

# MILITARY

## CHAPTER 304

### SENATE BILL NO. 2115

(Government and Veterans Affairs Committee)

(At the request of the Adjutant General)

## NATIONAL GUARD TRAINING AND COMPENSATION

AN ACT to amend and reenact sections 37-01-04, 37-07.2-01, 37-28-01, 37-28-02, and 37-28-03 of the North Dakota Century Code, relating to the governor's authority to call out the national guard for training, national guard tuition grants, the definition of resident for military adjusted compensation, and the time period for filing claims; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 37-01-04 of the North Dakota Century Code is amended and reenacted as follows:

**37-01-04. Governor's authority to order out national guard - Reserve militia ordered out.** In case of insurrection, invasion, tumult, riot, breach of the peace, or imminent danger thereof, to provide a presence at state ceremonial events, ~~or~~ to provide assistance to political entities in search and rescue efforts or to respond to a potential natural or environmental hazard or nuisance, or to perform training activities, the governor may order into the active service of this state any part of the national guard that the governor may deem proper. When the national guard of this state, or a part thereof, is called forth under the Constitution of the United States and the laws of the United States, the governor shall order out for service the remaining troops or such part thereof as may be necessary. If the number of available troops is insufficient, the governor shall order out such part of the reserve militia as the governor may deem necessary.

**SECTION 2. AMENDMENT.** Section 37-07.2-01 of the North Dakota Century Code is amended and reenacted as follows:

**37-07.2-01. National guard tuition grants - Terms of grants.** Any qualifying member of the national guard who enrolls in ~~any private nonprofit college or university~~ an accredited postsecondary institution in North Dakota ~~granting a four-year baccalaureate degree~~ may, subject to the limitations of available appropriated funds and subject to national guard rules ~~promulgated~~ adopted by the adjutant general, receive a grant in an amount equal to the payments made pursuant to chapter 37-07.1 for similar courses and credit hours for each qualifying member of the national guard who is enrolled at the university of North Dakota. Any ~~private nonprofit college or university~~ accredited postsecondary institution that agrees to participate in such a program must waive twenty-five percent of the tuition for qualifying national guardsmen in an amount equal to the difference between the tuition grant received by the national guard member and the tuition charged for similar courses and credit hours at the university of North Dakota. The use of the grant may not be restricted to the payment of tuition fees by the member of the national guard. These grants must be distributed according to rules promulgated by

the adjutant general and are available only so long as the member maintains satisfactory performance with the guard, meets the qualification requirements of the rules, and pursues a course of study which satisfies the normal requirements of the school. As used in this chapter, the word "tuition" has the same meaning as provided in section 37-07.1-02.

**SECTION 3. AMENDMENT.** Section 37-28-01 of the North Dakota Century Code is amended and reenacted as follows:

**37-28-01. Statement of public purpose.** In order to ease the financial hardships and personal and family sacrifice sustained by ~~these North Dakota~~ members of the North Dakota national guard, and North Dakota residents of the reserve, and active duty component who were mobilized after December 5, 1992, in support of military operations around the world it is the intent of the legislative assembly that additional compensation be provided to those resident veterans of North Dakota and payment of that compensation is declared to be a public purpose. It is the further intent of the legislative assembly to encourage those North Dakota resident veterans to continue their voluntary membership in the national guard, reserve component, and active military force.

**SECTION 4. AMENDMENT.** Section 37-28-02 of the North Dakota Century Code is amended and reenacted as follows:

**37-28-02. Definitions.** As used in this chapter:

1. "Adjutant general" means the adjutant general of North Dakota.
2. "Beneficiary" in relation to a deceased veteran, means, in the order named:
  - a. The surviving unremarried husband or wife as of the date of signing the application;
  - b. The surviving child or children and the lawful issue of a deceased child or children by right of representation;
  - c. The surviving person standing in loco parentis; or
  - d. The surviving parent or parents.
3. "Domestic service" means service by a veteran during the period of service which is not foreign service.
4. "Foreign service" means service by a veteran after December 5, 1992, for which the veteran received an armed forces expeditionary medal or campaign badge.
5. "Honorable and faithful" means service evidenced by:
  - a. An honorable discharge, or its equivalent;
  - b. In the case of an officer, a certificate of service; and
  - c. In the case of a veteran who has not been discharged, a certificate from the appropriate service authority that the veteran's service was honorable and faithful.

6. "Period of service" means the period of time beginning December 5, 1992, and ending June 30, ~~2007~~ 2009.
7. "Resident" means a person who has filed a North Dakota income tax return for the year prior to making application for benefits under this section and who:
  - a. Was born in and lived in the state of North Dakota until entrance into the armed forces of the United States;
  - b. Was born in, but was temporarily living outside the state of North Dakota, not having abandoned North Dakota residence at the time of entrance into the armed forces of the United States; or
  - c. Was born elsewhere but had resided within the state of North Dakota for the last six months before entrance into military service and had prior to or during that six-month period:
    - (1) Voted in the state of North Dakota;
    - (2) Was an emancipated minor during such period of residence or had lived with a parent or person standing in loco parentis who was a resident; or
    - (3) Was not registered for voting in another state after being a resident.
- d. a. "Resident" ~~also~~ means a veteran who was a bona fide resident of the state of North Dakota at the time of ~~entering the armed forces mobilization or, in the case of an active component member, at the time of deployment for which the member received an expeditionary medal or campaign badge~~, as determined under the rules of the adjutant general and the laws of this state. "Resident" includes all mobilized members of the North Dakota national guard.
- e. b. "Veteran" means a member of the national guard or reserve component who was activated under 10 U.S.C. 12302 and who completed honorable and faithful service of more than thirty days on active duty in the armed forces of the United States at any time during the period of service, or active component member awarded the expeditionary medal or campaign badge for service after December 5, 1992, who was a resident of the state of North Dakota, and who has not received bonus or adjusted compensation from another state for the period of service.

