

GENERAL PROVISIONS

CHAPTER 69

SENATE BILL NO. 2056
(Legislative Council)
(Interim Judiciary Committee)

TECHNICAL CORRECTIONS ACT

AN ACT to amend and reenact sections 4-10-19, 6-09.11-04, subsection 3 of section 10-19.1-116, subsection 2 of section 11-10-10, sections 11-13-18, 12.1-12-02, 12.1-12-09, subsection 1 of section 13-03.1-15, subsection 3 of section 14-09-09.10, sections 16.1-15-06, 19-18-04, 20.1-01-07, 21-10-06, 23-01-09, subsection 2 of section 23-07-01.1, section 23-07.1-03, subsection 2 of section 23-13-02.3, section 24-01-22.1, subsection 1 of section 25-03.1-26, sections 25-04-06, 25-04-07, 25-04-08.1, 25-04-11.1, 25-04-14, subsection 2 of section 25-04-15, subsection 3 of section 25-04-16, section 26.1-09-09, subsection 4 of section 26.1-25-02, sections 26.1-30.1-01, 26.1-36-01, subdivisions i and j of subsection 2 of section 26.1-36-04, sections 26.1-39-10, 26.1-41-08, subsection 1 of section 26.1-41-13, subsection 1 of section 28-01-44, section 30.1-12-05, subsection 4 of section 34-13-01, sections 36-01-21, 37-17.1-16, subsection 3 of section 38-14.1-14, subsection 4 of section 38-14.1-40, sections 39-03.1-26, 39-04-10.2, subsection 7 of section 39-06.1-06, section 39-07-07.1, subsection 5 of section 39-16.1-11, sections 40-23.1-13, 40-40-15, subsection 5 of section 43-07-01, sections 43-07-04, 43-07-11, 43-32-10, 50-06-01.3, 50-06.3-05, 51-04-01, 52-01-02, subsection 3 of section 52-06-01, section 52-06-27, subsection 2 of section 54-27-20.2, section 54-27-20.3, subdivision e of subsection 4 of section 54-52-17, subsection 4 of section 54-52.1-01, subsection 6 of section 55-10-08, subsection 10 of section 57-38-01, sections 59-01-03, 61-01-01, 61-01-26, 61-03-20, subdivision e of subsection 2 of section 61-04.1-16, sections 61-16.1-06, 61-16.1-20, 61-31-09, 65-01-01, subsections 9 and 13 of section 65-01-02, sections 65-01-05, 65-01-11, 65-02-01, 65-04-02, 65-04-04.1, subsection 1 of section 65-04-27.1, sections 65-04-29, 65-05-09.1, 65-05.1-01, subsection 1 of section 65-05.1-03, sections 65-05.1-07, 65-05.2-01, 65-05.2-04, subsection 3 of section 65-06.2-02, sections 65-06.2-03, 65-08-02, 65-08-03, and 65-08-04 of the North Dakota Century Code, relating to improper, inaccurate, redundant, missing, or obsolete references.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-10-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-10-19. Enforcement - Hearing by commissioner - Application of chapter 28-32. The commissioner shall enforce this chapter and the regulations made thereunder rules adopted under this chapter. Except as provided in section 4-10-14, whenever the commissioner is of the opinion that a violation of this chapter or of the regulations made thereunder rules adopted under this chapter exists, he the commissioner shall hold a hearing

as provided in chapter 28-32. A person aggrieved by a seizure pursuant to section 4-10-14 may request a hearing pursuant to chapter 28-32. If after the hearing, or without hearing if the person involved fails or refuses to appear, the commissioner decides that there has been a violation of this chapter or the rules and regulations derived therefrom, ~~he~~ the commissioner may impose the civil penalty provided in section ~~4-10-20~~ 4-10-22, or if ~~he~~ the commissioner decides that the evidence warrants prosecution, ~~he~~ the commissioner shall proceed as ~~hereinafter~~ provided in this chapter.

* SECTION 2. AMENDMENT. Section 6-09.11-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.11-04. Loans to farmers - Purposes.

- ~~+~~ The following purposes are eligible to be funded by bond proceeds or loan participations under this chapter:
 - ~~a.~~ 1. Purchasing or leasing agricultural real estate.
 - ~~b.~~ 2. Constructing, repairing, altering, or adding to any farm buildings on agricultural real estate owned or purchased by the farmer.
 - ~~c.~~ 3. Making permanent improvements to agricultural real estate owned or purchased by the farmer for the purpose of increasing the productive value of the land or promoting conservation of the soil.
 - ~~d.~~ 4. Purchasing farm equipment.
 - ~~e.~~ 5. Purchasing livestock.
 - ~~f.~~ 6. Paying off and discharging mortgages, encumbrances, and other charges or liens against or on the agricultural real estate owned or purchased by the farmer.
 - ~~g.~~ 7. Purchasing the farmer's home-quarter pursuant to chapter ~~6-10~~ 6-09.10.

SECTION 3. AMENDMENT. Subsection 3 of section 10-19.1-116 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- 3. The assets of the corporation or the proceeds resulting from a sale, lease, transfer, or other disposition must be applied in the following order of priority to the payment and discharge or:
 - a. The costs and expenses of the proceedings, including attorneys' fees and disbursements;
 - b. Debts, taxes and assessments due the United States, this state and its subdivisions, and other states and their subdivisions, in that order;
 - c. Claims duly proved and allowed to employees under title 65. Claims under this subdivision may not be allowed if the corporation carried ~~workmen's~~ workers' compensation insurance, as provided by law, at the time the injury was sustained;

* NOTE: Section 6-09.11-04 was also amended by section 3 of House Bill No. 1181, chapter 119.

- d. Claims, including the value of all compensation paid in any medium other than money, duly proved and allowed to employees for services performed within three months preceding the appointment of the receiver, if any; and
- e. Other claims duly proved and allowed.

* SECTION 4. AMENDMENT. Subsection 2 of section 11-10-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The county treasurer, county superintendent of schools, register of deeds, county auditor, and clerk of district court each shall receive the following annual salary, payable monthly, for official services rendered:
 - a. Fifteen thousand one hundred dollars in counties having a population of less than eight thousand.
 - b. Fifteen thousand five hundred dollars in counties having a population of or exceeding eight thousand plus additional compensation of one hundred dollars per year for each one thousand additional population or major fraction thereof over eight thousand. However, in counties where the population consists of more than twenty-five percent Indians who have not severed tribal relations, the county commissioners may adjust the salaries provided for herein within the limitations contained in this subdivision.

SECTION 5. AMENDMENT. Section 11-13-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-13-18. Reporting name of blind person for which exemption is claimed. The county auditor of each county shall report to the state highway commissioner the names of all blind persons for which a property exemption is claimed. Such reports as required ~~shall be~~ are for the information of the state highway department in determining the eligibility of any person to operate a motor vehicle on the highways of this state and ~~shall~~ must be kept confidential and not divulged to any person or used as evidence in any trial except that the reports may be admitted in proceedings under ~~sections~~ section 39-06-33 ~~and 39-06-39~~.

SECTION 6. AMENDMENT. Section 12.1-12-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-12-02. Illegal influence between legislators or between legislators and governor. Any person who violates the provisions of section ~~4~~ 9 of article IV or section 11 of article V of the Constitution of North Dakota is guilty of a class C felony.

SECTION 7. AMENDMENT. Section 12.1-12-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-12-09. Definitions for chapter. In this chapter, "thing of value" and "thing of pecuniary value" do not include: ~~+~~ (1) salary, fees, and other compensation paid by the government in consideration for which the official action or legal duty is performed; or ~~-~~ (2) concurrence in official action in the course of legitimate compromise among public servants, except

* NOTE: Section 11-10-10 was also amended by section 3 of House Bill No. 1451, chapter 138, and section 1 of House Bill No. 1602, chapter 139.

as provided in section ~~14~~ 9 of article IV or section 11 of article V of the Constitution of North Dakota.

SECTION 8. AMENDMENT. Subsection 1 of section 13-03.1-15 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Every licensee may make loans, including revolving loans, in any principal amount ~~not less more~~ than one thousand dollars ~~and but~~ not more than thirty thousand dollars and may contract for, receive, or collect interest on such loans at any rate agreed upon by the licensee and the borrower.

* SECTION 9. AMENDMENT. Subsection 3 of section 14-09-09.10 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. "Income" means any form of payment, regardless of source, owed to an obligor, including, ~~but not limited to,~~ an earned, unearned, taxable or nontaxable income, ~~workmen's~~ workers' compensation, disability benefits, unemployment compensation benefits, annuity and retirement benefits, but excluding public assistance benefits administered under state law.

SECTION 10. AMENDMENT. Section 16.1-15-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-15-06. Reports and pollbooks sent to county auditor - Compensation for making returns - County auditor to forward pollbook to clerk of United States district court and to the clerk of the North Dakota district court. By twelve noon of the day following an election except in cases of emergency or inclement weather, the inspector of elections, or one of the judges appointed by ~~him,~~ the inspector of elections, personally shall personally deliver the duplicate reports provided for in section 16.1-15-04 to the county auditor. The reports, carefully sealed under cover, accompanied by both of the pollbooks provided for in section ~~16.1-06-15~~ 16.1-06-21, and the wrapped and sealed stamp and inkpadd, with the oaths of the inspector and poll clerks affixed thereto, ~~shall~~ must be delivered properly to the county auditor. The person making the return shall receive compensation therefor in accordance with section 16.1-05-05. However, no compensation and no mileage ~~shall~~ may be paid if delivery of the ballots is not made by twelve noon on the day following the election. The compensation and mileage ~~shall~~ must be paid out of the county treasury on a warrant of the county auditor, and ~~shall be~~ is full compensation for returning all used or voided ballots and, for delivering the ballot boxes to the proper official. Within thirty days after receipt thereof following each presidential election, each county auditor shall forward one of the pollbooks to the clerk of the United States district court for the district encompassing that county for ~~his~~ the clerk's official use. The county auditor shall request return of the pollbook thirty days after receipt thereof by the clerk of the United States district court. The county auditor shall provide the clerk of the North Dakota district court of said county with a pollbook to be used by the clerk for jury selection.

** SECTION 11. AMENDMENT. Section 19-18-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Section 14-09-09.10 was also amended by section 5 of Senate Bill No. 2245, chapter 148.

** NOTE: Section 19-18-04 was also amended by section 3 of Senate Bill No. 2170, chapter 272.

19-18-04. Registration - Fees. Any person before selling or offering for sale any economic poison for use within this state shall file annually with the department an application for registration of such economic poison. The application must:

1. Give the name and address of each manufacturer or distributor.
2. Give the name and brand, if any, of each product registered, together with an ingredient statement of each product registered in accordance with the provisions of subsection 13 of section 19-18-02, and accompanying each registration application there ~~shall~~ must be filed with the department a label of each product so registered. If the department finds that the application conforms to law, the department shall issue to the applicant a certificate of registration of the product. If after public hearing before the department the application is denied, the product ~~shall~~ may not be offered for sale.
3. Be accompanied by an inspection fee of twenty-five dollars for each product. But in cases where the registration fees have been paid by the manufacturer, jobber, or any person, as required by this section, then in that event nothing in this section ~~shall~~ may be construed as applying to retail dealers selling economic poisons. At the close of each calendar month, the department shall transmit to the state treasurer all moneys received for such licenses. The state treasurer shall credit such moneys to the general fund of the state.

