HIGHWAYS, BRIDGES, AND FERRIES

CHAPTER 229

HOUSE BILL NO. 1340
(Representative Glassheim)

AN ACT to create and enact a new section to chapter 24-01 of the North Dakota Century Code, relating to metropolitan planning organizations; and to amend and reenact section 24-01-04 of the North Dakota Century Code, relating to master street plans developed by municipalities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-01-04 of the North Dakota Century Code is amended and reenacted as follows:

24-01-04. Municipalities to develop master street plan. ~~Each~~ Except for a municipality located within a designated metropolitan planning organization, each municipality of over five thousand population in this state, according to the latest available census, shall develop and adopt a master street plan cooperatively between the director and the municipal officials, which must ensure the proper location and integration of the state highway connections in the total city street plan. In selecting and designating the master street plan, the cooperating officials shall take into account the more important principal streets that connect the residential areas with business areas, and the streets that carry the important rural traffic into and across the city, to ensure a system of streets upon which traffic can be controlled and protected, in such a manner as to provide safe and efficient movement of traffic within a municipality.

SECTION 2. A new section to chapter 24-01 of the North Dakota Century Code is created and enacted as follows:

Metropolitan planning organizations. Metropolitan planning organizations shall develop, in cooperation with the state and public transit operators, transportation plans and programs for metropolitan areas which encourage and promote the safe and efficient management, operation, and development of surface transportation systems that will serve the mobility needs of people and freight and foster economic growth and development within and through urbanized areas of this state while minimizing transportation-related fuel consumption, air pollution, and greenhouse gas emissions. The plans and programs for each metropolitan area must provide for the development and integrated management and operation of transportation systems and facilities, including pedestrian walkways and bicycle transportation facilities that will function as an intermodal transportation system for the metropolitan area. A metropolitan planning organization is a political subdivision for purposes of chapter 54-52.

Approved April 8, 2009
Filed April 9, 2009

CHAPTER 230

HOUSE BILL NO. 1353

(Representative Weiler)
(Senators Hogue, Triplett)

AN ACT to create and enact a new section to chapter 24-01 of the North Dakota Century Code, relating to relocation of a utility facility; and to amend and reenact sections 24-01-41, 49-21-01.3, and 49-21-04 of the North Dakota Century Code, relating to facility relocation cost recovery.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-01-41 of the North Dakota Century Code is amended and reenacted as follows:

24-01-41. Relocation of utility facilities.

1. Whenever the director determines and orders that any utility facility which now is, or hereafter may be, located in, over, along, or under the national system of interstate and defense highways, or urban extension thereof, qualifying for federal aid should be changed, removed, or relocated to accommodate the construction of a project on the national system of interstate and defense highways, including extensions thereof within urban areas, the utility owning or operating such facility shall change, relocate, or remove the same in accordance with the order of the director; provided that the costs of the change, relocation, or removal, including the costs of installing such facilities in a new location, must be ascertained and paid to the affected utility by the state out of state highway funds as part of the cost of such federally aided project, unless such payment would violate a legal contract between the utility and the state.

2. ~~The~~ As used in this section, the term "utility" includes all cooperatively, municipally, publicly, or privately owned utilities, for supplying water, sewer, light, gas, power, telegraph, telephone, transit, pipeline, or like service to the public or any part thereof. "Cost of change, relocation, or removal" includes the entire cost incurred by such utility properly attributable to such change, relocation, or removal after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility. ~~Nothing herein contained may be construed to~~

3. The department, in cooperation with utilities, shall develop or adopt procedures for administration of utility facility relocation. The procedures must comply with federal law. At a minimum, the procedures must address notification, coordination, billing, and payment. The department shall coordinate with utilities that are affected by the construction project as early as possible in the project development process.

4. The department shall coordinate utility facility relocations with the affected utility in an effort to minimize cost associated with utility facility relocations.

5. When a utility facility needs to be relocated, the department shall enter an agreement with the utility indicating if the utility facility relocation work is eligible for reimbursement, the estimated cost for the work, the anticipated construction schedule, and the location of the work.

6. This section does not affect in any way the right of any utility to receive just compensation for the expense of changing, removing, or relocating its facilities located in a private right of way.

SECTION 2. A new section to chapter 24-01 of the North Dakota Century Code is created and enacted as follows:

Relocation of utility facilities - Political subdivision roads.