**SECTION 5. AMENDMENT.** Section 37-28-03 of the North Dakota Century Code is amended and reenacted as follows:

**37-28-03. Payment of adjusted compensation for domestic and foreign service.** Each national guard or reserve component resident veteran mobilized stateside is entitled to fifty dollars for each month or major fraction thereof for domestic service, not to exceed nine hundred dollars. Each national guard, reserve, or active component resident veteran of foreign service who received the expeditionary medal or campaign badge is entitled to one hundred dollars for each month or major fraction thereof, not to exceed one thousand eight hundred dollars.

Combined totals for stateside and foreign service may not exceed one thousand eight hundred dollars. If the veteran received a purple heart for foreign service, the veteran is entitled to a payment of two thousand five hundred dollars in lieu of monthly payments for adjusted compensation. If the veteran is deceased, the veteran's beneficiary is entitled to any payments under this chapter to which the veteran would have been entitled. Applications for adjusted compensation may be filed with the adjutant general through June 30, ~~2007~~ 2009, or in the case of a soldier mobilized on June 30, ~~2007~~ 2009, not later than six months after the end of the mobilization period of service.

**SECTION 6. EMERGENCY.** Sections 3, 4, and 5 of this Act are declared to be an emergency measure.

Approved April 9, 2007

Filed April 10, 2007

## CHAPTER 305

### SENATE BILL NO. 2353

(Senators Dever, Lyson, Tollefson)  
(Representatives Carlisle, Karls, L. Meier)

## VETERANS AND VETERANS' PREFERENCES

AN ACT to amend and reenact sections 37-01-40, 37-19.1-01, and 37-19.1-02 and subsection 1 of section 37-19.1-04 of the North Dakota Century Code, relating to veterans and veterans' preferences.

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

**SECTION 1. AMENDMENT.** Section 37-01-40 of the North Dakota Century Code is amended and reenacted as follows:

#### **37-01-40. Veteran and wartime veteran defined - Uniform service dates for wartime veterans.**

1. A "veteran" is a person an individual who has served on continuous federalized active military duty for ~~twenty-four months~~ one hundred eighty days or the full period for which the person individual was called or ordered to active military duty, ~~whichever is shorter~~ for reasons other than training, and who was discharged or released ~~therefrom~~ under other than dishonorable conditions. A discharge reflecting "expiration of term of service" or "completion of required service" or words to that effect qualifies the shorter term of service as making the ~~person~~ individual a veteran.
2. A "wartime veteran" is a person an individual who served in the active military forces, during a period of ~~war~~ armed conflict or who received the armed forces expeditionary or other campaign service medal during an emergency condition and who was discharged or released ~~therefrom~~ under other than dishonorable conditions. "Wartime veteran" also includes a ~~person an individual~~ who died in the line of duty in the active military forces, as determined by the armed forces.
3. Period of service dates for a wartime veteran begins with the date of any declaration of war by the Congress of the United States or presidential proclamation beginning hostilities or the beginning of an emergency condition recognized by the issuance of a presidential proclamation or a presidential executive order and in which the armed forces expeditionary medal or other campaign service medals are awarded according to presidential executive order and ending on a date prescribed by presidential proclamation or concurrent resolution of the Congress of the United States and dates determined by the United States department of defense.
4. Current uniform period of service dates for periods of armed conflict include:

- a. The period beginning December 7, 1941, through December 31, 1946, known as world war II;
  - b. The period beginning June 27, 1950, through January 31, 1955, known as the Korean war;
  - c. The period beginning August 5, 1964, through May 7, 1975, known as the Vietnam war;
  - d. The period beginning August 2, 1990, through January 2, 1992, known as the gulf war; and
  - e. The period beginning September 11, 2001, and ending on a date prescribed by presidential proclamation or by Congress as the last day of operation Iraqi freedom or operation enduring freedom, whichever occurs later.
5. The department of veterans affairs shall maintain a list of all period of service dates for emergency conditions in which the armed forces expeditionary medal has been awarded.

**SECTION 2. AMENDMENT.** Section 37-19.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**37-19.1-01. Definitions.** As used in this chapter:

1. "Agency" or "governmental agency" means all political subdivisions and any state agency, board, bureau, commission, department, officer, and any state institution or enterprise authorized to employ ~~persons~~ individuals either temporarily or permanently.
  2. "Chief deputy" means the ~~person~~ individual who is appointed by an elected or appointed official under express statutory authority to hire a chief deputy and who is authorized to act on behalf of that official. The term does not include a ~~person~~ an individual appointed to a position that must be filled under ~~an established~~ a personnel system.
  3. "Disabled veteran" means a veteran who is found to be entitled to a service-connected disability rating as determined by the United States veterans' administration.
  4. "Justifiable cause" means grounds for action that are in accord with sufficient reason that can be justified or defended as correct. Justifiable cause not to hire a veteran must be something specific to that individual which renders the individual unsuitable for the position.
  5. "Personnel system" means a ~~personnel system based on merit principles~~ system that rates applicants for a position using an objective set of skills, knowledge, abilities, behaviors, or other characteristics required for the position.
- 6- 6. "Political subdivision" means counties, cities, townships, and any other governmental entity created by state law which employs ~~persons~~ individuals either temporarily or permanently.