Each registration expires on the thirty-first of December following its issuance. A certificate of registration may not be issued for a term longer than one year, and is not transferable from one person to another, or from the ownership to whom issued to another ownership, or from one place to another place or location. A penalty of fifty percent of the license or registration fee ~~shall~~ must be imposed if the license or certificate of registration is not applied for on or before January first of each year, or within the same month such economic poisons are first manufactured or sold within this state.

SECTION 12. AMENDMENT. Section 20.1-01-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-01-07. Hunting big game or small game other than waterfowl or cranes with motor-driven vehicles prohibited - Exception - Motor-driven vehicle use in transporting big game restricted. Except as provided in subsection 11 of section 20.1-02-05, no person, while hunting big game or small game, other than waterfowl or cranes, statewide, may use a motor-driven vehicle on any land other than an established road or trail, unless ~~he~~ that person has reduced a big game animal to possession and cannot easily retrieve ~~said~~ the big game animal, in which case a motor-driven vehicle may be used to retrieve the big game animal, ~~provided that~~ but after such retrieval, ~~such~~ the motor-driven vehicle ~~is again~~ must be returned to the established road or trail along the same route it originally departed. For purposes of safety and allowing normal travel, a motor-driven vehicle may be parked on the roadside or directly adjacent to said road or trail. No person, while hunting big game or small game, statewide, may drive or attempt to drive, run or attempt to run, molest or attempt to molest, flush or attempt to flush, or

harass or attempt to harass any such game with the use or aid of any motor-driven vehicle. No person, while hunting big game or small game, other than waterfowl or cranes, statewide, may drive through any retired cropland, brush area, slough area, timber area, open prairie, or unharvested or harvested cropland, except upon an established road or trail.

SECTION 13. AMENDMENT. Section 21-10-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-10-06. Funds under management of board - Accounts. The board is charged with the investment of the following funds:

1. State bonding fund.
2. Teachers' fund for retirement.
3. State fire and tornado fund.
4. ~~Workmen's~~ Workers' compensation fund.
5. Veterans' home improvement fund, in accordance with section 37-15-14.1.
6. National guard training area and facility development trust fund.
7. National guard tuition trust fund.

Separate accounting must be maintained for each of the above funds and when it is deemed advantageous in the purchase, sale, or exchange of securities, securities belonging to one or more of the funds or the Bank of North Dakota may be purchased, sold, or exchanged as part of a single transaction. In the event of such sale, the respective funds must immediately be credited with their proportionate share of the proceeds. In the event of such purchase or exchange, title to or credit for the securities ~~shall~~ must be taken in the name of the individual funds, proportionate to their share of the total purchase price.

The board of university and school lands shall consult with the state investment board or the director thereof on investment policies, and the board of university and school lands may delegate authority to the state investment board or the investment director to make such purchases, sales, or exchanges on its behalf.

SECTION 14. AMENDMENT. Section 23-01-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-01-09. Duties of director of consolidated laboratories branch. The director of the consolidated laboratories branch of the state department of health and consolidated laboratories shall ~~include~~:

1. Make bacteriological examination of bodily secretions and excretions and of waters and foods.
2. Make preparations and examinations of pathological tissues submitted by the state health officer, by any county superintendent of public health, or by any physician who has been regularly licensed to practice in this state.

3. Make all analyses and preparations which he is required to make, and furnish the results thereof, as expeditiously and promptly as possible.
4. Cause sanitary statistics to be collected and tabulated, and cause to be ascertained by research work such methods as will lead to the improvement of the sanitation of the various parts of the state.
5. From time to time, cause to be issued bulletins and reports setting forth the results of the sanitary and pathological work done in the laboratories embodying all useful and important information resulting from the work carried on in the laboratories during the year, the substance of such bulletins and reports to be incorporated in the annual report of the state health officer.
6. Be empowered to establish by regulation a schedule of reasonable fees which it may charge for laboratory analysis. No charge ~~shall~~ may, however, be made for any analysis conducted in connection with any public health incident affecting an entire region, community, or neighborhood.

SECTION 15. AMENDMENT. Subsection 2 of section 23-07-01.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Such reports as required in this section are for the information of the state highway commissioner in determining the eligibility of any person to operate a motor vehicle on the highways of this state and must be kept confidential and not divulged to any person or used as evidence in any trial, except that the reports may be admitted in proceedings under ~~sections~~ section 39-06-33 ~~and 39-06-39~~.

SECTION 16. AMENDMENT. Section 23-07.1-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-07.1-03. State has prior claim on patient benefits. Notwithstanding any provision ~~contained~~ in this chapter, ~~the this state of North Dakota shall have~~ has prior claim on benefits for the care and treatment of tuberculosis, including diagnosis, tests, studies, and analyses, accruing to patients for whom care and treatment is provided by the state of North Dakota under entitlement by the federal government, medical or hospital insurance contracts, ~~workmen's~~ workers' compensation or the medical care and disability provisions of programs under the supervision of the department of human services.

* SECTION 17. AMENDMENT. Subsection 2 of section 23-13-02.3 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. At all times during the operation of a self-service motor fuel dispensing facility the owner, operator, employee, or authorized attendant shall be on the premises and shall supervise the operation thereof. The person attending the operation shall refuse service to anyone who appears for any reason to be unable to dispense such motor fuel safely. If, however, the filling station

* NOTE: Subsection 2 of section 23-13-02.3 was also amended by section 1 of Senate Bill No. 2335, chapter 319.

provides pump island service to its customers, the attendant ~~must~~ shall provide refueling services to any ~~handicapped~~ mobility ~~impaired~~ person stopped at a self-service motor fuel dispensing unit who requests assistance and whose vehicle displays a certificate or insignia issued pursuant to section 39-01-15. No additional cost may be charged to a ~~handicapped~~ mobility ~~impaired~~ person because of the service. This subsection ~~shall~~ does not apply to any self-service motor fuel dispensing unit equipped with a card-operated or key-operated dispensing device, provided that all persons possessing the card or keys required to operate the device have been instructed in the proper and safe operation of the device.

SECTION 18. AMENDMENT. Section 24-01-22.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-01-22.1. Appeal after deposit for taking. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for a taking of right of way as authorized by section ~~fourteen of the constitution~~ 16 of article I of the Constitution of North Dakota, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter ~~shall~~ must be tried at the next regular or special term of court with a jury unless a jury ~~be~~ is waived, in the manner prescribed for trials under chapter 32-15.

* SECTION 19. AMENDMENT. Subsection 1 of section 25-03.1-26 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The state hospital or public treatment facility ~~must~~ immediately shall accept and a private treatment facility may accept on a provisional basis the application and the person admitted under section 25-03.1-25. The superintendent or director shall require an immediate examination of the subject and, within twenty-four hours after admission, shall either release the person if ~~he~~ the superintendent or director finds that the subject does not meet the emergency commitment standards, or file a petition if one has not been filed with the magistrate of the county of the person's residence, or ~~to~~ of the county of the court which directed immediate custody under subsection 2 of section 25-03.1-25, giving notice to the court and stating in detail the circumstances and facts of the case.

SECTION 20. AMENDMENT. Section 25-04-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-04-06. Juvenile court commitment of dependent, neglected, or delinquent mentally deficient - Commitment for observation - Appeal. ~~Whenever~~ In any proceeding instituted in juvenile court, the court may make an order committing the child to the state school whenever it ~~shall appear~~ appears to the satisfaction of the court in any proceeding instituted in juvenile court that the child involved in the proceeding is:

1. Dependent and ~~mentally deficient,~~ or developmentally disabled;
2. Neglected and ~~mentally deficient,~~ developmentally disabled; or

* NOTE: Section 25-03.1-26 was also amended by section 19 of Senate Bill No. 2389, chapter 149.

3. Delinquent and ~~mentally deficient,~~ developmentally disabled.

~~the court may make an order committing such child to the state school. If the court shall be in doubt as to whether the child is mentally deficient developmentally disabled, it the court may make an order committing the child to the state school for observation only by the authorities of such institution. If it is ascertained as a result of such observation that the child is mentally deficient developmentally disabled, a report to such effect shall must be made by the authorities of the school to the court. The court thereupon shall make an order fixing a time for a hearing upon the report showing the child to be mentally deficient developmentally disabled. Notice of such hearing shall must be given to the parents, custodian, or guardian of such child in the manner prescribed by law for the giving of notice in other proceedings in juvenile court. Upon such hearing, the court shall make such order as it may deem proper. Any parent, custodian, guardian, or other person charged with the control of such child may take an appeal from the order made by the court in the manner now prescribed by law for the taking of appeals from decisions of the juvenile court. The procedure provided in this section shall is not be exclusive but shall be is in addition to other procedures provided in this chapter for the commitment of mentally deficient developmentally disabled children to the state school.~~

SECTION 21. AMENDMENT. Section 25-04-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-04-07. Mentally deficient Developmentally disabled defendants.

1. When in any cause, other than a proceeding before the juvenile court, it appears that a defendant may be mentally deficient developmentally disabled to such an extent that he the defendant is unable to confer effectively with counsel or to participate adequately in his own the defendant's defense, this issue shall must be adjudicated in accordance with the procedures provided for in chapter 12.1-04. When any person has been adjudicated unfit to stand trial by reason of mental deficiency being developmentally disabled, the court shall initiate a process for the determination of mental incompetency, or for a joint determination of incompetency and defective delinquency as provided hereinafter. If incompetency is established, the court shall appoint an appropriate guardian of the person.
2. If the defendant's condition and behavior is such that it appears to the court that he the defendant may be not only incompetent, but may also constitute a continuing peril to the life, person, or property of others, the court may order his the defendant's admission and temporary detention for a period not to exceed thirty days in a state institution or facility suitable to receive such persons. Prior to the expiration of the order a report shall must be transmitted to the court in accordance with this directive, which report shall must include recommendations concerning the nature and extent of the defendant's mental deficiency developmental disability, the extent to which the individual is able to manage himself and his affairs with ordinary prudence, and the extent and character of any propensity toward aggravated antisocial behavior such as might substantiate a finding of defective delinquency.

3. The court may thereupon conduct a hearing on the joint question of incompetency and defective delinquency, with due notice to all interested parties in the manner provided for in chapter 30.1-28. The court may hear the matter or may order a jury trial. A jury trial ~~shall~~ must be had if demanded by the defendant or someone on ~~his~~ the defendant's behalf.
4. If the defendant is found competent, ~~he shall~~ the defendant must be discharged. If ~~he~~ the defendant is found to be incompetent, but not a defective delinquent, the court shall appoint an appropriate guardian of the person. If ~~he~~ the defendant is found to be a defective delinquent, the court shall appoint an appropriate guardian and may, in addition, issue an order placing ~~him~~ the defendant in the state school at Grafton or other appropriate state facility.
5. Any parent, custodian, guardian, or other person charged with the control of such defendant may take an appeal from the order made by the court in the manner provided by law. The procedure provided in this section ~~shall~~ is not be exclusive but ~~shall be~~ is in addition to any other procedure for the commitment of ~~mentally deficient developmentally disabled~~ persons to the state school or other state facility.

