Sixtieth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1340

Introduced by

Representatives Klemin, DeKrey, Delmore

Senators Grindberg, Nelson, Nething

A BILL for an Act to create and enact chapter 10-35 of the North Dakota Century Code, relating
to public corporations; and to amend and reenact section 54-09-08 of the North Dakota Century
Code, relating to the secretary of state's general services operating fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 10-35 of the North Dakota Century Code is created and enacted
as follows:

10-35-01. Citation. This chapter may be cited as the "North Dakota Public
Corporations Act".

10-35-02. Definitions. For purposes of this chapter, unless the context otherwise
requires:

1. "Beneficial owner", "owns beneficially", and similar terms have the same meaning
as in the rules and regulations of the commission under section 13 of the
Exchange Act.
[15 U.S.C. section 78a et seq.].
4. "Executive officer" has the same meaning as in the rules and regulations of the
commission under the Exchange Act.
5. "Poison pill" means a security created or issued by a public corporation that
precludes or limits a person or group of persons from owning beneficially or of
record, or from exercising, converting, transferring, or receiving, the security on the
same terms as other shareholders or which is intended to have the effect of diluting
disproportionately from the shareholders generally the interest of the person or
group of persons in the corporation or a successor to the corporation or otherwise
discouraging the person or group of persons from acquiring beneficial ownership of
shares of the corporation or a successor to the corporation. For the purposes of
this subsection:

a. A security may constitute a poison pill whether or not it trades separately or
together with other securities of the corporation and whether or not it is
evidenced by a separate certificate or by a certificate for other securities of
the corporation.

b. "Poison pill" includes any form of security created or issued by a corporation,
or any agreement or arrangement entered into by a corporation, regardless of
the name by which it is known, that is designed or intended to operate as or
that has the effect of what is commonly referred to, either on July 1, 2007, or
at any time thereafter, as a "poison pill" or "shareholder rights plan".

c. A security is not a poison pill if it would otherwise be a poison pill solely
because it contains restrictions on ownership or acquisition of shares of the
corporation that are necessary:

(1) To maintain the tax status of the corporation; or

(2) For the corporation to comply with a statute, rule, or regulation that
    regulates a business in which the corporation is engaged.

d. "Security" includes:

(1) An investment contract, warrant, option right, conversion right, or any
    other form of right or obligation;

(2) A "security" within the meaning of that term in the Exchange Act, the
    Securities Act of 1933, as amended [15 U.S.C. section 77a et seq.], the
    rules and regulations of the commission, or judicial interpretations
    under any of the foregoing;

(3) Any other ownership interest or right to acquire an ownership interest;

(4) Any other instrument commonly known as a "security"; and

(5) Any instrument or contract right created or issued by a public
    corporation, whether or not the instrument or contract right is a security
    under any other provision of law.
6. "Public corporation" or "corporation" means a corporation as defined in section 10-19.1-01:
   a. That is incorporated after July 1, 2007; and
   b. The articles of which state that the corporation is governed by this chapter.
8. "Required vote" means approval of a provision of the articles or bylaws, at a time when the corporation has a class of voting shares registered under the Exchange Act, by at least the affirmative vote of both:
   a. A majority of the directors in office who are not executive officers of the corporation; and
   b. Two-thirds of the voting power of the outstanding shares entitled to vote generally for the election of directors that are not owned beneficially or of record by directors or executive officers of the corporation.

10-35-03. Application and effect of chapter.
1. This chapter applies to every public corporation.
2. The existence of a provision of this chapter does not of itself create any implication that a contrary or different rule of law is or would be applicable to a corporation that is not a public corporation. This chapter does not affect any statute or rule of law as it applies to a corporation that is not a public corporation.
3. A provision of the articles or bylaws of a public corporation may not be inconsistent with any provision of this chapter.
4. The computation of a percentage of shares owned beneficially or of record by a person or group of persons for purposes of this chapter or chapter 10-19.1 shall be based on the number of outstanding shares of the public corporation shown most recently in a filing by the corporation with the commission under the Exchange Act.

1. Chapter 10-19.1 applies generally to all public corporations, except that the provisions of this chapter control over any inconsistent provision of chapter 10-19.1.
2. A public corporation is a "publicly held corporation" as that term is used in chapter 10-19.1.

3. The definitions in section 10-19.1-01 apply to the use in this chapter of the terms defined in that section.

10-35-05. Amendment of the bylaws.