- 6- 7. "Private secretary" means the ~~person~~ individual who is appointed by an elected or appointed official under express legal authority to hire a private secretary or administrative assistant and who is authorized to handle correspondence, keep files, schedule appointments, and do other clerical work of a more personal and confidential nature for that official, but does not include a ~~person~~ an individual appointed to a position that must be filled under ~~an established~~ a personnel system.
- 7- 8. "Veteran" means a North Dakota resident who is a wartime veteran as defined in subsection 2 of section 37-01-40.

**SECTION 3. AMENDMENT.** Section 37-19.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**37-19.1-02. Public employment preference to veterans - Residency requirements.**

1. Veterans are entitled to preference, over all other applicants, in appointment or employment by governmental agencies, provided that such veteran is a United States citizen at the time of application for employment. Veterans qualified for preference may not be disqualified from holding any position with an agency because of physical or mental disability, unless the disability renders them unable to properly perform the duties of the position applied for.
2. When a veteran applies for appointment or employment under subsection 1, the officer, board, or person whose duty it is to appoint or employ a ~~person~~ an individual to fill the available position shall, except where the veteran has been qualified for the position applied for under a personnel system, investigate the qualifications of the veteran. If the veteran is found to possess the qualifications required for the position applied for, whether educational or by way of prior experience, and is physically and mentally able to perform the duties of the position applied for, the officer, board, or person shall appoint or employ the veteran.
3. A disabled veteran is entitled to a preference superior to that given other veterans under this section, which preference must be accorded in the manner provided in this section.
4. Notwithstanding the preference provisions in subsections 1, 2, and 3, public employment preference for veterans by agencies ~~or governmental agencies, as defined herein, which now have, or which may hereafter have, an established~~ filling positions through a personnel system are governed by the following:
  - a. No distinction or discrimination may be made in the administration of the examination because the applicant may be a veteran.
  - b. Upon completion of the examination with a passing grade, the applicant must be informed of a veteran's rights to employment preference as hereinafter provided.
  - c. The applicant must be required to furnish proof of the applicant's status as a veteran and, if disabled, proof of the applicant's disability, as defined herein.

- d. Upon receipt of proof required in subdivision c, on a one hundred point scale, the examiner shall add five points for a nondisabled veteran and ten points for a disabled veteran to the examination grade of the applicant; ~~and the~~. The total is the veteran's examination grade score.
- e. Upon request for the prescribed number of eligible ~~persons~~ individuals from the eligibility registry, ~~such~~ the number of eligible ~~persons~~ individuals must be certified from the top number of eligible ~~persons~~ individuals and with ~~such~~ the certified list of eligible ~~persons~~ individuals there must also be submitted a statement as to which of those so certified are veterans, disabled veterans, or nonveterans.
- f. ~~In the event~~ If the certified list of eligible ~~persons~~ individuals includes either veterans or disabled veterans, the appointing or employing authority of that particular agency or governmental agency shall make a selection for the available position as follows:
- (1) A disabled veteran, without regard to the disabled veteran's examination grade, is first entitled to the position and, in the absence of justifiable cause, documented in writing, for not making ~~such~~ that selection, must be so appointed or employed. If ~~such~~ the list includes two or more disabled veterans, then the one with the highest examination grade is first entitled to the position and, in the absence of justifiable cause, documented in writing, for not making ~~such~~ that selection, must be so appointed or employed.
  - (2) ~~When such~~ If the certified list of eligible ~~persons~~ individuals does not include one or more disabled veterans and consists only of veterans, then the one with the highest examination grade is first entitled to the position and, in the absence of justifiable cause, documented in writing, must be ~~se~~ appointed or employed.
  - (3) ~~When such~~ If the certified list of eligible ~~persons~~ individuals includes nonveterans and veterans, but not disabled veterans, then the one with the highest examination grade, whether a nonveteran or a veteran, is first entitled to the position and, in the absence of justifiable cause, must be so appointed or employed; and if the one with the highest examination grade is a veteran and is not appointed or employed, there must be justifiable cause documented in writing for not making ~~such~~ that appointment or employment.
5. ~~The provisions of this~~ This section ~~de~~ does not apply when the position to be filled is that of a superintendent of schools, teacher, or the chief deputy or private secretary of an elected or appointed official, the chancellor and vice chancellors of the board of higher education, presidents or executive deans, vice presidents, assistant to the president, provosts, and instructors of board institutions. Temporary committees and individual or group appointments made by the governor or legislative assembly are also excepted from the provisions of this section.

**SECTION 4. AMENDMENT.** Subsection 1 of section 37-19.1-04 of the North Dakota Century Code is amended and reenacted as follows:

1. If a veteran, or a qualified veteran's spouse, hereafter known as the applicant, is not given the preference provided in section 37-19.1-02 or 37-19.1-03, the applicant, within fifteen days after notification by certified mail that employment has been refused, may request a hearing ~~before a hearing officer~~ as provided in subsection 3. The applicant's request must be in writing, must include the employer's notification that employment has been refused, and must be delivered to the commissioner of veterans' affairs by certified mail. A copy of the written request must be mailed to the employer or employing agency. The applicant is entitled to immediate employment in the position for which application was originally made, or an equivalent position, together with backpay and benefits from the date the appointment should have been made less amounts otherwise earnable through due diligence, if the hearing officer finds in favor of the applicant.