SECTION 22. AMENDMENT. Section 25-04-08.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-04-08.1. Notification prior to discharge. Prior to discharge the superintendent shall consult with the parent or guardian of the person of the ~~mentally deficient developmentally disabled~~ person, or with the court which ordered the commitment, and shall notify the director of the county social service board of the county wherein it is proposed that such person will assume residence and shall also notify the executive director of the ~~state social service board~~ department of human services.

SECTION 23. AMENDMENT. Section 25-04-11.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-04-11.1. Disposition of nonresidents - Exceptions - Reciprocal agreements. If a person who has no legal residence in this state or whose residence is unknown is found to be a person requiring care and treatment in the state school, the person ~~shall~~ must be sent to the state school in the same manner, and accompanied by the same documents, as in the case of a resident of this state. The supervising department shall immediately inquire as to the residence of the person or the person's responsible relatives, and, if the residence is found to be in another state or country, the supervising department shall arrange for transportation of the person to the place of legal residence or legal settlement unless the person can be accommodated at the state school without depriving a North Dakota resident of care and treatment at the state school and adequate costs of care are paid for within a reasonable time, or unless a reciprocal agreement has been entered into with another state regarding the care and commitment of the nonresident. The supervising department may enter into reciprocal agreements with other states regarding the mutual exchange, return, and transportation of ~~mentally deficient~~ developmentally disabled persons who are within one state but have

legal residence or legal settlement in another state. The agreements must not contain any provision conflicting with any law of this state.

SECTION 24. AMENDMENT. Section 25-04-14 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-04-14. Expenses chargeable against patient or patient's estate - Filing claims. Expenses for care and treatment of each patient over twenty-one years of age at the Grafton state school must, if practicable, be in accordance with the cost of providing care and treatment for the different degrees or conditions of mental and physical health and charges may be adjusted in accordance with the patient's ability to pay which must include an estimate of potential future receipts including amounts from estates. The supervising department shall recover from the patient or from a discharged patient expenses chargeable for care and treatment. If any patient is receiving social security benefits or is a veteran who has received, is receiving, or is entitled to receive compensation or pension from the veterans' administration, the expenses are a current claim against the patient and may be recovered monthly by the supervising department except that any amount required by the payor of the benefits to be paid directly to the patient must, upon approval of the director of institutions department of human services, be credited to the patient's personal account from any money thus received.

SECTION 25. AMENDMENT. Subsection 2 of section 25-04-15 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. No real property belonging to the estate may be sold during the lifetime of the patient except for the maintenance and support of the patient's dependents, unless it is shown that the sale of the property will not result in undue hardship to those dependents, and it may be sold only upon the order of the county court having jurisdiction of the estate, with the consent of the director of institutions department of human services.

* SECTION 26. AMENDMENT. Subsection 3 of section 25-04-16 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. As used in this chapter, "supervising department" means the director of institutions, or the director's designee department of human services.

SECTION 27. AMENDMENT. Section 26.1-09-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-09-09. Annual report - Publication of annual statement - Examination. The attorney, within the time limited for filing the annual report by insurance companies transacting the same kind of business, shall make a report to the commissioner for each calendar year showing the financial condition at the office where the contracts are issued, and shall furnish any additional information and reports the commissioner requires to show the total premiums or deposits collected, the total losses paid, the total amounts returned to subscribers, and the amounts retained for expenses. The attorney may not be required to furnish the names and addresses of any

- * NOTE: Subsection 3 of section 25-04-16 was also amended by section 4 of House Bill No. 1127, chapter 338.

subscribers. The attorney shall publish an abstract of annual statement as required by section ~~26.1-03-07~~ 26.1-03-10. The business affairs and assets of the attorney are subject to visitation and examination by the commissioner at the expense of the office examined. Where the principal office of the attorney is located in another state, the commissioner, in lieu of an examination conducted by the commissioner's office as provided for in this section, may accept a certified copy of the report of examination made by the insurance office of the state where the principal office is located or by the insurance department of any other state.

SECTION 28. AMENDMENT. Subsection 4 of section 26.1-25-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. Insurance against loss or damage to aircraft or against liability, other than ~~workmen's~~ workers' compensation and employers' liability, arising out of ownership, maintenance, or use of aircraft.

SECTION 29. AMENDMENT. Section 26.1-30.1-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-30.1-01. Application. This chapter applies to policies primarily insuring risks arising from the conduct of a commercial or industrial enterprise except ~~workmen's~~ workers' compensation policies, private passenger automobile policies, inland marine policies, excess umbrella liability policies, errors and omissions policies, and officers and directors liability policies.

SECTION 30. AMENDMENT. Section 26.1-36-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-36-01. Scope. No section of this chapter applies to or affects (1) any policy of ~~workmen's~~ workers' compensation insurance or any policy of liability insurance with or without supplementary expense coverage therein; or (2) any policy or contract of reinsurance; or (3) any blanket or group insurance policy, except when the section refers to a blanket or group insurance policy; or (4) life insurance, endowment or annuity contracts, or contracts supplemental thereto which contain only such provisions relating to accident and sickness insurance as (a) provide additional benefits in case of death or dismemberment or loss of sight by accident, or as (b) operate to safeguard such contracts against lapse, or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant shall become totally and permanently disabled, as defined by the contract or supplemental contract.

SECTION 31. AMENDMENT. Subdivisions i and j of subsection 2 of section 26.1-36-04 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

- i. A provision that if, with respect to a person covered under the policy, benefits for allowable expense incurred during a claim determination period under the policy together with benefits for allowable expense during such period under all other valid coverage exceed the total of the person's allowable expense

during such period, the insurer is liable only for such proportionate amount of the benefits for allowable expense under the policy during such period as (1) the total allowable expense during such period bears to (2) the total amount of benefits payable during such period for such expense under the policy and all other valid coverage (without giving effect to this provision or to any "overinsurance provision" applying to such other valid coverage) less in both (1) and (2) any amount of benefits for allowable expense payable under other valid coverage which does not contain an overinsurance provision. The provision must provide that in no event does the provision operate to increase the amount of benefits for allowable expense payable under the policy with respect to a person covered under the policy above the amount which would have been paid in the absence of the provision. The provision must provide that the insurer may pay benefits to any insurer providing other valid coverage in the event of overpayment by such insurer, and any such payment discharges the liability of this insurer as fully as if the payment had been made directly to the insured, the insured's assignee, or the insured's beneficiary. The provision must provide that in the event that the insurer pays benefits to the insured, the insured's assignee, or the insured's beneficiary, in excess of the amount which would have been payable if the existence of other valid coverage had been disclosed, the insurer has a claim for relief against the insured, the insured's assignee, or the insured's beneficiary, to recover the amount which would not have been paid had there been a disclosure of the existence of the other valid coverage. The provision must provide that the amount of other valid coverage which is on a provision of service basis will be computed as the amount the services rendered would have cost in the absence of such coverage. The provision must provide that:

- (1) "Allowable expense" means one hundred ten percent of any necessary, reasonable, and customary item of expense which is covered, in whole or in part, as a hospital, surgical, medical, or major medical expense under this policy or under any other valid coverage.
- (2) "Claim determination period" with respect to any covered person means the initial period, as provided in the policy, but not less than thirty days and each successive period of a like number of days, during which allowable expense covered under the policy is incurred on account of such person. The first period begins on the date when the first expense is incurred, and successive periods begin when successive expense is incurred after expiration of a prior period.

Or, in lieu thereof:

"Claim determination period" with respect to any covered person means the number of days, as provided in the policy but not less than thirty days during which allowable expense covered under the policy is incurred on account of such person.

- (3) "Overinsurance provision" means the provision which may reduce an insurer's liability because of the existence of benefits under other valid coverage.

This type of provision may be inserted in all policies providing hospital, surgical, medical, or major medical benefits. The insurer may make this provision applicable to either or both: other valid coverage with other insurers; and, except for individual policies individually underwritten, other valid coverage with the same insurer. The insurer must shall include in the provision a definition of "other valid coverage". The definition may include hospital, surgical, medical, or major medical benefits provided by group, blanket, or franchise coverage, individual and family-type coverage, blue cross-blue shield coverage, and other prepayment plans, group practice, and individual practice plans, uninsured benefits provided by labor-management trustee plans, or union welfare plans, or by employer or employee benefit organizations, benefits provided under governmental programs, ~~workmen's workers'~~ compensation insurance, or any coverage required or provided by any other statute, and medical payments under automobile liability and personal liability policies. Other valid coverage may not include payments made under third party liability coverage as a result of a determination of negligence. The insurer may require, as part of the proof of claim, the information necessary to administer the provision.

- j. A provision that after the loss-of-time benefit of the policy has been payable for ninety days, such benefit will be adjusted, as provided below, if the total amount of unadjusted loss-of-time benefits provided in all valid loss-of-time coverage upon the insured should exceed a percent of the insured's earned income as provided in the policy; provided, however, that if the information contained in the application discloses that the total amount of loss-of-time benefits under the policy and under all other valid loss-of-time coverage expected to be effective upon the insured in accordance with the application for this policy exceeded an alternative percent of the insured's earned income as provided in the policy, at the time of the application, such higher percentage will be used in place of the original percent provided. The provision must provide that the adjusted loss-of-time benefit under the policy for any month will be only such proportion of the loss-of-time benefit otherwise payable under the policy as (1) the product of the insured's earned income and the original percent (or, if higher, the alternative percentage) bears to (2) the total amount of loss-of-time benefits payable for such month under the policy and all other valid loss-of-time coverage on the insured (without giving effect to the "overinsurance provision" in this or any other coverage) less in both (1) and (2) any amount of loss-of-time benefits payable under other valid loss-of-time coverage which does not contain an "overinsurance provision". The provision must provide that in making the computation, all benefits and earnings will be converted to a consistent basis weekly if the loss-of-time benefit of the policy is payable weekly, or monthly if the benefit is payable monthly, or otherwise, based upon the time

period. If the numerator of the foregoing ratio is zero or is negative, no benefit is payable. The provision must provide that in no event does the provision operate to reduce the total combined amount of loss-of-time benefits for such month payable under the policy and all other valid loss-of-time coverage below the lesser of three hundred dollars and the total combined amount of loss-of-time benefits determined without giving effect to any "overinsurance provision", nor operate to increase the amount of benefits payable under the policy above the amount which would have been paid in the absence of the provision, nor take into account or operate to reduce any benefit other than the loss-of-time benefit. The provision must provide that:

- (1) "Earned income", except where otherwise specified, means the greater of the monthly earnings of the insured at the time disability commences and the insured's average monthly earnings for a period of two years immediately preceding the commencement of the disability, and does not include any investment income or any other income not derived from the insured's vocational activities.
- (2) "Overinsurance provision" includes this type of provision and any other provision with respect to any loss-of-time coverage which may have the effect of reducing an insurer's liability if the total amount of loss-of-time benefits under all coverage exceeds a stated relationship to the insured's earnings.