1. Any shareholder of a public corporation may propose the adoption, amendment, or repeal of a bylaw.

2. Subdivision c of subsection 3 of section 10-19.1-31 shall not apply to a public corporation except that a provision of the articles or bylaws authorized by section 10-35-14 may apply to a proposal to adopt, amend, or repeal a bylaw.

10-35-06. Board of directors.

1. The articles or bylaws of a public corporation may not fix a term for directors longer than one year.

2. The articles or bylaws of a public corporation may not stagger the terms of directors into groups whose terms end at different times.

3. The size of the board of a public corporation may not be changed at a time when:
   a. The board has notice that there will be a contested election of directors at the next regular or special meeting of the shareholders; or
   b. The shareholders do not have the right to nominate candidates for election at the next regular meeting of the shareholders under a provision of the articles or bylaws adopted pursuant to section 10-35-07.

4. The board of a public corporation must elect one of its members as the chair of the board who shall preside at meetings of the board and perform such other functions as may be provided in the articles or bylaws or by resolution of the board. The chair of the board may not serve as an executive officer of the corporation.


1. A public corporation may not require a shareholder or beneficial owner of shares to provide notice of an intention to nominate a candidate for election as a director except as provided in a provision of the articles or bylaws that satisfies the requirements of this section.
2. A provision of the articles or bylaws of a public corporation requiring a shareholder or beneficial owner to provide notice of an intention to nominate a candidate for election as a director may not require the notice to include more than:
   a. The name of the shareholder or beneficial owner;
   b. A statement that the shareholder or beneficial owner is the beneficial owner of one or more shares in the corporation and reasonable evidence of that ownership; and
   c. The number of candidates the shareholder or beneficial owner intends to nominate.

3. The date fixed by the articles or bylaws for submission by a shareholder or beneficial owner of a notice of intention to nominate a candidate for election as a director may not be earlier than:
   a. In the case of a meeting held within five business days before or after the anniversary of the previous year's regular meeting, ninety days before the anniversary date of the prior regular meeting; or
   b. In the case of a meeting not held within five business days before or after the anniversary of the previous year's regular meeting, the later of:
      (1) Twenty days after the public corporation announces the date of the meeting in the body of a public filing, and not solely in an exhibit or attachment to a filing, regardless of whether the exhibit or attachment has been incorporated by reference into the body of the filing, with the commission under the Exchange Act; and
      (2) Ninety days before the date of the meeting.

4. A provision of the articles or bylaws requiring a shareholder or beneficial owner to provide notice of an intention to nominate a candidate for election as a director must provide a period of at least twenty days during which the shareholder or beneficial owner may submit the notice to the public corporation.

5. The adoption or amendment of a bylaw requiring advance notice of nominations may not take effect in the one hundred twenty-day period before the next meeting of shareholders, unless the adoption or amendment of the bylaw has been approved by the shareholders.

1. If a qualified shareholder provides notice of an intention to nominate one or more candidates for election to the board of directors that satisfies both section 10-35-07 and this section, the public corporation must:
   a. Include the name of each nominee and a statement not longer than five hundred words without counting the information required under subdivisions a through e of subsection 2 supplied by the qualified shareholder in support of each nominee in the corporation's proxy statement; and
   b. Make provision for a shareholder to vote on each nominee on the form of proxy solicited on behalf of the corporation.

2. The public corporation may not require the notice from the qualified shareholder to include more than:
   a. The name of the shareholder or the names of the members of the group of shareholders;
   b. A statement that the shareholder or group of shareholders satisfies the definition of a qualified shareholder in subsection 3;
   c. A statement that the shareholder or group of shareholders does not have knowledge that the candidacy or, if elected, board membership of any of its nominees would violate controlling state or federal law or rules other than rules regarding director independence of a national securities exchange or national securities association applicable to the corporation;
   d. The information regarding each nominee that is required to be included in the corporation's proxy statement by the rules and regulations adopted by the commission under the Exchange Act;
   e. A statement from each nominee that the nominee consents to be named in the corporation's proxy statement and form of proxy and, if elected, to serve on the board of directors of the corporation, for inclusion in the corporation's proxy statement; and
   f. The supporting statement permitted by subdivision a of subsection 1.

3. "Qualified shareholder" means a person or group of persons acting together that satisfies the following requirements:
a. On the date of the notice, the person or group owns beneficially in the aggregate more than five percent of the outstanding shares of the public corporation that are entitled to vote generally at the time for the election of directors; and

b. The person or each member of the group has beneficially owned the shares that are used for purposes of determining the ownership threshold in subdivision a continuously for at least one year and beneficially owns the shares on both:
   (1) The record date for the meeting at which there is a vote on a director candidate nominated by the qualified shareholder; and
   (2) The date of the meeting.