Approved May 4, 2007

Filed May 4, 2007

## CHAPTER 306

### SENATE BILL NO. 2142

(Senators Nelson, Dever, Horne)  
(Representatives Amerman, Froseth, Schneider)

### VETERANS' AID FUND LOANS

AN ACT to amend and reenact sections 37-14-04, 37-14-06, and 37-14-07 of the North Dakota Century Code, relating to loans made from the veterans' aid fund.

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

**SECTION 1. AMENDMENT.** Section 37-14-04 of the North Dakota Century Code is amended and reenacted as follows:

**37-14-04. Veterans' aid fund - Purpose.** The purpose of the veterans' aid fund is to make loans or ~~advancements~~ to any veteran and to a surviving spouse of a veteran if the spouse has not remarried. A qualified applicant may be permitted to receive more than one loan providing the applicant has satisfied payment requirements of a previous loan total amount of all loans does not exceed five thousand dollars.

**SECTION 2. AMENDMENT.** Section 37-14-06 of the North Dakota Century Code is amended and reenacted as follows:

**37-14-06. Department may provide aid.** If the department of veterans' affairs is satisfied that an applicant is a veteran or the surviving spouse of a veteran and has not remarried, and that the applicant is a citizen and resident of this state, and that the applicant meets the criteria set forth in rules adopted pursuant to section 37-14-10 regarding qualifications to obtain a loan, the department may loan to the applicant, ~~or a guardian of the applicant,~~ a sum from the veterans' aid fund not to exceed five thousand dollars. Additional loans may be made to an applicant if the applicant still meets the loan criteria and if the total of all loans does not exceed five thousand dollars. If an applicant is provided more than one loan, the amounts will be consolidated into one payment.

**SECTION 3. AMENDMENT.** Section 37-14-07 of the North Dakota Century Code is amended and reenacted as follows:

**37-14-07. Repayment to be made to aid fund.** Upon the granting of an application and at the time of disbursement, the applicant, or the applicant's ~~legally appointed guardian~~ legal agent, shall execute ~~an a loan~~ agreement with the department of veterans' affairs that within a specified period of not to exceed four years from the date of the receipt of the last item of the advancement, the applicant will repay to the state for the use of the veterans' aid fund the full amount of all advancements made to the applicant with interest as provided in rules adopted under section 37-14-10, but not to exceed ten percent annually. One-half of the interest must be waived if timely repayment is made to the fund as set forth in rules adopted pursuant to section 37-14-10. The department may take necessary legal action to collect, compromise, or settle loans if in the opinion of the department the person has the financial means to repay, and the person deliberately refuses to do so. The department may release from financial liability any person it determines is

financially unable to repay the loan through no fault of the person. The department may assess and collect a late payment penalty as provided in section 47-14-05.

Approved March 5, 2007

Filed March 6, 2007

## CHAPTER 307

### HOUSE BILL NO. 1425

(Representatives Metcalf, Haas, Kerzman, Klein, Nelson, Wieland)

## VETERANS' HOME OPERATING FUND EXPENDITURES

AN ACT to amend and reenact section 37-15-14 of the North Dakota Century Code, relating to the veterans' home operating fund expenditures.

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

**SECTION 1. AMENDMENT.** Section 37-15-14 of the North Dakota Century Code is amended and reenacted as follows:

**37-15-14. Veterans' home operating fund - Moneys for the maintenance of the veterans' home to be deposited with state treasurer - ~~General fund appropriation expenditures.~~** A special fund, to be known as the veterans' home operating fund, must be maintained in the state treasury. Moneys arising from the interest received on money derived from the sale of lands appropriated for the support of the home and from the rental of ~~such~~ these lands, moneys received from the United States for the support and maintenance of the home, and all other moneys, income, and collections of public funds arising from any other source or endeavor of the home, except as provided for in section 37-15-21, must be placed in the veterans' home operating fund for the use and maintenance of the veterans' home. ~~The general fund appropriation to the veterans' home may be expended only when federal or other funds are not available and upon the approval of the director of the office of management and budget.~~

Approved March 23, 2007

Filed March 23, 2007

## CHAPTER 308

### SENATE BILL NO. 2137

(Political Subdivisions Committee)  
(At the request of the Adjutant General)

## EMERGENCY AND DISASTER RESPONSE ADMINISTRATION

AN ACT to amend and reenact sections 37-17.1-02, 37-17.1-02.1, and 37-17.1-04, subsections 3 and 6 of section 37-17.1-06, subsections 3 and 4 of section 37-17.1-07, subsections 1 and 2 of section 37-17.1-07.1, subsection 3 of section 37-17.1-11, subsection 1 of section 37-17.1-12, section 37-17.1-13, subsections 2 and 4 of section 37-17.1-14.2, sections 37-17.1-19, 37-17.1-20, 37-17.1-21, and 37-17.1-24, subsections 1 and 3 of section 37-17.1-25, and section 57-15-28 of the North Dakota Century Code, relating to the department of emergency services and the North Dakota Disaster Act of 1985.

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

**SECTION 1. AMENDMENT.** Section 37-17.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**37-17.1-02. Purposes.** The purposes of this chapter are to:

1. Reduce vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural or manmade disasters or emergencies, threats to homeland security, or hostile military or paramilitary action.
2. Provide a setting conducive to the rapid and orderly start of restoration and rehabilitation of persons and property affected by disasters or emergencies.
3. Clarify the roles of the governor, state agencies, and local governments in prevention of, in mitigation of, preparation for, ~~and~~ response to, and recovery from disasters or emergencies.
4. Authorize and provide for coordination of emergency management activities by agencies and officers of this state, and similar state-local, interstate, federal-state, and foreign activities in which the state and its political subdivisions may participate.
5. Provide for a statewide emergency management system embodying all aspects of prevention, mitigation, preparedness, response, and recovery and incorporating the principles of the national incident management system and its incident command system, as well as other applicable federal mandates.