This type of provision may be included only in a policy which provides a loss-of-time benefit which may be payable for at least fifty-two weeks, which is issued on the basis of selective underwriting of each individual application, and for which the application includes a question designed to elicit information necessary either to determine the ratio of the total loss-of-time benefits of the insured to the insured's earned income or to determine that such ratio does not exceed the percentage of earnings, not less than sixty percent, selected by the insurer and inserted in lieu of the blank factor above. The insurer may require, as part of the proof of claim, the information necessary to administer this provision. If the application indicates that other loss-of-time coverage is to be discontinued, the amount of such other coverage must be excluded in computing the alternative percentage in the first sentence of the overinsurance provision. The policy must include a definition of "valid loss-of-time coverage" which may include coverage provided by governmental agencies and by organizations subject to regulation by insurance law and by insurance departments of this or any other state or of any other country or subdivision thereof, coverage provided for the insured pursuant to any disability benefits statute or any ~~workmen's~~ worker's compensation or employer's liability statute, benefits provided by labor-management trusteed plans or union welfare plans or by employer or employee benefit organizations, or by salary continuance or pension programs, and any other coverage the inclusion of which may be approved.

SECTION 32. AMENDMENT. Section 26.1-39-10 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-39-10. Property and casualty policies - Declination, cancellation, and nonrenewal - Scope. Sections 26.1-39-10 through 26.1-39-21 apply to insurance policies or risks located or resident in this state which are issued and take effect or which are renewed after July 1, 1983, and insure against any of the following:

1. Loss of or damage to real property which consists of not more than four residential units, one of which is the principal place of residence of the named insured.
2. Loss of or damage to personal property owned by the named insured or used for personal, family, or household purposes within a residential dwelling.
3. Legal liability of the named insured arising out of bodily injury to or death of any persons or damage to property, except bodily injury, death, or property damage arising out of business pursuits other than professional legal or medical services.

Sections 26.1-39-10 through 26.1-39-21 do not apply to ~~workmen's~~ workers' compensation policies, automobile policies, inland marine policies, insurance policies issued through a residual market mechanism, or policies primarily insuring risks arising from the conduct of a commercial or industrial enterprise.

For purposes of sections 26.1-39-10 through 26.1-39-21, any policy period or term of less than six months is considered a policy period or term of six months and any policy period or term of more than one year or any policy with no fixed expiration date is considered a policy period or term of one year.

SECTION 33. AMENDMENT. Section 26.1-41-08 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-41-08. Secured person exemption.

1. In any action against a secured person to recover damages because of accidental bodily injury arising out of the ownership or operation of a secured motor vehicle in this state, the secured person is exempt from liability to pay damages for:
 - a. Noneconomic loss unless the injury is a serious injury.
 - b. Economic loss to the extent of all basic no-fault benefits paid or to become payable for such injury under this chapter after subtracting the same elements of loss recoverable under any ~~workmen's~~ workers' compensation law.
2. The exemption under subsection 1 does not apply unless the person who has sustained accidental bodily injury is a person who may qualify for basic no-fault benefits pursuant to section 26.1-41-06 and who is not excluded under section 26.1-41-07.

SECTION 34. AMENDMENT. Subsection 1 of section 26.1-41-13 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. A basic no-fault insurer has the primary obligation to make payment for economic loss because of accidental bodily injury arising out of the operation of a motor vehicle; provided, that the amount of all benefits a claimant recovered or is entitled to recover for the same elements of loss under any ~~workmen's~~ workers' compensation law must be subtracted from the basic no-fault benefits otherwise payable for the injury.

SECTION 35. AMENDMENT. Subsection 1 of section 28-01-44 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. No action, whether in contract, oral or written, ~~sealed or unsealed,~~ in tort or otherwise, to recover damages:
 - a. For any deficiency in the design, planning, supervision, or observation of construction or construction of an improvement to real property;
 - b. For injury to property, real or personal, arising out of any such deficiency; or
 - c. For injury to the person or for wrongful death arising out of any such deficiency,

~~shall~~ may be brought against any person performing or furnishing the design, planning, supervision, or observation of construction, or construction of such an improvement more than ten years after substantial completion of such an improvement.

SECTION 36. AMENDMENT. Section 30.1-12-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-12-05. (3-105) Proceedings affecting devolution and administration - Jurisdiction of subject matter. Persons interested in decedents' estates may apply to the court for determination in the informal proceedings provided in chapters 30.1-12 through 30.1-23, and may petition the court for orders in formal proceedings within the court's jurisdiction including but not limited to those described in chapters 30.1-12 through 30.1-23. The court has exclusive jurisdiction of formal proceedings to determine how decedents' estates subject to the laws of this state are to be administered, expended, and distributed, including actions to determine title to property alleged to belong to the ~~state~~ estate and of any action or proceeding in which property distributed by a personal representative or its value is sought to be subjected to rights of creditors or successors of the decedent.

SECTION 37. AMENDMENT. Subsection 4 of section 34-13-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. "Employment agent" or "employment agency" means any person, firm, corporation, or association in this state engaged for hire or compensation in the business of furnishing:

- a. Persons seeking employment or changing employment, with information or other service enabling or tending to enable such persons to procure employment, by or with employers, other than such employment agent; or
- b. Any other person, firm, corporation, or association who may be seeking to employ or may be in the market for help of any kind, with information enabling or tending to enable such other person, firm, corporation, or association to procure such help.

The term "employment agent" or "employment agency" does not include any person, firm, corporation, or association employing individuals to render part-time or temporary services to or for a third person, if the person, firm, corporation, or association employing the individuals, in addition to wages or salaries, pays social security and unemployment insurance taxes, provides ~~workmen's~~ workers' compensation coverage, and is responsible for the acts of the employees while rendering services to or for a third person.

* SECTION 38. AMENDMENT. Section 36-01-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-21. Definitions. For purposes of sections 36-01-21 through 36-01-28, unless the context or subject matter otherwise requires:

1. "Garbage" means animal and vegetable waste matter resulting from the handling, preparation, cooking, and consumption of foods, including animal carcasses or parts thereof, except that dairy products from a licensed creamery or dairy may not be considered garbage under the definitions of this section.
2. "Person" means the state, any municipality, political subdivision, institution, public or private corporation, individual, partnership, or other entity.

SECTION 39. AMENDMENT. Section 37-17.1-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-17.1-16. Immunity and exemption.

1. All functions hereunder and all other activities relating to emergency management are hereby declared to be governmental functions. Neither the state nor any county or city or its departments and agencies, or any disaster or emergency worker complying with or reasonably attempting to comply with this chapter, or any executive order or disaster or emergency operational plan pursuant to the provisions of this chapter, or pursuant to any ordinance relating to any precautionary measures enacted by any county or city of the state, except in case of willful misconduct, gross negligence, or bad faith, is liable for the death of or injury to persons, or for damage to property, as a result of any such activity. ~~The provisions of this~~ This section ~~do~~ does not affect the right of any person to receive benefits to which ~~they~~ that person would otherwise be entitled under this chapter, or under the ~~workmen's~~ workers' compensation law, or under any pension law, nor the right of any such person to receive any benefits or compensation under any Act of Congress.

* NOTE: Section 36-01-21 was also repealed by section 32 of House Bill No. 1121, chapter 425.

2. Any requirement for a license to practice any professional, mechanical, or other skill does not apply to any authorized disaster or emergency worker who, in the course of performing their duties, practices such professional, mechanical, or other skill during a disaster or emergency.

SECTION 40. AMENDMENT. Subsection 3 of section 38-14.1-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Each applicant for a permit shall submit to the commission as part of the permit application a certificate issued by an insurance company authorized to do business in ~~the this state of North Dakota~~ certifying that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operations for which such permit is sought. Such policy must provide for personal injury and property damage protection in an amount adequate to compensate any persons, except employees covered by ~~workmen's workers'~~ compensation insurance pursuant to chapter 65-01, damaged as a result of surface coal mining and reclamation operations including use of explosives and entitled to compensation under the applicable provisions of state law. Such policy must be maintained in full force and effect during the terms of the permit or any renewal, including the length of all reclamation operations. The policy must include a rider requiring that the insurer notify the commission whenever substantive changes are made in the policy, including any termination or failure to renew. All operations must cease if the policy is terminated or is not renewed.

SECTION 41. AMENDMENT. Subsection 4 of section 38-14.1-40 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. Any person who is injured in his person or property through the violation by any operator or permittee of any ~~regulation rule~~, order, or permit issued pursuant to this chapter may bring an action for damages ~~+~~ including reasonable attorney and expert witness fees ~~+~~ or for temporary or permanent equitable relief. ~~Nothing in this~~ This subsection ~~affects~~ does not affect the rights established by or ~~limits imposed under the state~~ ~~workmen's workers'~~ compensation laws.

SECTION 42. AMENDMENT. Section 39-03.1-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-03.1-26. Payments under other laws. All payments provided for in this chapter are in addition to any other benefits now or hereafter provided for under the ~~workmen's workers'~~ compensation laws of ~~the this state of North Dakota~~.

* SECTION 43. AMENDMENT. Section 39-04-10.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-04-10.2. Special plates for ~~physically handicapped~~ mobility impaired persons. The registrar of motor vehicles shall issue, without charge, upon application and payment of the regular license fee, plates marked with a special identifying insignia, symbol, or design making them distinctly different from other number plates, to any ~~physically handicapped~~ mobility impaired applicant upon submission by the applicant of a certificate

* NOTE: Section 39-04-10.2 was also amended by section 3 of Senate Bill No. 2335, chapter 319.

issued by a qualified physician to the registrar that the applicant is a ~~physically handicapped person~~ mobility impaired within the meaning of subsection 2 of section 39-01-15. The registrar shall determine the form and size of the insignia, symbol, or design, and shall ~~promulgate~~ adopt rules and regulations governing the issuance thereof.

* SECTION 44. AMENDMENT. Subsection 7 of section 39-06.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. For a violation of subsection ~~6~~ 8 of section 39-01-15, any municipal ordinance equivalent to subsection ~~6~~ 8 of section 39-01-15, or any traffic parking regulations on any state charitable or penal institution property or on the state capitol grounds, a fee in the amount of five dollars.

** SECTION 45. AMENDMENT. Section 39-07-07.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-07-07.1. Provision of envelopes for traffic and parking violations on state charitable or penal institution property or state capitol grounds. Preprinted envelopes must be provided for any person who elects to post bond by mail, pursuant to section 39-06.1-02, for a violation of subsection ~~6~~ 8 of section 39-01-15 or any state traffic parking regulations on any state charitable or penal institution property or on the state capitol grounds.

SECTION 46. AMENDMENT. Subsection 5 of section 39-16.1-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. Such motor vehicle liability policy need not insure any liability under any ~~workmen's~~ workers' compensation law nor any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance, or repair of any such motor vehicle nor any liability for damage to property owned by, rented to, in charge of, or transported by the insured.