10-35-09. Election of directors.

1. After a quorum is established at a meeting of the shareholders of a public corporation at which directors are to be elected, the polls must be opened for the election of directors before the meeting may be recessed or adjourned. If the polls have not been previously closed, the polls close for the election of directors upon the first recess or adjournment of the meeting.

2. Except as provided in subsection 3, if the articles of a public corporation provide that the shareholders do not have the right to cumulate their votes in an election of directors:
   a. Each share in the corporation entitled to vote on the election of directors shall be entitled to vote noncumulatively for or against, or to abstain with respect to, each candidate for election.
   b. To be elected, a candidate must receive the affirmative vote of at least a majority of the votes cast for or against the candidate's election.
   c. An individual who is not elected under subdivision b may not be appointed by the board of directors to fill a vacancy on the board at any time thereafter unless the individual is subsequently elected as a director by the shareholders.
   d. If a director who was a candidate for reelection is not elected under subdivision b, the director may continue to serve under subdivision b of
subsection 1 of section 10-19.1-35 for not longer than ninety days after the
date of the first public announcement of the results of the election.

e. If no directors are elected under subdivision b, the current directors continue
to serve under subdivision b of subsection 1 of section 10-19.1-35, and
another meeting of the shareholders for the election of directors must be held
not later than eighty-nine days after the date of the first public announcement
of the results of the election.

3. Subsection 2 does not apply to an election of directors by a voting group if there
are more candidates for election by the voting group than the number of directors
to be elected by the voting group and one or more of the candidates has been
properly nominated by the shareholders. An individual is not counted as a
candidate for election under this subsection if the board of directors reasonably
determines before the notice of meeting is given that the individual’s candidacy
does not create a bona fide election contest. The determination of the number of
candidates for purposes of this subsection shall be made as of:

a. The expiration of the time fixed by the articles or bylaws for advance notice by
   a shareholder of an intention to nominate directors; or

b. Absent such a provision at a time publicly announced by the board of
   directors which is not more than fourteen days before notice is given of the
   meeting at which the election is to occur.

4. A public corporation may not compensate an individual, directly or indirectly, as a
result of the fact, in whole or in part, that the individual is not elected or reelected
as a director, and without regard to whether the compensation would be paid to the
individual as a director or officer or on any other basis.

5. The shareholders may act by consent in a record to elect directors, but the consent
will be in lieu of a regular meeting of shareholders only if:

a. The shareholders are not entitled to vote cumulatively for the election of
directors;

b. The election by consent takes effect within the one hundred twenty-day period
   before the anniversary of the most recent regular meeting; and

c. The full board is elected by the consent.

1. A shareholder of a public corporation who nominates one or more candidates for election as directors who are not nominated by management or the board of directors must be reimbursed by the corporation for the reasonable actual costs of solicitation of proxies incurred by the shareholder in an amount equal to the shareholder's total reasonable actual costs of solicitation multiplied by a fraction, the numerator of which is the number of candidates nominated by the shareholder who are elected, and the denominator of which is the total number of candidates nominated by the shareholder.

2. As used in this section, "actual costs of solicitation" means amounts paid to third parties relating to the solicitation, including lawyers, proxy solicitors, public relations firms, printers, the United States postal service, and media outlets.

10-35-11. Director supermajority provisions prohibited. Neither the articles nor the bylaws of a public corporation may provide for a greater quorum or voting requirement for the board or a committee of the board than a majority of the number of directors that would constitute the full board or committee assuming there are no vacancies.

10-35-12. Regular meeting of shareholders.

1. Unless directors are elected by consent in lieu of a regular meeting as provided in subsection 5 of section 10-35-09, a public corporation must hold a meeting of shareholders annually for the election of directors and the conduct of such other business as may be properly brought before the meeting by the board or the shareholders.

2. The articles or bylaws of a public corporation must state the latest date in each calendar year by which the regular meeting of shareholders must be held. The date so fixed by the articles or bylaws may not be later than one hundred eighty days after the end of the prior fiscal year of the corporation.

3. Any shareholder of a public corporation may demand a regular meeting of shareholders under subsection 2 of section 10-19.1-71 or apply for an order of court directing the holding of a regular meeting of shareholders under section 10-19.1-72.1, in each case without regard to the percentage of the voting power held by the shareholder.
4. An amendment of the bylaws of a public corporation that changes the latest date by which the regular meeting of shareholders must be held may not take effect until after the regular meeting has been held for the year during which the amendment is adopted, unless the amendment has been approved by the shareholders.