**SECTION 2. AMENDMENT.** Section 37-17.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**37-17.1-02.1. Department of emergency services.** The department of emergency services consists of a division of state radio and a division of homeland security. The adjutant general is the director of the department. The adjutant general shall provide for shared administration of both divisions. The division of homeland security consists of the state emergency operations center section, the disaster recovery section, and the homeland security section. The adjutant general shall appoint a separate director of each division. A division director serves at the pleasure of the adjutant general. The adjutant general shall fix the compensation of a division director within limits of legislative appropriation.

**SECTION 3. AMENDMENT.** Section 37-17.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**37-17.1-04. Definitions.** As used in this chapter:

1. "Disaster" means the occurrence of widespread or severe damage, injury, or loss of life or property resulting from any natural or manmade cause, including fire, flood, earthquake, severe high and low temperatures, tornado storm, wave action, ~~or~~ chemical spill, or other water or air contamination, epidemic, blight, drought, infestation, explosion, riot, or hostile military or paramilitary action, which is determined by the governor to require state or state and federal assistance or actions to supplement the recovery efforts of local governments in alleviating the damage, loss, hardship, or suffering caused thereby.
2. "Disaster or emergency worker" means any person performing disaster or emergency responsibilities or duties at any place in this state subject to the order or control of, or pursuant to a request of, the state government or any political subdivision.
3. "Emergency" means any situation that is determined by the governor to require state or state and federal response or mitigation actions to immediately supplement local governments to protect lives and property, to provide for public health and safety, or to avert or lessen the threat of a disaster.
4. "Emergency management" means a comprehensive integrated system at all levels of government and in the private sector which provides for the development and maintenance of an effective capability to prevent, mitigate, prepare for, respond to, and recover from known and unforeseen hazards or situations, caused by an act of nature or man, which may threaten, injure, damage, or destroy lives, property, or our environment.
5. "Homeland security" means a concerted national effort to prevent terrorist attacks within the United States, reduce America's vulnerability to terrorism, and minimize the damage and recover from attacks in the United States.
6. "Incident command system" means a standardized on-scene incident management concept designated specifically to allow responders to adopt an integrated organizational structure equal to the complexity and demands of any single incident or multiple incidents without being hindered by jurisdictional boundaries.

7. "Mass care" means food, clothing, shelter, and other necessary and essential assistance provided to a large number of affected people in response to, or recovery from, a disaster or emergency.
8. "National incident management system" means a consistent nationwide approach for federal, state, and local governments to work effectively and efficiently together to prepare for, respond to, and recover from domestic incidents regardless of cause, size, or complexity.

**SECTION 4. AMENDMENT.** Subsections 3 and 6 of section 37-17.1-06 of the North Dakota Century Code are amended and reenacted as follows:

3. The division of homeland security shall ~~take an integral part in~~ provide technical assistance for the development and revision of local disaster or emergency operations plans prepared under section 37-17.1-07. ~~To this end it shall employ or otherwise secure the services of professional and technical personnel capable of providing expert assistance to local emergency management organizations. These personnel shall consult with local emergency management organizations on a regularly scheduled basis and shall make field examinations of the areas, circumstances, and conditions to which particular local disaster or emergency plans are intended to apply and may suggest or require revisions.~~
6. The division of homeland security, in coordination with lead and support agencies, shall:
  - a. Coordinate the procurement ~~and positioning~~ of supplies, materials, and equipment ~~for~~ during disaster or emergency operations.
  - b. Provide guidance and standards for local disaster or emergency operational plans.
  - c. Periodically review local disaster or emergency operational plans.
  - d. Coordinate state or state and federal assistance to local emergency management organizations.
  - e. Establish and operate or assist local emergency management organizations to establish and operate training programs and programs for emergency public information.
  - f. Make surveys of industries, resources, and facilities, within the state, both public and private, as are necessary to carry out the purposes of this chapter. The use of sensitive and proprietary logistical data submitted to the state in confidence by individual industries and suppliers must be accorded full confidentiality and will be released only in aggregate form.
  - g. Plan and make arrangements for the availability and use of any private facilities, services, and property, and, if necessary and if in fact used, coordinate payment for that use under terms and conditions agreed upon.

- h. Establish access to a register of persons with types of training and skills important in prevention, mitigation, preparedness, response, and recovery.
- i. Establish access to a register of equipment and facilities available for use in a disaster or emergency.
- j. Prepare, for issuance by the governor, executive orders, proclamations, and guidance as necessary or appropriate in managing a disaster or emergency.
- k. Coordinate and may enter agreements with the federal government and any public or private agency or entity in achieving any purpose of this chapter and in implementing programs for disaster mitigation, preparation, response, and recovery.
- l. Be the state search and rescue coordinating agency, establish access to a register of search and rescue equipment and personnel in the state, and plan for its effective utilization ~~in carrying out the search for and rescue of persons when no violation of criminal laws exists.~~
- m. Do other things necessary, incidental, or appropriate for the implementation of this chapter.