SECTION 47. AMENDMENT. Section 40-23.1-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-23.1-13. Governing body to hear and determine appeals and objections to assessments - Altering assessments - Limitations. At the regular meeting of the governing body at which the assessment list is to be acted upon, any person aggrieved by the determination of the city auditor, in regard to any assessment who has appealed therefrom as provided in section ~~40-23-14~~ 40-23.1-12, may appear before the governing body and present ~~his~~ that person's reasons why the action of the city auditor should not be confirmed. The governing body shall hear and determine the appeals and objections and may increase or diminish any of such assessments as ~~it~~ the governing body may deem just, in the event that the formula provided for in sections 40-23.1-02 and 40-23.1-03 proves to be inapplicable. The governing body may increase or diminish any assessment as may be just and necessary to make the aggregate of all assessments equal to the total amount required to pay the entire cost of the work for which such assessments are made, or the part of such cost to be paid by special assessment. No assessment ~~shall~~ may exceed the benefits as determined, in accordance with this chapter by the city auditor, to the parcel of land assessed.

* NOTE: Subsection 7 of section 39-06.1-06 was also amended by section 4 of Senate Bill No. 2335, chapter 319.

** NOTE: Section 39-07-07.1 was also amended by section 5 of Senate Bill No. 2335, chapter 319.

SECTION 48. AMENDMENT. Section 40-40-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-40-15. Expenditures made or liabilities incurred beyond appropriation - Joint and several liability of members of governing body. Except as otherwise provided in ~~sections 40-40-17 and~~ section 40-40-18, no municipal expenditure ~~shall~~ may be made nor liability incurred, and no bill ~~shall~~ may be paid for any purpose in excess of the appropriation made therefor in the final budget. Expenditures made, liabilities incurred, or warrants issued in excess of the appropriations ~~shall be~~ are a joint and several liability of the members of the governing body who authorized the making, incurring, or issuing thereof or who were present when they were authorized and did not vote against authorizing the same.

SECTION 49. AMENDMENT. Subsection 5 of section 43-07-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. The term "nonresident contractor" denotes and applies to any contractor who has not an established and maintained place of business within this state, or who has not made reports to the North Dakota workers compensation bureau within the previous year of employees within this state, and who has not made contribution to the North Dakota ~~workmen's~~ workers' compensation fund accordingly, or who, during a like period has not made an income tax return in this state.

SECTION 50. AMENDMENT. Section 43-07-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-07-04. License - How obtained. To obtain a license under this chapter, an applicant shall submit, on such forms as the registrar shall prescribe, an application under oath containing a statement of the applicant's experience and qualifications as a contractor, and the names of three persons who are knowledgeable about the applicant's experience and qualifications. A bond, as hereinafter prescribed, ~~shall must~~ be filed with the application and the contractor shall submit a statement from the North Dakota workers compensation bureau that the contractor has secured ~~workmen's~~ workers' compensation coverage satisfactory to ~~that~~ the bureau along with such other information as may be required by the registrar to assist ~~him~~ the registrar in determining the applicant's fitness to act in the capacity of a contractor. The application ~~shall must~~ contain a statement that the applicant desires the issuance of a license under ~~the terms of~~ this chapter, and ~~shall must~~ specify the class of license sought. Any person refused a license by the registrar ~~shall have a right of~~ may appeal from such refusal to the district court of Burleigh County, North Dakota, if a nonresident, or to the district court of the county of his residence, if a resident of North Dakota ~~this~~ state.

* SECTION 51. AMENDMENT. Section 43-07-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-07-11. Contractor's bond - Requirements. Every contractor ~~as hereinbefore defined shall be~~ is required to execute and file with the application for license required by this chapter a good and valid bond issued by a surety company authorized to do business in this state or, in the case of class D contractors only, a personal bond with two sureties who are

- * NOTE: Section 43-07-11 was also amended by section 1 of Senate Bill No. 2205, chapter 507.

acceptable to the registrar and who are residents of ~~the this~~ state of North Dakota. Every such bond for a class A contractor shall ~~must~~ be written in the amount of two thousand dollars; bonds for class B, C, and D contractors shall ~~must~~ be in the amount of one thousand dollars, each running to the state of North Dakota and conditioned upon the payment of all taxes, including ~~the~~ workers' compensation premiums under ~~the~~ Workmen's Compensation Law, title 65, and unemployment compensation contributions due under ~~the~~ Unemployment Compensation Law, chapters 52-01 through 52-07.1, ~~of the state of North Dakota~~, all use taxes required to be paid by the contractor to the state of North Dakota and all income taxes withheld or required to be withheld from employees pursuant to chapter 57-38, which may accrue to the state of North Dakota or the political subdivisions thereof on account of the execution and performance of the construction contract or subcontract; provided that any bond required by this section shall ~~be is~~ in addition to any bond required by ~~the provisions of~~ section 48-01-05 and shall ~~is also be~~ in addition to the obligation imposed by ~~the provisions of~~ section 57-40.2-14 upon a surety company to the state of North Dakota. Every contractor, ~~as hereinbefore defined~~, upon making application for renewal of ~~his~~ the contractor's license shall ~~may~~ not be required to furnish a contractor's bond; however, the secretary of state as registrar shall ~~may~~ not issue a certificate of renewal to any contractor upon notification by any department or agency of the state or political subdivision thereof, any secrecy provisions contained in the North Dakota tax laws notwithstanding, that the contractor has not paid a tax or other obligation presently due to the state of North Dakota or its political subdivisions. Upon notification that the contractor has been delinquent in the payment of any tax or other obligation to the state of North Dakota or the political subdivisions thereof, the secretary of state shall require the bond specified herein prior to the renewal of the license.

SECTION 52. AMENDMENT. Section 43-32-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-32-10. Power of board to administer oaths - Conduct hearings - Summon witnesses - Take testimony. The members of the board and the secretary may administer oaths. The board may summon witnesses as provided in ~~section 43-17-09 and 43-17-10~~, chapter 28-32 and take testimony in all matters relating to its duties, including the enforcement of the provisions and purposes of this chapter and the rules and regulations adopted by the board.

* SECTION 53. AMENDMENT. Section 50-06-01.3 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06-01.3. Executive director - Appointment - Compensation. The executive director of the department shall be appointed by, and shall serve at the pleasure of, the governor. The executive director shall take the oath of office required of civil officers by section 44-01-05 and shall ~~be bonded as required of civil officers by section 44-01-06~~. The executive director shall receive compensation in the amount established by the governor within the limits of legislative appropriations.

SECTION 54. AMENDMENT. Section 50-06.3-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Section 50-06-01.3 was also amended by section 2 of Senate Bill No. 2291, chapter 575.

50-06.3-05. Handicapped patients - Limitation. Notwithstanding any other provision of this chapter, no handicapped patient under twenty-one years of age or the estate or the parent of such patient may be charged for educational or related services provided at the state hospital. However, the department ~~shall have~~ ~~has~~ prior claim on all benefits accruing to such patients for medical and medically related services under entitlement from the federal government, medical or hospital insurance contracts, ~~workmen's~~ workers' compensation, or medical care and disability provisions of programs administered by the department. For the purposes of this section, "related services" means transportation and such developmental, corrective, and other supportive services, as determined by the department of public instruction, as are required to assist a handicapped patient to benefit from special education. The cost of related services, other than medical and medically related services, shall be paid by the state hospital, the school district of residence of the handicapped child, and other appropriate state agencies and political subdivisions of this state. The department of public instruction, the department, the school district of residence, and other appropriate state agencies and political subdivisions, as determined by the department of public instruction, shall determine and agree to that portion of related services, other than medical and medically related services, for which each such agency and political subdivision shall be liable. The department of public instruction may adopt rules necessary to implement ~~the provisions of~~ this section.

SECTION 55. AMENDMENT. Section 51-04-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-04-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Merchandise" ~~shall~~ does not include any livestock or agricultural product.
2. "Transient merchant" includes any person, individual, copartnership, or corporation, either as principal or agent, who engages in, does, or transacts any temporary or transient business in this state, either in one locality, or in traveling from place to place in this state, selling, or soliciting orders for future delivery of, goods, wares, merchandise, personal property, and personal services including, ~~but not limited to,~~ spraying, trimming, or pruning of trees and shrubs of all species, painting or repairing buildings or structures, pest or rodent control, and taking photographs for present or future delivery, who does not intend to become and does not become a permanent merchant of such place.

SECTION 56. AMENDMENT. Section 52-01-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-01-02. Employing unit to keep records - Reports of employing unit - Inspection prohibited - Exception. Each employing unit shall keep true and accurate work records containing such information as the bureau may prescribe. Such The records ~~shall~~ must be open to inspection and may be copied by the bureau or its authorized representatives at any reasonable time as often as may be necessary. The bureau or the chairman of any appeal tribunal may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the bureau, or ~~he~~ the chairman,

deems necessary for the effective administration of the North Dakota Unemployment Compensation Law. In addition, the bureau or the chairman of any appeal tribunal may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the workers compensation bureau deems necessary for effective administration of the North Dakota ~~Workmen's~~ Workers' Compensation Law set forth in title 65. Such reports must be provided to the workers compensation bureau by the bureau or the chairman of any appeal tribunal. Information thus obtained ~~shall~~ may not be published or be open to public inspection, other than to public employees in the performance of their public duties, in any manner revealing the employing unit's identity, but any claimant or ~~his~~ the claimant's legal representative at a hearing before an appeal tribunal or the bureau ~~shall~~ must be supplied with information from such records to the extent necessary for the proper presentation of ~~his~~ the claim.

SECTION 57. AMENDMENT. Subsection 3 of section 52-06-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. He is able to work and is available for suitable work and actively seeking work; provided,
 - a. That notwithstanding any other provisions in this section, no otherwise eligible individual ~~shall~~ may be denied benefits for any week because ~~he~~ the individual is in training with the approval of the bureau by reason of the application of provisions of this subsection relating to availability for work and to active search for work, or the provisions of subsection 3 of section 52-06-02 relating to disqualification for benefits for failure to apply for, or a refusal to accept, suitable work;
 - b. ~~and c. Repealed by S.L. 1973, ch. 391, § 24.~~
 - d. That no claimant ~~shall~~ may be considered ineligible in any week of unemployment for failure to comply with the provisions of this subsection, if such the failure is due to an illness or disability not covered by workmen's workers' compensation insurance and which occurred after ~~he~~ the claimant has registered for work and no work has been offered the claimant which is suitable;

SECTION 58. AMENDMENT. Section 52-06-27 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-06-27. Judicial review of decision - Petition - Filing. A party to proceedings before the bureau may obtain a judicial review of the decision of the bureau by filing a petition for such review within thirty days after the date of mailing the bureau's decision to such the party at ~~his~~ the party's last known address, or in the absence of mailing, within thirty days after delivery of the decision to such the party. The petition for review ~~shall~~ must be filed in the district court of the county in which the petitioner resides, ~~and shall~~ must be verified, and ~~shall~~ must state the grounds upon which review is sought. All other parties to the proceeding before the bureau ~~shall~~ must be parties respondent. The bureau ~~shall be~~ is deemed to be a party to any such proceeding. If the bureau is a party respondent, the petition ~~shall~~ must be served upon it by leaving with it or its chairman, or

any other representative as it may designate for that purpose, as many copies of the petition as there are respondents. With its answer or petition, the bureau shall certify and file with the court a verified copy of the record of the case, including all documents and papers and a transcript of all testimony taken in the matter, together with the bureau's findings, conclusions, and decision therein. Upon the filing of a petition for review by the bureau or upon the service of the petition upon it, the bureau forthwith shall send by registered ~~or certified~~ mail to each other party to the proceeding a copy of such petition and such mailing ~~shall be is~~ deemed to be completed service upon all such parties. In any proceeding under this section the finding of the bureau as to the facts, if supported by evidence and in the absence of fraud, ~~shall be is~~ conclusive and the review by the court ~~shall~~ must be confined to questions of law. Such proceedings ~~shall~~ must be heard by the court and ~~shall~~ must be given precedence over all other civil cases except cases arising under the ~~workmen's~~ workers' compensation statute of this state. An appeal may be taken from the decision of the district court to the supreme court of ~~the this~~ state of North Dakota in the same manner as is provided in civil cases. Upon the final termination of such judicial proceeding, the bureau shall enter an order in accordance with the mandate of the court.