5. The committee of the board of a public corporation that has authority to set the compensation of executive officers must report to the shareholders at each regular meeting of shareholders on the compensation of the corporation’s executive officers. The shareholders that are entitled to vote for the election of directors shall also be entitled to vote on an advisory basis on whether they accept the report of the committee.

10-35-13. Call of special meeting of shareholders.

1. A public corporation shall hold a special meeting of shareholders upon the demand of its shareholders as provided in section 10-19.1-72, except that, regardless of the purpose for the meeting, the shareholders demanding the meeting must own beneficially ten percent or more of the voting power of all shares entitled to vote on each issue proposed to be considered at the special meeting.

2. The articles or bylaws of a public corporation may not restrict:
   a. The period during which shareholders may call a special meeting of shareholders; or
   b. The business that may be conducted at a special meeting.


1. A public corporation may not require a shareholder or beneficial owner to provide notice of an intention to propose a matter for consideration or a vote at a regular meeting of shareholders except as provided in a provision of the article or bylaws that satisfies the requirements of this section.

2. A provision of the articles or bylaws requiring a shareholder or beneficial owner to provide notice of an intention to propose a matter for consideration or a vote by the shareholders may not require the notice to include more than:
   a. The name of the shareholder or beneficial owner;
b. A statement that the shareholder or beneficial owner is the beneficial owner of one or more shares in the corporation and reasonable evidence of that ownership; and

c. The general nature of the business to be proposed.

3. The date fixed by the articles or bylaws for submission by a shareholder or beneficial owner of a notice of intention to propose a matter for consideration or a vote by the shareholders may not be earlier than:

a. In the case of a meeting held within five business days before or after the anniversary of the previous year's regular meeting, ninety days before the anniversary date of the prior regular meeting; or

b. In the case of a meeting not held within five business days before or after the anniversary of the previous year's regular meeting, the later of:

(1) Twenty days after the public corporation announces the date of the meeting in the body of a public filing, and not solely in an exhibit or attachment to a filing regardless of whether the exhibit or attachment has been incorporated by reference into the body of the filing, with the commission under the Exchange Act; and

(2) Ninety days before the date of the meeting.

4. A provision of the articles or bylaws requiring a shareholder or beneficial owner to provide notice of an intention to propose a matter for consideration or a vote by the shareholders must provide a period of at least twenty days during which the shareholder or beneficial owner may submit the notice to the public corporation.

5. The adoption or amendment of a bylaw requiring advance notice of business to be proposed by a shareholder or beneficial owner may not take effect in the one hundred twenty-day period before the next regular meeting of shareholders, unless the adoption or amendment of the bylaw has been approved by the shareholders.

6. This section does not apply to the proposal by a shareholder or beneficial owner of an amendment of the articles of a public corporation.

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1. A proposal of an amendment of the articles of a public corporation by a
shareholder or shareholders under subsection 2 of section 10-19.1-19 need not
include more than:
   a. The name of the shareholder or the names of the members of the group of
      shareholders;
   b. A statement of the number of shares of each class owned beneficially or of
      record by the shareholder or group of shareholders; and
   c. The text of the proposed amendment.

2. The articles or bylaws of a public corporation may not impose any requirements on
   the proposal of an amendment of the articles by a shareholder.

3. An amendment proposed by a shareholder or shareholders pursuant to
   subsection 1 and approved by the shareholders does not need to approved by the
   board to be adopted and become effective.

10-35-16. Quorum at shareholder meetings.

1. If a proxy is given authority by a shareholder of a public corporation to vote on less
   than all items of business considered at a meeting of shareholders, the
   shareholder is considered to be present and entitled to vote by the proxy for
   purposes of section 10-19.1-76 on all items of business to be considered at the
   meeting.

2. A proxy who is given authority by a shareholder who abstains with respect to an
   item of business is considered to have authority to vote on the item of business for
   purposes of this section.

10-35-17. Shareholder supermajority provisions prohibited.

Neither the articles nor
the bylaws of a public corporation may provide for a greater quorum or voting requirement for
shareholders than a majority of the voting power of the shares entitled to vote on the item of
business or, in the case of a class or series entitled to vote as a separate group, a majority of
the voting power of the outstanding shares of the class or series.


Unless otherwise provided in the articles, a shareholder
of a public corporation does not have the preemptive rights provided in section 10-19.1-65.