**SECTION 5. AMENDMENT.** Subsections 3 and 4 of section 37-17.1-07 of the North Dakota Century Code are amended and reenacted as follows:

3. Each city shall provide an emergency management organization of its own, or it shall participate in the countywide emergency management organization. Each governing board of a city shall make its determination on the basis of the city's emergency management requirements, hazards, capabilities, and resources. ~~The division of homeland security shall publish and keep current a list of cities desiring to have an emergency management organization of their own. If a city provides an emergency management organization of its own, the city and county shall coordinate the city and county emergency plans.~~
4. The mayor of or the president of the board of city commissioners in a city or with an emergency management organization and the chairman of the board of county commissioners shall notify the division of homeland security of the manner in which the city or and the county is are providing or securing emergency management activities, identify ~~the person~~ each individual who will coordinate the activities of the local emergency management organization, and furnish additional information relating thereto as the division requires.

**SECTION 6. AMENDMENT.** Subsections 1 and 2 of section 37-17.1-07.1 of the North Dakota Century Code are amended and reenacted as follows:

1. Program components.
  - a. The governor shall appoint members of the state emergency response commission to carry out the commission's responsibilities as outlined in Public Law 99-499, 42 U.S.C. 11001, et seq., also referred to as SARA title III, and the responsibilities of the

commission members as outlined in the North Dakota emergency operations plan.

- b. In conjunction with the state emergency response commission, the local emergency planning committees, as appointed by the boards of county commissioners, and the local emergency management organizations, ~~the division of homeland security~~ shall coordinate the development and maintenance of a state hazardous chemicals preparedness and response program.
- c. The director of the division of homeland security shall serve as the chairman of the state emergency response commission. In the absence of the chairman, the designated vice chairman shall serve as chairman. The state emergency response commission by vote will select the vice chairman to fulfill a two-year term. The chairman shall recognize the assignment of representatives to the commission who are designated through a delegation of authority by a member. The chairman shall designate a commission secretary, solely for the purpose of documenting and distributing clerical proceedings, from the staff of the division of homeland security.
- d. For the purpose of complying with the reporting requirements set forth in sections 302, 304, 311, 312, and 313 of Public Law 99-499, 42 U.S.C. 11001, et seq., also referred to as SARA title III, the owner and operator of any facility, as defined in SARA title III, shall submit those reports to the North Dakota division of homeland security as required by SARA title III, which shall establish and maintain the state repository for these reports.

## 2. Establishment of funds.

- a. There is created in the state treasury a nonlapsing restricted account to be known as a state hazardous chemicals preparedness and response fund. The fund consists of revenue collected from the state hazardous chemical fee system and funds appropriated by the general assembly. Moneys in the fund shall be appropriated biennially to the division of homeland security for carrying out the purposes, goals, and objectives of SARA title III, and the state hazardous chemicals preparedness and response program.
- b. The county treasurer of each county shall establish a nonlapsing restricted account, to be known as the county hazardous chemicals preparedness and response account. The county hazardous chemicals preparedness and response account consists of revenue from the state hazardous chemicals fee system, county, federal or state funds, grants, and any private donations provided to finance the county hazardous chemicals preparedness and response program.
- c. Each owner and operator of a facility, as defined in SARA title III, shall pay an annual hazardous chemicals fee to the division of homeland security by March first of each year. The fee is twenty-five dollars for each chemical within the meaning of 40 CFR 355.20 or its successor which is required under section 312 of

SARA title III, to be listed on the hazardous chemical inventory form (tier II) which the owner or operator must submit to the division. The federal requirements must be used for completing the tier II form, including the threshold amounts, as outlined in 40 CFR 370.20. The maximum fee for a facility under this section is one hundred fifty dollars. The division of homeland security shall transfer to the county hazardous chemicals preparedness and response account one-half of the funds collected from the state's hazardous chemicals fee system.

- d. The owners or operators of family farm enterprises that are not engaged in the retail or wholesale of hazardous chemicals and facilities owned by the state or local governments are exempt from the fee under subdivision c. For purposes of this section, the terms "family farm" and "farmer" have the same meaning as set forth in section 6-09.11-01.
- e. The state and county governments are authorized to accept and may deposit grants, gifts, and federal funds into the hazardous chemicals preparedness and response fund and accounts for the purpose of carrying out the hazardous chemicals preparedness and response ~~program~~ programs to include training, exercising, equipment, response, and salaries.
- f. "Hazardous chemical" means as defined in 40 CFR 355.20 and 29 CFR 1910.1200.
- g. The state hazardous chemicals fee system does not supersede a city fee system for hazardous chemicals.

**SECTION 7. AMENDMENT.** Subsection 3 of section 37-17.1-11 of the North Dakota Century Code is amended and reenacted as follows:

3. If the division of homeland security determines, in coordination with lead and support agencies, on the basis of the studies or other competent evidence, that an area is susceptible to a disaster of catastrophic proportions without adequate warning; existing building standards and land use controls in that area are inadequate and could add substantially to the magnitude of the disaster or emergency; and changes in zoning regulations, other land use regulations, or building requirements are needed in order to further the purposes of this section, it shall specify the essential changes to the governor. If the governor, upon review of the determination, finds after public hearing, that the changes are essential, the governor shall so recommend to the agencies or local governments with jurisdiction over that area and subject matter. If no action or insufficient action pursuant to the governor's recommendations is taken within the time specified by the governor, the governor shall so inform the legislative assembly and request legislative action appropriate to mitigate the impact of the disaster or emergency.

**SECTION 8. AMENDMENT.** Subsection 1 of section 37-17.1-12 of the North Dakota Century Code is amended and reenacted as follows:

1. Persons within this state shall conduct themselves and keep and manage their affairs and property in ways that will reasonably assist and

will not unreasonably detract from the ability of the state and the public to effectively prevent, mitigate, prepare for, respond to, and recover from a disaster or emergency. This obligation includes appropriate personal service and use or restriction on the use of property in time of disaster or emergency. This chapter neither increases nor decreases these obligations but recognizes their existence under the Constitution of North Dakota and statutes of this state and the common law. Compensation for services or for the taking or use of property must be only to the extent that obligations recognized herein are exceeded in a particular case and then only to the extent that the claimant may not be deemed to have volunteered that person's services or property without compensation.