SECTION 59. AMENDMENT. Subsection 2 of section 54-27-20.2 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The remainder ~~shall~~ must be allocated in the following manner:
 - a. Such money ~~shall~~ must be allocated to all countywide areas so that each countywide area shall receive an amount which bears the same ratio as the real property tax levy in dollars of all political subdivisions within the countywide area bears to the sum of the products. For the purposes of ~~sections 54-27-20.1 through this section and section~~ 54-27-20.3, countywide area is the geographic area of a county.
 - b. The county government and all cities within the countywide area ~~shall~~ must be allocated that portion of the amount allocated to the countywide area pursuant to subdivision a which bears the same ratio to such amount as each county's or city's real property tax levy in dollars bears to the sum of the real property tax levy in dollars of all cities and county government within that countywide area.

SECTION 60. AMENDMENT. Section 54-27-20.3 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-27-20.3. Disbursement of local funds - Reports. Cities, city park districts, ~~county governments~~ counties, and townships may receive and expend payments made pursuant to ~~sections 54-27-20.1 through 54-27-20.3~~ section 54-27-20.2 and this section and such payments shall be considered an appropriation in the budget of the local unit of government, which, upon the order of the governing body may be disbursed in the manner other disbursements are made. The state revenue sharing moneys so received ~~shall~~ must be treated as a part of the local tax effort of each local unit of government receiving such funds. The state treasurer may require local units of government receiving state revenue sharing funds to provide such

information or copies of reports as may be necessary to administer ~~sections 54-27-20.1 through 54-27-20.3~~ section 54-27-20.2 and this section.

* SECTION 61. AMENDMENT. Subdivision e of subsection 4 of section 54-52-17 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- e. Disability retirement benefits ~~shall~~ must be calculated at sixty percent of the member's final average salary, reduced by the member's primary benefits under the Social Security Act as amended, and by any ~~workmen's~~ workers' compensation benefits paid.

** SECTION 62. AMENDMENT. Subsection 4 of section 54-52.1-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. "Eligible employee" means every permanent employee who is employed by a governmental unit, as that term is defined in section 54-52-01. "Eligible employee" includes members of the legislative assembly, judges of the supreme court, paid members of state or political subdivision boards, commissions, or associations, full-time employees of political subdivisions, elective state officers as defined by subsection 2 of section 54-06-01, and disabled permanent employees who are receiving compensation from the North Dakota ~~workmen's~~ workers' compensation fund. As used in this subsection, "permanent employee" means one whose services are not limited in duration and, who is filling an approved and regularly funded position in a governmental unit, and who is employed at least twenty hours per week and at least five months each year.

SECTION 63. AMENDMENT. Subsection 6 of section 55-10-08 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. ~~In the event~~ If a city, county, school district, or other political subdivision objects to any decision of the state historical board to disallow alteration or demolition of a site listed on the state historical sites registry, such political subdivision may submit the objection to arbitration as provided in this subsection. Arbitration may also be demanded by either the board or such political subdivision if the board or the political subdivision determines that the other has failed to cooperate in identifying or implementing reasonable alternatives to demolition or alteration. The party desiring arbitration shall make a written demand therefor of the other and in such demand shall name three arbitrators. The demand must also set forth the objections which the party desires to submit to arbitration, with reference to the particular state historic site. Such demand must be served upon the other party, which, within ten days, shall name in writing three arbitrators, and in connection therewith shall set forth in writing its response to the objections set forth in the demand served upon it and any additional objections which it desires to submit to arbitration on its part. The six arbitrators so selected shall name a seventh arbitrator. If the party proceeded against shall fail or refuse to name three arbitrators, the moving party may apply ex parte to the

* NOTE: Section 54-52-17 was also amended by sections 2, 3, and 4 of House Bill No. 1092, chapter 666; sections 1 and 2 of House Bill No. 1227, chapter 668; section 6 of House Bill No. 1586, chapter 223; section 1 of Senate Bill No. 2135, chapter 670; and section 1 of Senate Bill No. 2112, chapter 669.

** NOTE: Subsection 4 of section 54-52.1-01 was also amended by section 1 of House Bill No. 1156, chapter 674.

judge of the district court of the county in which the state historical site in question, or any part thereof, may be located, for the appointment of the unnamed arbitrators, and if upon the appointment of three arbitrators by each of the parties, the six so appointed have been unable to agree upon a seventh arbitrator within five days, then either party, upon five days' notice may apply to such district court for the appointment of such seventh arbitrator. The political subdivision may select its arbitrators from among the governing board of the affected political subdivision, from any regular or special committee appointed by the governing board, whether serving on such governing board or not, or from any combination thereof. The state historical board may select its arbitrators from among the board itself, from an executive committee of the board, or from any combination thereof. When a panel of arbitrators has been appointed, a submission in writing must be ~~executed as provided in section 32-29-02, except that such~~ acknowledged by the parties thereto in the same manner as a conveyance of real property and may fix the time on or before which the award must be made. The submission must provide for the entry of judgment upon the award by the district court of the county within which the state historical site or some part thereof is located. The submission must also provide that each party shall bear its own arbitration costs and expenses, however the costs and expenses relating to the seventh arbitrator must be borne equally by both parties to the dispute. The seven arbitrators shall proceed to resolve the controversies brought before them, and the decision of the arbitrators, or a majority of them, must be given in writing to the board or the officials concerned and shall be binding upon both parties. Thereafter, the arbitration must proceed in accordance with the provisions of chapter ~~32-29~~ 32-29.1.

SECTION 64. AMENDMENT. Subsection 10 of section 57-38-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10. Any term, as used in ~~chapters 57-38, 57-38-1, 57-38-2, 57-59, or in any other section or provision of the~~ this code, as it pertains to the filing and reporting of income, deductions, or exemptions or the paying of North Dakota income tax, ~~shall have~~ has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required or contemplated.

SECTION 65. AMENDMENT. Section 59-01-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

59-01-03. Purpose for which express trust may be created. A trust may be created for any purpose for which a contract lawfully may be made, except as otherwise prescribed by chapters ~~2 and 3 of this title and chapter 10 of title 47~~ 47-10, 59-02, and 59-03.

SECTION 66. AMENDMENT. Section 61-01-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-01-01. Waters of the state - Public waters. All waters within the limits of the state from the following sources of water supply, ~~namely~~ belong to the public and are subject to appropriation for beneficial use and the

right to the use of these waters for such use must be acquired pursuant to chapter 61-04:

1. Waters on the surface of the earth excluding diffused surface waters but including surface waters whether flowing in well-defined channels or flowing through lakes, ponds, or marshes which constitute integral parts of a stream system, or waters in lakes; **and**
2. Waters under the surface of the earth whether such waters flow in defined subterranean channels or are diffused percolating underground water; **and**
3. All residual waters resulting from beneficial use, and all waters artificially drained; and
4. All waters, excluding privately owned waters, in areas determined by the state engineer to be noncontributing drainage areas. A noncontributing drainage area is **hereby defined to be** any area **which that** does not contribute natural flowing surface water to a natural stream or watercourse at an average frequency ~~oftener~~ **more** often than once in three years over the latest thirty-year period

belong to the public and are subject to appropriation for beneficial use and the right to the use of these waters for such use; shall be acquired pursuant to the provisions of chapter 61-04.

SECTION 67. AMENDMENT. Section 61-01-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-01-26. Declaration of state water resources policy. In view of legislative findings and determination of the ever-increasing demand and anticipated future need for water in North Dakota for every beneficial purpose and use, it is hereby declared to be the water resources policy of the state that:

1. The public health, safety and general welfare, including without limitation, enhancement of opportunities for social and economic growth and expansion, of all of the people of the state, depend in large measure upon the optimum protection, management, and wise utilization of all of the water and related land resources of the state.
2. Well-being of all of the people of the state shall be the overriding determinant in considering the best use, or combination of uses, of water and related land resources.
3. Storage of the maximum water supplies shall be provided wherever and whenever deemed feasible and practicable.
4. Accruing benefits from these resources can best be achieved for the people of the state through the development, execution, and periodic updating of comprehensive, coordinated, and well-balanced short-term and long-term plans and programs for the conservation and development of such resources by the departments and agencies of the state having responsibilities therefor.

5. Adequate implementation of such plans and programs shall be provided by the state through cost-sharing and cooperative participation with the appropriate federal and state departments and agencies and political subdivisions within the limitation of budgetary requirements and administrative capabilities.
6. Required assurances of state cooperation and for meeting nonfederal repayment obligations of the state in connection with federal-assisted state projects shall be provided by the appropriate state department or agency.
7. Required assurances of local cooperation and for meeting nonfederal repayment obligations of local interests in connection with federal-assisted local projects may, at the request of political subdivisions or other local interests be provided by the appropriate state department or agency, provided, if for any reason it is deemed necessary by any department or agency of the state to expend state funds in order to fulfill any obligation of a political subdivision or other local interests in connection with the construction, operation, or maintenance of any such project, the state shall have and may enforce a claim against the political subdivision or other local interests for such expenditures.

The provisions of this ~~chapter shall section may~~ not be construed ~~to~~ in any manner ~~to~~ limit, impair, or abrogate the rights, powers, duties, or functions of any department or agency of the state having jurisdiction or responsibilities in the field of water and related land resources conservation, development, or utilization.