1. There must be a presiding officer at every meeting of the shareholders of a public corporation. The presiding officer must be appointed in the manner provided in the articles or bylaws or, in the absence of such a provision, by the board before the meeting or by the shareholders at the meeting. If the articles or bylaws are silent on the appointment of a presiding officer and the board and the shareholders fail to designate a presiding officer, the president is the presiding officer.

2. Except as otherwise provided in the articles or bylaws or, in the absence of such a provision, by the board before the meeting, the presiding officer determines the order of business and has the authority to establish rules for the conduct of the meeting.

3. The order of business and rules for the conduct of a meeting and any action by the presiding officer must:
   a. Be reasonable;
   b. Be fair to all of the shareholders; and
   c. May not favor or disadvantage the proponent of any action to be taken at the meeting.

4. The presiding officer may announce at the meeting when the polls close for each matter voted upon. If no announcement is made, the polls close upon the final adjournment of the meeting, except as provided in subsection 1 of section 10-35-09. After the polls close, ballots, proxies, and votes may not be accepted, and changes and revocations of ballots, proxies, or votes may not be made.

10-35-20. Action by shareholders without a meeting.

1. An action required or permitted to be taken at a meeting of the shareholders of a public corporation may be taken without a meeting by one or more records signed by shareholders who own voting power equal to the voting power that would be required to take the same action at a meeting of the shareholders at which all shareholders were present.

2. Action may not be taken by a public corporation by ballot of its shareholders without a meeting.

10-35-22. Duration of poison pills limited.

1. If a public corporation adopts, creates, or issues a poison pill without a vote of its shareholders authorizing that action, the poison pill must expire or be redeemed and will otherwise be of no further force or effect not later than the earlier of:

   a. One year after the date of its adoption, creation, or issuance; or
   b. Ninety days after the first public announcement that a number of shares have been tendered into an offer to purchase any and all shares of the corporation, which number of shares tendered represents at least a majority of the outstanding shares of each class or series of shares entitled to vote generally for the election of directors when added to those shares owned beneficially or of record by the person or group of persons making the offer or by any affiliates of that person or group of persons.

2. If authorized by a vote of its shareholders, a public corporation may:

   a. Adopt, create, or issue a poison pill that will be in effect for a period not longer than the shorter of:

      (1) Two years; and
      (2) The period set forth in subdivision b of subsection 1; or

   b. Extend the period during which a poison pill adopted, created, or issued pursuant to subsection 1 will be in effect to not longer in the aggregate than the period set forth in subdivision a.

3. A public corporation may not adopt, create, or issue a poison pill without the approval of its shareholders until after it has held a regular meeting of shareholders after its most recent prior poison pill has expired or been redeemed and otherwise ceased to be of any force or effect. The date of the regular meeting of shareholders must:

   a. Comply with section 10-35-12;
   b. Be at least ninety days after the date on which the prior poison pill expired, was redeemed, or otherwise ceased to be of any force or effect; and
   c. If the corporation has an advance notice requirement adopted pursuant to section 10-35-07, give the shareholders the full period of time required by
subsection 4 of section 10-35-07 in which to provide notice to the corporation of an intention to nominate candidates for election at the meeting.

10-35-23. Protection of power of current directors over poison pill. A poison pill adopted, created, or issued by a public corporation, with or without the approval of its shareholders, may not include a provision that limits in any way the power of the board of directors, as it may be constituted at any point in time, to take any action at any time with respect to the poison pill, including without limitation what is commonly referred to as a "dead hand", "no hand", or "slow hand" provision.

10-35-24. Minimum share ownership triggering level for poison pills. A poison pill adopted, created, or issued by a public corporation, with or without the approval of its shareholders, may not provide that beneficial ownership or announcement of an intention to seek beneficial ownership by a person or group of persons of shares equal to less than twenty-five percent of the total number of outstanding shares of all classes and series of shares of the corporation will result, either immediately or after the passage of a period of time, in:

1. A distribution or distribution date for rights certificates or other securities as defined in subdivision d of subsection 5 of section 10-35-02;
2. The person or group of persons becoming what is commonly referred to as an "acquiring person" or "adverse person" or otherwise having the status of a person intended to be diluted or subject to dilution by the poison pill;
3. What is commonly referred to as a "flip-in" or "flip-over" event or the poison pill otherwise being triggered or becoming operative; or
4. The poison pill otherwise having a dilutive, discriminatory, or other adverse effect on the person or group of persons.

10-35-25. Optional prohibition on adoption of poison pills.