**SECTION 9. AMENDMENT.** Section 37-17.1-13 of the North Dakota Century Code is amended and reenacted as follows:

**37-17.1-13. Communications.** The ~~division of homeland security~~ department of emergency services shall ascertain what means exist for rapid and efficient communications in times of a disaster or emergency. The ~~division~~ department shall consider the desirability of supplementing these communications resources or of integrating them into a comprehensive state or state and federal telecommunications or other communications system or network, including the military installations. In studying the character and feasibility of any system or its several parts, the ~~division~~ department shall evaluate the possibility of multipurpose use thereof for general state and local governmental purposes. The ~~division~~ department shall make recommendations to the governor as appropriate.

**SECTION 10. AMENDMENT.** Subsections 2 and 4 of section 37-17.1-14.2 of the North Dakota Century Code are amended and reenacted as follows:

2. The governor may enter into an interstate agreement with any state if the governor finds that joint action with that state is desirable in meeting common intergovernmental problems of emergency or disaster prevention, preparedness, mitigation, response, and recovery.
4. All interstate mutual aid compacts and other interstate agreements to which this state is a party dealing with disaster or emergency prevention, preparedness, response, recovery, or mitigation must be reviewed and made current every four years.

**SECTION 11. AMENDMENT.** Section 37-17.1-19 of the North Dakota Century Code is amended and reenacted as follows:

**37-17.1-19. Temporary housing for disaster victims and site acquisition and preparation.** ~~In accordance with the provisions of the United States Disaster Relief Act of 1974 [Pub. L. 93-288; 88 Stat. 143], the~~ The governor is authorized to enter into such agreements and execute such assurances on behalf of the state of North Dakota as may be necessary to establish, in the event of a disaster or emergency, a program of temporary housing for disaster victims adversely affected by a disaster or emergency ~~in those cases when such disaster or emergency victims are unable to meet their needs through assistance under provisions other than section 404 of the Disaster Relief Act or through other means.~~ The governor is authorized:

1. To receive temporary housing units to be occupied by disaster or emergency victims from any agency of the United States and to make such units available to any county or city of the state.
2. To assist any county or city of this state which is the site of temporary housing for disaster or emergency victims, to acquire and to prepare sites necessary for such temporary housing, and to "pass through" funds made available by any agency, public or private.

Any county or city of this state is expressly authorized to acquire, temporarily or permanently, by purchase, lease, or otherwise, sites required for installation of temporary housing units for disaster or emergency victims and to enter into whatever arrangements, including purchase of temporary housing units and payment of transportation charges, which are necessary to prepare or equip such sites to utilize the housing units.

The governor shall establish guidelines necessary to carry out the purposes of sections 37-17.1-19, 37-17.1-20, and 37-17.1-21.

**SECTION 12. AMENDMENT.** Section 37-17.1-20 of the North Dakota Century Code is amended and reenacted as follows:

**37-17.1-20. Community disaster loans.** ~~In accordance with the provisions of the United States Disaster Relief Act of 1974 [Pub. L. 93-288; 88 Stat. 143], the~~ The governor is authorized to enter into such agreements and execute such assurances on behalf of the state of North Dakota as may be necessary to establish, in the event of a presidentially declared "major disaster", a program of community disaster loans in those cases when communities are unable to meet or provide for their essential governmental functions ~~through assistance under provisions other than section 414 of the Disaster Relief Act or through other means.~~ Upon the governor's determination that a local government of the state will suffer a substantial loss of tax and other revenues from a disaster and has demonstrated a need for financial assistance to perform its governmental functions, the governor may apply to the federal government, on behalf of the local government, for a loan and receive and disburse the proceeds of any approved loan to any applicant local government.

The governor may:

1. Determine the amount needed by any applicant local government to restore or resume its governmental functions and certify the same to the federal government. No application amount may exceed twenty-five percent of the annual operating budget of the applicant for the fiscal year in which the disaster occurs.
2. Recommend to the federal government, based upon the governor's review, the cancellation of all or any part of repayment when, within three fiscal years following the disaster, the revenues of the local government are insufficient to meet its operating expenses, including additional disaster-related expenses of a county or city.

**SECTION 13. AMENDMENT.** Section 37-17.1-21 of the North Dakota Century Code is amended and reenacted as follows:

**37-17.1-21. Debris and wreckage removal in disasters or emergencies.** ~~In accordance with the provisions of the United States Disaster Relief Act of 1974 [Pub. L. 93-288; 88 Stat. 143], the~~ The governor is authorized to enter into such

agreements and execute such assurances on behalf of the state of North Dakota as may be necessary to establish, in the event of a disaster or emergency, a program of debris and wreckage removal caused by a disaster ~~in those cases when such debris and wreckage removal cannot be provided under provisions other than section 403 of the Disaster Relief Act or through other means.~~ The governor is authorized:

1. Notwithstanding any other provision of law, through the use of state departments or agencies, or the use of any of the state's instrumentalities, to clear or remove from publicly or privately owned land or water, debris and wreckage which may threaten public health or safety, or threaten public or private property, in any disaster or emergency declared by the governor.
2. To accept funds from the federal government and utilize such funds to make grants to any local government for the purpose of removing debris or wreckage from publicly or privately owned land or water.