1. Whenever a political subdivision determines and orders that any utility facility that is or may be located in, over, along, or under a road right of way under its authority, qualifying for federal aid, should be changed, removed, or relocated to accommodate the construction of a project, the utility owning or operating the facility shall change, relocate, or remove the utility facility in accordance with the order of the political subdivision; provided that the costs of the change, relocation, or removal, including the cost of installing the facilities in a new location, must be ascertained and paid to the affected utility by the political subdivision as part of the cost of the federally aided project unless the payment would violate a legal contract between the utility and the political subdivision or where the roadway existed before the utility facility.

2. As used in this section:

   a. "Cost of change, relocation, or removal" includes the entire cost incurred by such utility properly attributable to such change, relocation, or removal after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility.

   b. "Political subdivision" includes a county, city and county, city, home rule city, service authority, school district, local improvement district, law enforcement authority, water, sanitation, fire protection, metropolitan, irrigation, drainage, or other special district, or any other municipal, quasi-municipal, or public organization.

   c. "Utility" includes all cooperatively, municipally, publicly, or privately owned utilities for supplying water, sewer, light, gas, power, telegraph, telephone, transit, pipeline, or like service to the public.

3. The political subdivision, in cooperation with utilities, shall develop or adopt procedures for administration of utility facility relocation. The procedures must comply with federal law. At a minimum, the procedures must address notification, coordination, billing, and payment. The political subdivision shall coordinate with utilities that are affected by the construction project as early as possible in the project development process.

4. The political subdivision shall coordinate utility facility relocations with the affected utility in an effort to minimize costs associated with utility facility relocations.

5. When a utility facility needs to be relocated, the political subdivision shall enter an agreement with the utility indicating if the utility facility relocation work is eligible for reimbursement, the estimated cost for the work, the anticipated construction schedule, and the location of the work.

6. This section does not affect in any way the right of any utility to receive just compensation for the expense of changing, removing, or relocating its facilities located in a private right of way.

SECTION 3. AMENDMENT. Section 49-21-01.3 of the North Dakota Century Code is amended and reenacted as follows:

49-21-01.3. Certain price increases prohibited - Essential telecommunications services. Changes in essential telecommunications services prices are prohibited except as specifically provided for in chapter 49-21 and section 49-02-01.1.

1. All increases or decreases in governmentally imposed surcharges and any financial impact on cost of essential telecommunications services caused by governmentally imposed changes in taxes, accounting practices, or separations procedures or resulting in relocation, change, or removal of facilities must be fully reflected in any price for those services within thirty days of the effective date of the surcharge or change, except price changes related to the costs of relocation, change, or removal of facilities are not subject to a thirty-day implementation requirement.

~~2.~~ ~~Nothing in this~~ This section ~~prohibits~~ does not prohibit the lowering of a price of an essential service based on reasonable business practices in a competitive environment provided that no price change may be anticompetitive or otherwise in violation of antitrust or unfair trade practice laws.

~~3.~~ 2. Whenever a price change provided for in this section is less than three percent of the existing price, notwithstanding any time limitations in this section, a telecommunications company may accumulate such changes in price subject to the following conditions:

a. Price increases may be accumulated up to a percentage total of five percent.

b. Price decreases may be accumulated only to the extent that there is an offsetting accumulated price increase of an equal or greater percentage. Accumulated price decreases may never exceed accumulated price increases.

c. Price decreases may be accumulated only for two years beginning January first of the year in which the change is allowed.

d. Accumulated price increases may be implemented at the discretion of the telecommunications company.

e. The effective date of implementation of an accumulated price change may be prospective only, and in accordance with the filing requirements of section 49-21-04.

~~4.~~ 3. The monthly price of residence service for telecommunications companies with over fifty thousand subscribers may be up to eighteen dollars.

~~5.~~ 4. Subject to the limitations of this section, ~~nothing in~~ this chapter ~~prohibits~~ does not prohibit an incumbent local exchange carrier from deaveraging local exchange service prices provided the incumbent local exchange carrier agrees to amend its commission-approved interconnection agreements to allow for deaveraged interconnection prices effective concurrently with the deaveraged retail prices.