1. The articles or bylaws of a public corporation may restrict or prohibit the corporation from adopting, creating, or issuing a poison pill.
2. A provision of the articles or bylaws adopted pursuant to subsection 1 at a time when a public corporation has a poison pill in effect must be adopted by the affirmative vote of a majority of the outstanding shares entitled to vote on adoption of the provision. In every other instance, a provision of the articles or bylaws adopted pursuant to subsection 1 must be adopted by the affirmative vote of a
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majority of the votes cast by holders of shares entitled to vote on adoption of the
provision.


1. The articles or bylaws of a public corporation may not contain an antitakeover
provision unless it has been approved by the required vote.

2. As used in this section:

   a. Except as provided in subdivision b, "antitakeover provision" means a
      provision that:

      (1) Would block an acquisition by any person or group of persons of
          beneficial ownership of any shares of the corporation or a change in
          control of the corporation absent compliance with the provision;

      (2) Restricts the price that may be paid by any person or group of persons
          in an acquisition of beneficial ownership of any shares of the
          corporations;

      (3) Restricts the terms of a transaction after the occurrence of a change in
          control of the corporation or limits the price that may be paid in such a
          transaction, when it may be conducted, or how it must be approved by
          the directors or shareholders;

      (4) Requires an approval of the directors or shareholders in addition to, or
          in a different manner from, whatever approvals are required under this
          chapter and chapter 10-19.1 for a transaction involving an acquisition
          by any person or group of persons of beneficial ownership of any
          shares of the corporation or a change in control of the corporations;

      (5) Requires the approval of a nongovernmental third party for an
          acquisition by any person or group of persons of beneficial ownership of
          any shares of the corporation or a transaction that would involve a
          change in control of the corporation;

      (6) Requires the corporation, directly or indirectly, to take an action that it
          would not have been required to take if it had not been the subject of an
          acquisition by any person or group of persons of beneficial ownership of
any of its shares or a transaction that would involve a change in control
of the corporation;

(7) Limits, directly or indirectly, the power of the corporation if it is the
subject of an acquisition by any person or group of persons of beneficial
ownership of any of its shares or a transaction that would involve a
change in control of the corporation to take an action that the
corporation would have had the power to take, without that limit, if the
acquisition of beneficial ownership or transaction had not occurred;

(8) Changes or limits the voting rights of any shares of the corporation
following a transaction involving an acquisition by any person or group
of persons of beneficial ownership of any shares of the corporation or a
change in control of the corporation;

(9) Would give any beneficial or record owner of shares of the corporation
a direct right of action against a person or group of persons with respect
to the acquisition by the person or group of persons of beneficial
ownership of any shares in the corporation or control of the corporation;

or

(10) Is designed or intended to operate as, or that has the effect of, what is
commonly referred to, either on July 1, 2007, or at any time thereafter,
as a "business combination", "control share acquisition", "control share
cash out", "freeze out", "fair price", "disgorgement", or other
"antitakeover" provision.

b. "Antitakeover provision" does not include a provision in the terms of a class or
series of shares that are issuable upon the exercise of a poison pill, but only
so long as the shares of the class or series are not issued by the corporation
except pursuant to the exercise of a poison pill.

c. "Control" has the same meaning as in the rules and regulations of the
commission under the Exchange Act.

10-35-27. Liberal construction. The provisions of this chapter and of chapter 10-19.1
must be liberally construed to protect and enhance the rights of shareholders in public
corporations.

1. Instead of filing an annual report under section 10-19.1-146, each public corporation shall file under this section, within the time provided in section 10-25-29, an annual report setting forth:

a. The name of the public corporation;
b. A statement that it is a public corporation;
c. The name of the public corporation's registered agent and the address of the registered office of the public corporation;
d. The address of the principal executive office of the public corporation;
e. A brief statement of the character of the business, if any, in which the public corporation is actually engaged in this state; and
f. The names and respective business addresses of the executive officers and directors of the public corporation.

2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed as provided in subsection 52 of section 10-19.1-01, the articles or the bylaws, or by a resolution approved by the affirmative vote of the required proportion or number of the directors. If the public corporation is in the hands of a receiver or trustee, it must be signed on behalf of the public corporation by the receiver or trustee. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years.