Authority under sections 37-17.1-19, 37-17.1-20, and 37-17.1-21 may not be exercised, except upon state-owned lands, unless the affected local government, corporation, limited liability company, organization, or individual first presents an unconditional authorization for removal of such debris or wreckage from public and private property and, in the case of removal of debris or wreckage from private property, first agrees to indemnify the state government against any claim arising from such removal.

Whenever the governor provides for clearance of debris or wreckage pursuant to subsection 1 or 2, employees of the designated state agencies or individuals appointed by the state are authorized to enter upon private land or waters and perform any tasks necessary to the removal or clearance operation.

Except in cases of willful misconduct, gross negligence, or bad faith, any state employee or agent complying with orders of the governor and performing duties pursuant thereto under sections 37-17.1-19, 37-17.1-20, and 37-17.1-21 is not liable for death of or injury to persons or damage to property.

The governor shall establish guidelines to carry out the purposes of sections 37-17.1-19, 37-17.1-20, and 37-17.1-21.

**SECTION 14. AMENDMENT.** Section 37-17.1-24 of the North Dakota Century Code is amended and reenacted as follows:

**37-17.1-24. Definitions.** In this section and section 37-17.1-25, unless the context otherwise requires:

1. "Assisting unit" means an emergency response unit that renders mutual aid assistance to a requesting unit.
2. "Emergency response unit" includes a fire department, law enforcement agency, emergency medical services operation, and any other public, tribal, and private group that responds to a request for assistance at the scene of an incident.
3. "Incident" means any situation that requires actions to immediately protect lives and property, to provide for public health and safety, or to avert or lessen the threat of a disaster.

4. "Incident command system" means a recognized system adopted by the United States department of homeland security and the division of emergency management for the command, control, and coordination of resources and personnel at the scene of an incident standardized, on-scene incident management concept designed specifically to allow responders to adopt an integrated organizational structure equal to the complexity and demands of any single incident or multiple incidents without being hindered by jurisdictional boundaries.
5. "National incident management system" means a system that provides a consistent nationwide approach for federal, state, and local governments to work effectively and efficiently together to prepare for, respond to, and recover from domestic incidents, regardless of cause, size, or complexity.
6. "National response plan" means a comprehensive all-hazards approach to enhance the ability of the United States to manage domestic incidents, incorporating best practices and procedures from incident management disciplines and integrating them into a unified structure to guide national support of state and local governments and the private sector.
7. "Requesting unit" means the emergency response unit with responsibility for responding to an incident which seeks mutual aid assistance from another emergency response unit.

**SECTION 15. AMENDMENT.** Subsections 1 and 3 of section 37-17.1-25 of the North Dakota Century Code are amended and reenacted as follows:

1. An incident ~~command system~~ commander must be designated by the requesting unit, and the incident ~~command system~~ must be used. The incident commander may request mutual aid and is responsible for all resources assigned to or responding to an incident.
3. All resources assigned to an incident are under the ~~command~~ operational control of the incident commander. The individual in charge of an assisting unit may retain the ability to withdraw personnel or resources upon notification to the incident commander. An assisting unit withdrawing from an emergency response operation is not liable for damage to the requesting unit.

**SECTION 16. AMENDMENT.** Section 57-15-28 of the North Dakota Century Code is amended and reenacted as follows:

**57-15-28. Emergency fund - County.** The governing body of any county may levy a tax for emergency purposes not exceeding the limitation in subsection 22 of section 57-15-06.7. The emergency fund may not be considered in determining the budget or the amount to be levied for each fiscal year for normal tax purposes but must be shown in the budget as an "emergency fund" and may not be deducted from the budget as otherwise provided by law. Each county may create an emergency fund, and all taxes levied for emergency purposes by any county, when collected, must be deposited in the emergency fund, and must be used only for emergency purposes caused by the destruction or impairment of any county property necessary for the conduct of the affairs of the county, emergencies caused by nature or by the entry by a court of competent jurisdiction of a judgment for damages against the county. The emergency fund may not be used for any road construction or

maintenance, except for repair of roads damaged by nature within sixty days preceding ~~such~~ the determination to expend emergency funds, or for the purchase of road equipment; however, the emergency fund may be used to match federal funds appropriated to mitigate damage to roads related to a federally declared disaster that occurred more than sixty days preceding the determination. Any unexpended balance, remaining in the emergency fund at the end of any fiscal year, must be kept in ~~such~~ the fund. When the amount of money in the emergency fund, plus the amount of money due the fund from outstanding taxes, equals the amount produced by a levy of five mills on the taxable valuation of property in a county with a population of thirty thousand or more, or ten mills on the taxable valuation of property in a county with a population of less than thirty thousand, the levy authorized by this section must be discontinued, and no further levy may be made until required to replenish the emergency fund.

Approved May 2, 2007

Filed May 3, 2007

**CHAPTER 309****HOUSE BILL NO. 1291**

(Representatives Price, Belter, DeKrey)  
(Senators Hacker, Krebsbach, Oehlke)

**VETERAN'S DEATH BENEFIT**

AN ACT to amend and reenact section 37-28-04 of the North Dakota Century Code, relating to the death benefit for veterans; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 37-28-04 of the North Dakota Century Code is amended and reenacted as follows:

**37-28-04. Payment to beneficiary of veteran who died in active service.**

In the case of a veteran who died as a result of active service during the period of service, the beneficiary of ~~such~~ the veteran is entitled to a payment of ~~two~~ five thousand ~~five hundred~~ dollars in lieu of any other compensation under this chapter.

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

Approved March 12, 2007

Filed March 13, 2007