SECTION 68. AMENDMENT. Section 61-03-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-03-20. State engineer to cooperate with United States geological survey in making topographic maps. The state engineer may confer with the director of the United States geological survey and may accept the cooperation of the United States with this state in the execution of topographic surveys and maps of this state. The state engineer may arrange with ~~said~~ the director or other authorized representative of the United States geological survey concerning the details of such work, the method of its execution, and the order in which these surveys and maps of different parts of the state shall be undertaken. In any such work the director of the United States geological survey shall agree to expend on the part of the United States upon said work a sum equal to that appropriated by the state from time to time for this purpose. In arranging ~~these~~ details ~~heretofore referred to~~, the state engineer, in addition to such other provisions as ~~he~~ ~~the state engineer~~ may deem wise, shall require that the maps resulting from this survey ~~shall~~ show the outlines of all counties, towns, and extensive wooded areas, as existing on the ground at the time of the execution of the survey, the location of all railways, roads, streams, canals, lakes, and rivers, and ~~shall~~ contain contour lines showing the elevation and depression for at least every twenty feet [6.10 meters] or oftener in vertical interval of the surface of the country. The resulting map ~~shall~~ must recognize wholly the cooperation of the state of North Dakota, and as each manuscript sheet of the map is completed the United States geological survey should furnish the state engineer shall be furnished by the United States geological survey with photographic copies of the same. As the engraving on each sheet is completed

the director shall furnish the state engineer ~~shall be furnished by said director~~ with transfers from the copperplates of the same.

SECTION 69. AMENDMENT. Subdivision e of subsection 2 of section 61-04.1-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- e. The applicant has North Dakota ~~workmen's~~ workers' compensation insurance coverage for all employees working in ~~North Dakota~~ this state.

SECTION 70. AMENDMENT. Section 61-16.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-06. District budget - Tax levy - Financing by special assessment. The fiscal year of the district ~~shall begin~~ begins January first and ~~end ends~~ December thirty-first. The water resource board shall estimate the expenses of the district before October first of each year. Estimates of district expenses may include costs of rights of way, easements, or other interests in property deemed necessary for the construction, operation, and maintenance of any projects. The district budget may also include an amount necessary for future projects which are part of a master plan ~~prepared and adopted pursuant to section 61-16.1-13~~. Upon completion and adoption of a budget covering necessary expenses, the board shall send a copy of the budget to the county auditor of each county in the district. Each county auditor shall transmit the same to the board of county commissioners of his or her county. The board of county commissioners shall either disapprove the budget, amend and approve the budget as amended, or approve the budget as submitted and, if approved as amended or as submitted, the board shall, by resolution, levy and authorize and direct the county auditor to extend and spread upon the tax roll of the county or portion of the county in the district a tax not exceeding the limitation in section 57-15-26.6 in the same manner, and with the same effect, as general property taxes are extended and spread. Funds produced each year by the tax levy shall be available until expended, and if the tax levy in any year will not produce sufficient revenue to cover district expenses, a fund sufficient to pay the district expenses may be accumulated. The acquisition of rights of way, easements, and the construction, operation, and maintenance of a project in a district may, in the discretion of the water resource board, be financed in whole or in part by special assessments against property benefited by such project, or from revenues realized from general tax collections, or from net revenues to be derived from service charges to be imposed and collected for the services of the project, or any combination of such sources.

SECTION 71. AMENDMENT. Section 61-16.1-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-20. Voting right or powers of landowners. In order that there may be a fair relation between the amount of liability for assessments and the power of objecting to the establishment of a proposed project, the voting rights of affected landowners on the question of establishing the project ~~shall be~~ are as provided in this section. The landowner or landowners of tracts of land affected by the project ~~shall~~ have one vote for each dollar of assessment that ~~his~~ the land is subject to or one vote for each dollar of the assessed valuation of land condemned for the project, as determined in accordance with title 57. The governing body of any county, township, or city to be assessed ~~shall~~ also has one vote for each dollar of

assessment against such city county, township, or city. ~~It is the intent of this section to allow~~ There may be only one vote for each dollar of assessment, regardless of the number of owners of such tract of land. Where more than one owner of such land exists, the votes ~~shall~~ must be prorated among them in accordance with each owner's property interest. A written power of attorney ~~shall authorize~~ authorizes an agent to protest a project on behalf of any affected landowner or landowners.

SECTION 72. AMENDMENT. Section 61-31-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-31-09. Drainage of wetlands. The state engineer shall notify the commissioner of any drainage permit application pursuant to section ~~61-16-1-4~~ 61-32-03 which has been denied by the state engineer. Each water resource district shall notify the commissioner of any drainage permit application pursuant to section ~~61-16-1-4~~ 61-32-03 which has been denied by a water resource district. The notice ~~shall~~ must be sent to the commissioner by certified mail not later than ten days after the decision. After receipt of the notice, the commissioner shall investigate the wetland area proposed to be drained to determine whether it would be eligible for inclusion in the state waterbank program, and shall take appropriate action to attempt to enter into an agreement under this chapter with the landowner for conservation of the wetland area.

SECTION 73. AMENDMENT. Section 65-01-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-01-01. Purposes of compensation law - Police power. The state of North Dakota, exercising its police and sovereign powers, declares that the prosperity of the state depends in a large measure upon the well-being of its wage workers, and, hence, for ~~workmen~~ workers injured in hazardous employments, and for their families and dependents, sure and certain relief is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding, or compensation, except as otherwise provided in this title, and to that end, all civil actions and civil claims for relief for such personal injuries and all jurisdiction of the courts of the state over such causes are abolished except as is otherwise provided in this title.

* SECTION 74. AMENDMENT. Subsections 9 and 13 of section 65-01-02 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

9. "Employee" means every person engaged in a hazardous employment under any appointment, contract of hire, or apprenticeship, express or implied, oral or written, and:

a. ~~Such~~ The term includes:

- (1) All elective and appointed officials of this state and its political subdivisions, including municipal corporations and including the members of the legislative assembly, all elective officials of the several counties of this state, and all elective peace officers of any city.
- (2) Aliens.

* NOTE: Section 65-01-02 was also amended by section 1 of Senate Bill No. 2256, chapter 765, and section 4 of Senate Bill No. 2324, chapter 295.

- (3) Poor relief workers except such as are engaged in repaying to counties relief moneys which the counties have been compelled by statute to expend for poor relief.
- (4) Minors, whether lawfully or unlawfully employed; a minor is deemed sui juris for the purposes of this title, and no other person may have any claim for relief or right to compensation for any injury to such minor ~~workman~~ worker, but in the event of the award of a lump sum of compensation to such minor employee, such sum shall be paid only to the legally appointed guardian of such minor.
- b. ~~Such~~ The term does not include:
- (1) Any person whose employment is both casual and not in the course of the trade, business, profession, or occupation of ~~his~~ that person's employer.
- (2) Any person who is engaged in an illegal enterprise or occupation.
- (3) The spouse or child of the employer dwelling in the household of the employer.
- c. Persons employed by subcontractor, or by an independent contractor operating under an agreement with the general contractor, for the purpose of this chapter are deemed to be employees of the general contractor who is liable and responsible for the payments of premium for the coverage of these employees until the subcontractor or independent contractor has secured the necessary coverage and paid the premium therefor. This subdivision ~~may not be construed as imposing~~ does not impose any liability upon a general contractor other than liability to the bureau for the payment of premiums ~~which that~~ are not paid by a subcontractor or independent contractor.
13. "Fund" means the North Dakota ~~workmen's~~ workers' compensation fund.

SECTION 75. AMENDMENT. Section 65-01-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-01-05. Employment of those unprotected by insurance unlawful - Effect of failure to secure compensation - Penalty - Injunction. It ~~shall be~~ is unlawful for any employer to employ anyone, or to receive the fruits of the labor of any person, in a hazardous employment as defined in this title, without first making application for ~~workmen's~~ workers' compensation insurance coverage for the protection of such employees by notice to the bureau of the intended employment, the nature thereof, and the estimated payroll expenditure for the coming twelve-month period. Failure to secure ~~workmen's~~ workers' compensation coverage for employees by application for ~~workmen's~~ workers' compensation insurance ~~shall constitute~~ constitutes a class A misdemeanor. Where the employer is a corporation, the president, secretary, treasurer, or person with primary responsibility ~~shall be~~ is liable for the failure to secure ~~workmen's~~ workers' compensation coverage under this section. In addition to the penalties prescribed ~~above~~ by this

section the bureau may, by injunction proceedings as provided for in this title, enjoin any employer from unlawfully employing uninsured workers.

SECTION 76. AMENDMENT. Section 65-01-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-01-11. Burden of proof in compensation matters - Death certificate. If the bureau or an employer ~~shall claim~~ claims that an employee is not entitled to the benefits of the North Dakota ~~Workmen's Workers'~~ Workers' Compensation Law by reason of the fact that ~~his~~ the employee's injury was caused by the employee's willful intention to injure himself, or to injure another, or by reason of the voluntary intoxication of the employee, the burden of proving such exemption or forfeiture ~~shall be~~ is upon the bureau or upon the person alleging the same; however, a blood alcohol level above the legal intoxication limit as defined in subsection 3 of section 39-20-07 ~~shall create creates~~ creates a rebuttable presumption that the injury was due to intoxication. Any claimant against the fund, however, ~~shall have~~ has the burden of proving by a preponderance of the evidence that ~~he~~ the claimant is entitled to participate in the same. In the event of a claim for death benefits the official death certificate ~~shall must~~ must be considered as evidence of death and may not be used to establish the cause of death.

* SECTION 77. AMENDMENT. Section 65-02-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-02-01. ~~Workmen's~~ Workers' compensation bureau - Membership - Terms of office. The North Dakota ~~workmen's workers'~~ workers' compensation bureau ~~shall must~~ must be maintained for the administration of the provisions of this title. ~~Such~~ The bureau ~~shall consist~~ consists of three ~~workmen's compensation~~ workers' compensation commissioners who ~~shall must~~ must be appointed by the governor. The terms of the commissioners ~~shall be~~ are six years, and ~~shall must~~ must be arranged so that the term of one commissioner ~~and of only one~~ shall expire expires on the tenth day of July in each odd-numbered year. One of the commissioners ~~shall~~ must be a representative of labor, one ~~shall must~~ must be a representative of the public, and one ~~shall must~~ must be a representative of the employers. The commissioners shall devote their entire time to the duties of the bureau, and each commissioner shall serve until ~~his~~ a successor has been appointed and qualified. Any commissioner may be removed by the governor for cause.

SECTION 78. AMENDMENT. Section 65-04-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-04-02. Statutory reserve. Ten percent of the money that is paid into the ~~workmen's workers'~~ workers' compensation fund ~~shall must~~ must be set aside for the creation of a surplus until such surplus ~~shall amount~~ amounts to the sum of fifty thousand dollars, after which time the sum of five percent of all the money paid into such fund ~~shall must~~ must be credited to such surplus fund until, in the judgment of the bureau, ~~such the~~ such surplus ~~shall be~~ is sufficiently large to guaranty the fund from year to year. Thereafter ~~such~~ such transfer of ~~said~~ said funds to the surplus fund may be discontinued temporarily for one or more years, or until, in the judgment of the bureau, the transfer of five percent of all money paid into such fund to such surplus again ~~shall be~~ is necessary.

SECTION 79. AMENDMENT. Section 65-04-04.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Section 65-02-01 was also amended by section 6 of Senate Bill No. 2324, chapter 295.

65-04-04.1. Determination of weekly wage for premium purposes to veteran-on-the-job trainee. Whenever an employer employs a person known as a veteran-on-the-job trainee, as defined under Public Laws 16 and 346 of the United States Congress, the premium for ~~workmen's~~ workers' compensation coverage ~~shall~~ must be based on a minimum weekly wage of thirty dollars per week.