3. Instead of the fees provided for annual report filings in section 10-19.1-147, the secretary of state shall collect a franchise fee with the annual report from every public corporation for each calendar year in an amount equal to sixty dollars for each ten thousand shares of authorized capital stock of the public corporation.

a. In the case of a public corporation that has not been a public corporation during an entire twelve-month calendar year, the amount of the public corporation franchise fee due, as provided in this section, shall be prorated on a monthly basis for the portion of the year during which the public corporation
was a public corporation. For this purpose, any portion of a month shall be regarded as a whole month.

b. In no case shall the public corporation franchise fee imposed by this section be more than eighty thousand dollars or less than sixty dollars.

c. If a public corporation changes during a calendar year the number of shares of its authorized capital stock, the total annual public corporation franchise fee payable as provided in this section shall be arrived at by adding together the franchise fees calculated as set forth in this section as prorated for the several periods of the year during which each distinct authorized amount of shares of capital stock was in effect.

d. For the purpose of computing the franchise fee imposed by this section, the authorized capital stock of a public corporation shall be considered to be the total number of shares of all classes and series that the public corporation is authorized to issue, whether or not the number of shares that may be outstanding at any one time is a lesser number.

e. Except as provided in this subsection, the public corporation franchise fee shall be in addition to any other taxes or fees imposed by this state on the public corporation.

10-35-29. Filing of annual report and payment of public corporation franchise fee.

1. Except for the first annual report and public corporation franchise fee, the annual report and public corporation franchise fee must be delivered to the secretary of state before December second of each year. The first annual report and payment of the public corporation franchise fee must be delivered before the date provided in the year following the calendar year in which the statement described in subdivision b of subsection 6 of section 10-35-02 takes effect.

2. An annual report and public corporation franchise fee in a sealed envelope postmarked by the United States postal service before the date provided in subsection 1, or an annual report in a sealed packet with a verified shipment date by any other carrier service before the date provided in subsection 1, is compliance with this requirement. When the filing date falls on Saturday, Sunday, or other
holiday as defined in section 1-03-01, a postmark or verified shipment date on the
next business day is compliance with this requirement.

3. The secretary of state must file the annual report if the annual report conforms to
the requirements of section 10-35-28 and the public corporation franchise fee has
been paid.
   a. If the annual report does not conform or adequate payment has not been
      made, the secretary of state must notify the public corporation of any
      necessary corrections or payment.
   b. If the annual report is corrected and filed with the payment before the date
      provided in subsection 1, or within thirty days after the public corporation was
      notified of corrections or payment by the secretary of state, then the penalties
      provided in section 10-35-31 for failure to file an annual report within the time
      provided do not apply.

4. The secretary of state may extend the annual report filing date provided in
   subsection 1 for a period not to exceed eleven months after the filing date provided
   in subsection 1 if a written application for an extension is delivered before the date
   provided in subsection 1.

10-35-30. Collection of public corporation franchise fee - Preferred debt. The
public corporation franchise fee shall be a debt due from the public corporation to the state for
which an action at law may be maintained after the same shall have been in arrears for a period
of one month. The public corporation franchise fee shall also be a preferred debt in case of
insolvency.

   1. The secretary of state shall charge and collect additional fees for late filing of the
      annual report and payment of the public corporation franchise fee as follows:
      a. Within ninety days after the date provided in subsection 1 of section 10-35-29,
         two hundred fifty dollars.
      b. Ninety days after the date provided in subsection 1 of section 10-35-29, the
         public corporation becomes not in good standing. The secretary of state shall
         notify the public corporation that its certificate of incorporation is not in good
         standing and that it may be dissolved as provided in subsection 2.
The secretary of state shall mail the notice of impending dissolution to
the last registered agent at the last registered office of record.

If the public corporation files its annual report after the notice is mailed,
together with the public corporation franchise fee and a late filing
penalty of one thousand dollars, then the secretary of state shall restore
its certificate of incorporation to good standing.

2. A public corporation that fails to file its annual report or to pay the public
corporation franchise fee due within one year after the date provided in
subsection 1 of section 10-35-29 ceases to exist as a corporation and is
considered involuntarily dissolved by operation of law.
   a. The secretary of state shall note the dissolution of the certificate of
      incorporation of the public corporation on the records of the secretary of state
      and shall give notice of the action to the dissolved public corporation.
   b. Notice by the secretary of state must be mailed to the last registered agent at
      the last registered office of record.

3. A public corporation dissolved for failure to file an annual report or to pay a public
corporation franchise fee due may be reinstated within one year following the
dissolution by:
   a. Filing a past-due annual report with the public corporation franchise fee due;
   b. Paying a late filing penalty of one thousand dollars; and
   c. Paying a reinstatement free of one hundred thirty-five dollars.