SECTION 4. AMENDMENT. Section 49-21-04 of the North Dakota Century Code is amended and reenacted as follows:

49-21-04. Price schedules filed with the commission. Each telecommunications company shall file with the commission in ~~such~~ the form and detail as ~~it~~ the commission may require, subject to considerations for maintaining trade secrets or commercial confidentiality:

1. Schedules showing all prices for essential services, including those prices set by contract and the individual unbundled or unpackaged price of any essential service, in effect at the time for any essential telecommunications service rendered by ~~such~~ the telecommunications company within this state;

2. All rules ~~and regulations which~~ that in any manner affect the prices charged or to be charged for ~~such~~ essential service; and

3. All new prices and any price increases of essential services at least twenty days before the effective date of the new price or price increase, unless the commission upon application and for good cause allows a lesser time~~, and except prices changed in accordance with subsection 1 of section 49-21-01.3, which will be filed at least ten days before the expiration of the thirty-day period mandated in that section. No~~. A price or price change is not effective until filed in accordance with this chapter.

Approved March 24, 2009
Filed March 24, 2009

CHAPTER 231

SENATE BILL NO. 2443

(Senator Christmann)
(Approved by the Delayed Bills Committee)

AN ACT to create and enact a new section to chapter 24-01 of the North Dakota Century Code, relating to facility relocation cost recovery due to implementation of the American Recovery and Reinvestment Act of 2009; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 24-01 of the North Dakota Century Code is created and enacted as follows:

Cost recovery for relocation of utility facilities due to implementation of the American Recovery and Reinvestment Act of 2009. Notwithstanding any other provision of state law, costs associated with changing, removing, relocating, or installing utility property as a result of or caused by a project funded through implementation of the American Recovery and Reinvestment Act of 2009 [Pub. L. 111-5] must be paid to the affected utility by the state or the political subdivision from funds provided by the Act, if allowed by federal law, as part of the costs of the project. The payment does not constitute a violation of a legal contract.

SECTION 2. EXPIRATION DATE. This Act is effective through July 31, 2011, and after that date is ineffective.

Approved April 24, 2009
Filed April 29, 2009

CHAPTER 232

SENATE BILL NO. 2223

(Senators Robinson, Nething)
(Representatives Delmore, R. Kelsch, Weisz)

AN ACT to provide for regional public transportation pilot projects; and to provide for a report to the legislative assembly.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REGIONAL PUBLIC TRANSPORTATION COORDINATION PILOT PROJECTS - SPENDING AUTHORITY. The department of transportation shall develop two public transportation coordination pilot projects in two of this state's planning regions. One project must focus on coordination in a region that does not have a city with a population over thirty-five thousand and one project must focus on coordination in a region that has a city with a population exceeding thirty-five thousand. The department shall implement one project in 2009 and one project in 2010. Each pilot project must have a regional coordination administrator who coordinates the provision of public transportation services to the residents of the region in a manner that is cost-effective, efficient, and reduces fragmentation and duplication of services. The regional coordination administrator shall assist communities in public transportation planning in the specified region to develop a structure that will support a coordinated public transportation system. The department shall develop standards for public transportation providers and contractors who provide public transportation within the coordinated public transportation system. These standards must promote coordination among public transportation providers. The department may spend additional funds from gifts, grants, or donations and those additional funds are appropriated for the purposes of this section.

SECTION 2. REPORT TO LEGISLATIVE ASSEMBLY. The director of the department of transportation shall report to the sixty-second legislative assembly with findings and recommendations based on the results of the public transportation coordination pilot projects.

Approved April 28, 2009
Filed May 1, 2009

CHAPTER 233

SENATE BILL NO. 2054

(Legislative Council)
(Tribal and State Relations Committee)

AN ACT to amend and reenact section 24-02-02.3 of the North Dakota Century Code, relating to department of transportation agreements with tribal governments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-02-02.3 of the North Dakota Century Code is amended and reenacted as follows:

24-02-02.3. Director may enter ~~into~~ agreements with tribal governments. Notwithstanding the provisions of chapter 54-40.2, the director may enter ~~into~~ agreements with any one or more tribal governments for the purpose of construction and maintenance of highways, streets, roads, and bridges on the state highway system. The agreements must be limited to those necessary to meet federal highway program spending requirements. ~~Each agreement may not exceed twenty-five thousand dollars.~~

Approved March 19, 2009
Filed March 19, 2009

CHAPTER 234

HOUSE BILL NO. 1514

(Representatives Onstad, Nathe, Porter, Weiler)
(Senators Hogue, Warner)