SECTION 80. AMENDMENT. Subsection 1 of section 65-04-27.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. To protect the lives, safety, and well-being of wage workers, to ~~insure~~ ensure fair and equitable contributions to the state ~~workmen's~~ workers' compensation insurance fund between all employers, and to protect the ~~workmen's~~ workers' compensation fund, the ~~workmen's~~ workers' compensation bureau may institute injunction proceedings in the name of the state of North Dakota against certain employers to prohibit them from employing others in those employments defined as hazardous by this title in any of the following instances:
 - a. When it has been brought to the attention of the bureau that the employer has unlawfully employed uninsured workers in violation of the provisions of section 65-01-05; ~~or~~
 - b. When the employer defaults in the payment of insurance premiums into the state fund; or
 - c. When the bureau, in exercise of the power and authority granted by section 65-03-01, giving it full power and jurisdiction over and the supervision of, every employment and every place of employment for the purpose of issuing and enforcing all necessary and proper safety rules and regulations, finds that it is necessary to enjoin and restrain certain employers and employments in order to protect the lives and safety of the employees because of failure or refusal to comply with necessary and proper safety rules and regulations.

The courts of this state are vested with jurisdiction and power to grant such preventive relief in the instances herein set forth.

SECTION 81. AMENDMENT. Section 65-04-29 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-04-29. Employers carrying on nonhazardous employment may come under law - Employee's option. Any employer carrying on any employment not ~~classed~~ defined as hazardous under ~~the definition of that term contained in section 65-01-02~~ who complies with ~~the provisions of~~ this title and who ~~shall pay~~ pays into the fund the premiums provided for under this chapter ~~shall be is~~ covered under the fund and ~~shall is not be~~ liable to respond in damages at common law or by statute for injuries to or the death of any employee, wherever occurring, during the period covered by such premiums. Any employee who elects before injury not to come under ~~workmen's~~ workers' compensation insurance may do so by notifying the ~~workmen's~~ workers' compensation bureau and the employer of such election in writing.

* SECTION 82. AMENDMENT. Section 65-05-09.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- * NOTE: Section 65-05-09.1 was also amended by section 4 of Senate Bill No. 2237, chapter 766.

65-05-09.1. Social security offset. When an injured employee, spouse, or dependent of an injured employee, is eligible for and is receiving permanent total or temporary total disability benefits under section 65-05-09, and is also eligible for, is receiving, or will receive, benefits under Title II of the Social Security Act [42 U.S.C. 423], the aggregate benefits payable under section 65-05-09 ~~shall~~ must be reduced, but not below zero, by an amount equal as nearly as practical to one-half of such federal benefit. The amount of the offset computed by the bureau initially ~~will~~ must remain the same throughout the period of eligibility and ~~will~~ may not be affected by any increase or decrease in federal benefits.

Any injured employee, or dependent of an injured employee, receiving permanent total or temporary total disability benefits under section 65-05-09 and whose benefits are offset as provided herein, ~~shall~~ is not be eligible for any escalation of benefits which would adversely affect the bureau's right to offset ~~workmen's~~ workers' compensation benefits against social security benefits, as provided for in this chapter. This offset will become effective on January 1, 1980, provided that it meets the criteria necessary to allow states to offset federal benefits under Title II of the Social Security Act [42 U.S.C. 424a].

* SECTION 83. AMENDMENT. Section 65-05.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05.1-01. Rehabilitation services. The state of North Dakota exercising its police and sovereign powers, declares that disability caused by injuries in the course of employment and disease fairly traceable to the employment create a burden upon the health and general welfare of the citizens of this state and upon the prosperity of this state and its citizens.

It is the purpose of this chapter to provide for the health and welfare by ensuring to ~~workmen's~~ workers' compensation claimants otherwise covered by this title, services, so far as possible, necessary to assist the claimant and the claimant's family in the adjustments required by the injury to the end that the claimant may receive comprehensive rehabilitation services. Such services shall include medical, psychological, economic, and social rehabilitation.

** SECTION 84. AMENDMENT. Subsection 1 of section 65-05.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Direct the implementation of programs for individual ~~workmen's~~ workers' compensation claimants in accordance with bureau determinations in compliance with the purpose of this chapter.

SECTION 85. AMENDMENT. Section 65-05.1-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05.1-07. Person furnishing training exempt from civil liability - Claimant's remedy. Any person, partnership, corporation, association, or agency that furnishes on-the-job or other similar training to a ~~workmen's~~ workers' compensation claimant as the result of a rehabilitation contract, without establishing an employment relationship with the claimant, ~~shall be~~ is exempt from all civil liability.

* NOTE: Section 65-05.1-01 was also amended by section 1 of House Bill No. 1191, chapter 771.

** NOTE: Section 65-05.1-03 was also amended by section 16 of Senate Bill No. 2324, chapter 295.

SECTION 86. AMENDMENT. Section 65-05.2-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05.2-01. Eligibility for supplementary benefits. ~~Any workmen's A workers'~~ compensation claimant who was receiving temporary total disability benefits, permanent total disability benefits, or death benefits as of July 1, 1980, and is receiving such benefits as of July 1, 1985, is eligible for supplementary benefits. Eligibility for supplementary benefits starts on July 1, 1985, and lasts for as long as the claimant is entitled to ~~workmen's workers'~~ compensation benefits.

SECTION 87. AMENDMENT. Section 65-05.2-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05.2-04. Supplementary benefit fund. The bureau ~~periodically~~ shall ~~periodically~~ determine the amount of money earned on reserves in the ~~workmen's workers'~~ compensation fund necessary to provide for the payment of supplementary benefits under this chapter and ~~periodically~~ shall ~~periodically~~ transfer an adequate amount from the earnings on the reserves of the ~~workmen's workers'~~ compensation fund to the supplementary benefit fund.

SECTION 88. AMENDMENT. Subsection 3 of section 65-06.2-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. ~~Workmen's Workers'~~ compensation benefits under this chapter accrue and are payable from the time of the inmate's release from the institution or after discharge from public service. Disability benefits ~~shall~~ must be computed according to the methods provided in chapter 65-05. The inmate's weekly wage ~~shall~~ must be computed using either the actual wage paid to the inmate or the federal minimum wage as of the date of injury, whichever is higher.

SECTION 89. AMENDMENT. Section 65-06.2-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-06.2-03. ~~Workmen's Workers'~~ compensation coverage of inmates. Any county or city ~~may~~, by resolution of the governing body, ~~may~~ elect to cover its inmates with ~~workmen's workers'~~ compensation benefits in accordance with ~~the provisions of this chapter~~. Any county or city ~~which that~~ makes this election ~~shall~~ is not be liable to respond in damages at common law or by statute for injuries to or the death of any inmate whenever the provisions of this chapter have been met and the premiums as set by the bureau are not in default.

SECTION 90. AMENDMENT. Section 65-08-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-08-02. Reciprocity in extraterritorial application of compensation acts of various states provided. An employee who is a resident of another state and ~~his~~ the employer from another state ~~shall be~~ is exempted from ~~the provisions of this title~~ while such nonresident employee is temporarily within ~~the this~~ state of North Dakota doing work for ~~such the~~ nonresident employer:

1. If that employer has furnished to such employee ~~workmen's workers'~~ compensation insurance under the ~~Workmen's Workers'~~ Compensation

Act, or any similar act, of such other state, covering such employee's employment in ~~North Dakota~~ this state.

2. If the extraterritorial coverage furnished by this title and granted to employers resident in ~~North Dakota~~ this state covering employment of ~~his~~ employees while working in such other state is recognized by such other state.
3. If the employers and employees resident in ~~North Dakota~~ this state who are covered by ~~the provisions of~~ this title are likewise exempted from the application of the ~~Workmen's Workers'~~ Workers' Compensation Act, or any similar act, of such other state.

If the annual payroll expended within ~~North Dakota~~ this state by a nonresident employer exceeds one thousand dollars then the out-of-state employer ~~shall~~ may no longer be considered as operating in ~~North Dakota~~ this state on a temporary basis, unless there is an agreement between the North Dakota ~~workmen's workers~~ workers compensation bureau and a similar agency of the other state where the employer is a resident, and such agreement provides otherwise.

The benefits under the ~~Workmen's Workers'~~ Workers' Compensation Act or similar laws of the other state, or other remedies under a like act or laws are the exclusive remedy against the employer for any resulting injury or death suffered by such employee while working for that employer in ~~the~~ this state of ~~North Dakota~~.

SECTION 91. AMENDMENT. Section 65-08-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-08-03. Evidence that nonresident employer carries extraterritorial compensation coverage. A certificate from the executive secretary or other duly authorized officer of the ~~workmen's workers~~ workers compensation bureau or similar bureau of another state certifying that an employer of such other state is insured under the ~~Workmen's Workers'~~ Workers' Compensation Act or similar act thereof, and has provided extraterritorial coverage insuring ~~his~~ that employer's employees while working within ~~the~~ this state of ~~North Dakota~~ shall be, is prima facie evidence that such employer carries such compensation insurance.

* SECTION 92. AMENDMENT. Section 65-08-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-08-04. Agreements between states relating to conflicts of jurisdiction. The ~~workmen's workers~~ workers compensation bureau, through the action of a majority of the commissioners, ~~shall have authority to~~ may enter into agreements with the ~~workmen's workers'~~ workers' compensation agencies of other states relating to conflicts of jurisdiction where the contract of employment is in one state and the injuries are received in the other state, or where there is a dispute as to the boundaries or jurisdiction of the states and when such agreements have been executed and made public by the respective state agencies, the rights of the employee hired in such other state and injured while temporarily employed in ~~North Dakota~~ this state, or hired in ~~North Dakota~~ this state and injured while temporarily employed in another state, or where the jurisdiction is otherwise uncertain, ~~shall~~ must be determined pursuant to such agreements and confined to the jurisdiction provided in such agreements. Where such an agreement exists, any provisions of this chapter which conflict with the provisions of that agreement ~~shall be~~ are superseded by the provisions of that agreement.

Approved March 14, 1989
Filed March 15, 1989

* NOTE: Section 65-08-04 was also amended by section 18 of Senate Bill No. 2324, chapter 295.

CHAPTER 70

SENATE BILL NO. 2153
(Committee on State and Federal Government)
(At the request of the Governor)

CHRISTMAS EVE STATE OFFICE CLOSING

AN ACT to create and enact a new section to chapter 1-03 of the North Dakota Century Code, relating to the closing of state offices on Christmas Eve.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 1-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Closing of state offices - Christmas Eve. State offices must be closed at twelve noon on December twenty-fourth, Christmas Eve day, unless it is a weekend or holiday pursuant to section 1-03-02.1.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 71

HOUSE BILL NO. 1226
(Representatives Martinson, A. Hausauer, L. Hanson)
(Senators Olson, D. Meyer, Waldera)

CENTENNIAL HOLIDAY

AN ACT to designate July 3, 1989, as a public holiday in recognition of the North Dakota centennial.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. North Dakota centennial holiday. Monday, July 3, 1989, is a holiday in recognition of the centennial of the state of North Dakota.

Approved April 3, 1989
Filed April 3, 1989