4. Reinstatement under this subsection does not affect the rights or liabilities arising
during the time from the dissolution to the reinstatement.

5. Fees paid to the secretary of state according to this chapter are not refundable if
an annual report submitted to the secretary of state cannot be filed because it lacks
information required by section 10-35-28 or the annual report lacks sufficient
payment as required by section 10-35-28 or as required by this section.

10-35-32. Secretary of state - Powers - Enforcement - Penalty - Appeal.

1. The secretary of state has the power and authority reasonably necessary to
efficiently administer this chapter and to perform the duties imposed thereby.
2. The secretary of state may propound to any public corporation that is subject to
this chapter and to any officer, director, or employee thereof, any interrogatory
reasonably necessary and proper to ascertain whether the public corporation has
complied with all provisions of this chapter applicable to the public corporation.
   a. The interrogatory must be answered within thirty days after mailing or within
      any additional time as must be fixed by the secretary of state. The answer to
      the interrogatory must be full and complete and must be made in writing and
      under oath.
   b. If the interrogatory is directed:
      (1) To an individual, it must be answered by that individual; or
      (2) To a public corporation, it must be answered by the president, vice
          president, secretary, or assistant secretary of the public corporation.
   c. The secretary of state is not required to file any record to which the
      interrogatory relates until the interrogatory has been answered, and not then if
      the answers disclose the record is not in conformity with this chapter.
   d. The secretary of state shall certify to the attorney general, for action the
      attorney general may deem appropriate, and interrogatory and answers
      thereto, which discloses a violation of this chapter.
   e. Each officer, director, or employee of a public corporation who fails or refuses
      within the time provided by subdivision a to answer truthfully and fully an
      interrogatory propounded to that person by the secretary of state is guilty of
      an infraction.
   f. An interrogatory propounded by the secretary of state and the answers are
      not open to public inspection. The secretary of state may not disclose any
      facts or information obtained from the interrogatory or answers except insofar
      as permitted by law or insofar as required for evidence in any criminal
      proceedings or other action by this state.

3. If the secretary of state rejects any record required by this chapter to be approved
by the secretary of state before the record may be filed, then the secretary of state
shall give written notice of the rejection to the person that delivered the record,
specifying the reasons for rejection.
a. Within thirty days after the service of the notice of denial, the public corporation may appeal to the district court in the judicial district serving Burleigh County by filing with the clerk of court a petition setting forth a copy of the record sought to be filed and a copy of the written rejection of the record by the secretary of state.

b. The matter must be tried de novo by the court. The court shall either sustain the action of the secretary of state or direct the secretary of state to take the action the court determines proper.

4. If the secretary of state dissolves a public corporation pursuant to subsection 2 of section 10-35-31, then the public corporation may appeal to the district court in the judicial district serving Burleigh County by filing with the clerk of court a petition, including:

   a. A copy of the public corporation's articles of incorporation; and
   
   b. A copy of the notice of dissolution given by the secretary of state.

5. The district court shall try the matter de novo. The court shall sustain the action of the secretary of state or direct the secretary of state to take the action the court determines proper.

6. If the court order sought is one for reinstatement of a public corporation that has been dissolved as provided in subsection 2 of section 10-35-31, then together with any other actions the court deems proper, and such order which reverses the decision of the secretary of state shall require the public corporation to:

   a. File all past-due annual reports;
   
   b. Pay the public corporation franchise fees to the secretary of state for each annual report as provided in subsection 3 of section 10-35-28; and
   
   c. Pay the reinstatement fee to the secretary of state as provided in subsection 3 of section 10-35-31.

7. Appeals from all final orders and judgments entered by the district court under this section in review of any ruling or decision of the secretary of state are treated as other civil actions.

10-35-33. Funds received. Ten percent of the fees received by the secretary of state for filing records of a public corporation as provided for in section 10-19.1-147 or this chapter
must be deposited in the secretary of state's general services operating fund to pay the cost to administer this chapter.

SECTION 2. AMENDMENT. Section 54-09-08 of the North Dakota Century Code is amended and reenacted as follows:

54-09-08. Secretary of state's general services operating fund. The secretary of state's general services operating fund is a special fund in the state treasury. Moneys in the fund are to be used pursuant to legislative appropriations for the provision of services under section 16.1-02-15, subsection 6 of section 41-09-94, subsection 9 of section 54-09-04, and sections 10-35-33, 54-09-10, and 54-09-11. At the close of each biennium, the secretary of state shall transfer any unobligated balance remaining in the fund exceeding seventy-five thousand dollars to the general fund.