AN ACT to amend and reenact section 24-02-37 of the North Dakota Century Code, relating to use of the special road fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-02-37 of the North Dakota Century Code is amended and reenacted as follows:

24-02-37. State highway fund - Priorities for expenditure - Use of investment income. The state highway fund, created by law and not otherwise appropriated and allocated, must be applied and used for the purposes named in this section, as follows:

1. Except for investment income as provided in subsection 3, the fund must be applied in the following order of priority:

   a. The cost of maintaining the state highway system.

   b. The cost of construction and reconstruction of highways in the amount necessary to match, in whatever proportion may be required, federal aid granted to this state by the United States government for road purposes in North Dakota.

   c. Any portion of the highway fund not allocated as provided in subdivisions a and b may be expended for the construction of state highways without federal aid or may be expended in the construction, improvement, or maintenance of such state highways.

2. All funds heretofore appropriated or hereafter appropriated or transferred to the department, whether earmarked or designated for special projects or special purposes or not, must be placed or transferred into a single state highway fund in the office of the state treasurer and any claims for money expended by the department upon warrants prepared and issued by the office of management and budget and signed by the state auditor under this title must be paid out of the state highway fund by the state treasurer; provided, however, that the commissioner shall keep and maintain complete and accurate records showing that all expenditures have been made in accordance with legislative appropriations and authorizations.

3. The state treasurer shall deposit the moneys in the state highway fund in an interest-bearing account at the Bank of North Dakota. The state treasurer shall deposit ~~forty~~ eighty percent of the income derived from the interest-bearing account in a special interest-bearing account in the state treasury known as the special road fund. The special road fund may be used, within the limits of legislative appropriation, exclusively for the construction and maintenance of access roads to and roads within recreational, tourist, and historical areas as designated by the special road committee. A political subdivision or state agency may request funds from the special road fund by applying to the committee on forms designated by the committee. The committee may require the political subdivision or state agency to contribute to the cost of the project as a condition of any expenditure authorized from the special road fund. ~~Any moneys in the fund not obligated by the special road committee on June thirtieth of each odd-numbered year must revert to the state highway fund.~~ Any moneys in the fund not obligated by the special road committee by June thirtieth of each odd-numbered year must be held for an additional two years after which the funds revert to the state highway fund.

Approved April 21, 2009
Filed April 22, 2009

CHAPTER 235

SENATE BILL NO. 2086

(Education Committee)
(At the request of the Department of Transportation)

AN ACT to amend and reenact section 24-02-42 of the North Dakota Century Code, relating to scholarship allowances.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-02-42 of the North Dakota Century Code is amended and reenacted as follows:

24-02-42. Scholarships authorized. The director is authorized to establish continuing grants of financial aid for study in undergraduate coursework, which meets the needs and mission of the department, at institutions of higher learning in this state. Expenditure ~~of not over twenty thousand dollars annually~~ from highway operating funds is authorized. No individual may receive financial aid in any year exceeding ~~two thousand dollars nor a total exceeding six thousand dollars and an executed contract of employment is a prerequisite~~ the tuition of the institution for which the student is enrolled. The director shall establish the annual expenditure in the department's budget, which includes individual student financial aid limitations to be determined by the director dependent on the available funds. Before any student shall receive the financial aid authorized by this section, the student shall enter into a contract with the department, which must provide that such student shall upon graduation accept employment with the department for a period of time at least equal to the time the student received financial aid benefits, the salary to be in the grade established for the classification assigned. In the event such student is inducted into the armed forces before graduation, such education may then be completed upon that student's return to civil life, and in the event such induction into the armed services is made after graduation the employment contract does not take effect until after such period of service in the armed forces has been completed. Leave of absence without pay will be granted to one whose induction occurs during the period of the life of such contract and the employment will be resumed for the balance of the contract period after such employee has been discharged from the service.

If such student fails to graduate with a degree, or fails to accept employment with the department as above provided, such student shall repay the department, with interest at the rate of six percent per annum, all sums received by the student in financial aid benefits under the contract herein provided, such repayment to be made within a period equal to the time the student received such benefits. For the purpose of this section, defenses of minority or statute of limitations are removed as to any applicant granted a loan by the director and such contracts are in all respects legal and binding. Salary increases to employees having received financial aid by virtue of this section must be based on the same considerations as other employees employed by the department.

The director, with the cooperation and concurrence of the board of higher education, shall prescribe rules for determining the selection of recipients, qualifications, and courses of study. Such rules may cover any areas as may be necessary to assure a source of qualified trained employees for the department.

Approved April 8, 2009
Filed April 9, 2009

CHAPTER 236

SENATE BILL NO. 2147

(Transportation Committee)
(At the request of the Department of Transportation)

AN ACT to create and enact a new section to chapter 24-02 of the North Dakota Century Code, relating to authorization for two design-build contracts for highway or bridge projects; to provide for a report to the legislative assembly; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 24-02 of the North Dakota Century Code is created and enacted as follows:

Contracts - Design-build method. Notwithstanding any other provision of law, the director may use the design-build method of project delivery to expedite the construction of a project by combining the design and construction elements of a highway or bridge project into a single contract, provided that:

1. The design-build method of project delivery may only be used on one signal light project and one box culvert structure project.

2. The director makes a determination in writing that it is appropriate and in the best interests of the public to use the design-build method of project delivery for only these two projects.

3. The department is responsible for the preparation of all environmental documents.

4. The department is responsible for acquisition of needed right of way and for providing for the relocation of utilities that may be in conflict with the project.

5. The director, in conjunction with the appropriate and affected professionals and contractors, adopts policies for procuring the projects using the design-build method of project delivery. These policies must be established before requesting proposals.

The prime design-build firm is not required to be registered to perform design or land surveying services pursuant to state law if the subcontractor actually performing the respective services on behalf of the firm is appropriately registered.

The prime design-build firm is not required to be licensed to perform construction, construction engineering, and inspection pursuant to state law if the subcontractor actually performing the work on behalf of the firm is appropriately licensed.

SECTION 2. REPORT TO LEGISLATIVE ASSEMBLY. The director of the department of transportation shall work with the appropriate and affected professionals and contractors to evaluate the design-build method project delivery

system and report to the legislative assembly with findings and recommendations as a result of analyzing the design-build projects delivered in these two projects.

SECTION 3. EXPIRATION DATE. Except as otherwise provided in this Act, this Act is effective through December 31, 2013, and after that date is ineffective.

Approved April 8, 2009
Filed April 9, 2009

CHAPTER 237

HOUSE BILL NO. 1495

(Representatives Damschen, Holman, Vigesaa)
(Senators Olafson, Robinson, Wardner)

AN ACT to amend and reenact subsection 1 of section 24-06-28 and section 24-06-29 of the North Dakota Century Code, relating to obstruction of section lines and highways.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 24-06-28 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~No~~ A person may not place or cause to be placed any permanent obstruction, ~~stones~~ stone, ~~trees~~ tree or portion of a tree, or rubbish within the vertical plane of thirty-three feet [10.06 meters] of any section line or within the right of way of any highway, unless written permission is first secured from the board of county commissioners or the board of township supervisors, as the case may be. The permission must be granted where the section line has been closed pursuant to section 24-07-03 or where the topography of the land along the section line is such that in the opinion of the board of county commissioners or board of township supervisors, as the case may be, the construction of a road on the section line is impracticable.

SECTION 2. AMENDMENT. Section 24-06-29 of the North Dakota Century Code is amended and reenacted as follows:

24-06-29. Removal of obstructions when section lines opened - Cost. If ~~any~~ a person places or causes to be placed ~~any stones~~ a stone, ~~trees~~ tree or portion of a tree, or rubbish within the vertical plane of thirty-three feet [10.06 meters] of any section line or within the right of way of any highway, the board of county commissioners or board of township supervisors, as the case may be, when a public highway is opened ~~along the section line~~, shall notify the owners of adjacent property to remove the ~~stones~~ stone, ~~trees~~ tree or portion of a tree, or rubbish. Written notice by registered mail to the record owner of the adjacent property mailed to the owner's last-known address and to any other persons in possession of the property constitutes valid notice. If the owners fail to remove the ~~stones~~ stone, ~~trees~~ tree or portion of a tree, or rubbish within thirty days after the notice is mailed, the board of county commissioners or the board of township supervisors, as the case may be, shall remove the ~~stones~~ stone, ~~trees~~ tree or portion of a tree, or rubbish. The cost of removal must be entered the same as taxes against the adjacent property and paid in the same manner as taxes.

Approved April 8, 2009
Filed April 9, 2009