

## JOURNAL OF THE SENATE

## Sixty-sixth Legislative Assembly

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Bismarck, April 10, 2019

The Senate convened at 1:00 p.m., with President Sanford presiding.

The prayer was offered by Pastor Geoff Hilton, Velva United Methodist Church, Velva.

The roll was called and all members were present except Senator Anderson.

A quorum was declared by the President.

## VETO MEASURE

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Senate Bill 2055 and return it to the Senate unsigned.

Last year, the North Dakota Supreme Court reaffirmed the separation of powers and resolved a dispute between the legislative and executive branches in North Dakota Legislative Assembly v. Burgum, 916 N.W.2d 83. The Court held the legislative assembly "may not delegate to another body the power to make law - to legislate." The Constitution grants the legislative body the authority to create law and appropriate funds. These duties cannot be delegated to a subset of legislators, such as the budget section, which consists of 42 of the legislature's 141 members.

Senate Bill 2055 is fundamentally flawed because it disregards the Supreme Court's ruling and enshrines the budget section's unconstitutional practice of acting as a mini-legislature. The purpose, powers and duties of the budget section, as proposed in Section 15 of Senate Bill 2055, ignore the Supreme Court's guidance and further undermine the constitutional duty of the executive branch to carry out laws passed by the full legislature.

Instead of addressing the issue raised in Assembly v. Burgum and properly balancing authority between the branches of government, Senate Bill 2055 makes the problem worse. For the reasons explained herein, I return Senate Bill 2055 to the Senate, unsigned.

## CONSIDERATION OF AMENDMENTS

**HB 1024, as engrossed: SEN. BEKKEDAHL (Appropriations Committee) MOVED** that the amendments on SJ pages 1354-1357 be adopted and then be placed on the Fourteenth order with **DO PASS**, which motion prevailed on a voice vote.

## SECOND READING OF HOUSE BILL

**HB 1024:** A BILL for an Act to provide an appropriation for defraying the expenses of the department of environmental quality; to create and enact a new section to chapter 23.1-12 and chapter 23.1-16 of the North Dakota Century Code, relating to boiler inspections and the petroleum tank release compensation fund; to amend and reenact sections 23.1-12-02, 23.1-12-04, 23.1-12-05, 23.1-12-06, 23.1-12-10, 23.1-12-11, 23.1-12-14, 23.1-12-15, 23.1-12-17, 23.1-12-18, 23.1-12-19, 23.1-12-20, 23.1-12-23, 23.1-12-24, 23.1-12-25, 23.1-12-26, 23.1-12-27, 23.1-12-28, 23.1-12-29, and 23.1-12-30 of the North Dakota Century Code, relating to the duties of the department of environmental quality; to repeal chapter 26.1-22.1 of the North Dakota Century Code, relating to boiler inspections; to provide for a report; to provide a contingent effective date; and to provide a contingent expiration date.

## ROLL CALL

The question being on the final passage of the amended bill, which has been read, and has committee recommendation of DO PASS, the roll was called and there were 46 YEAS, 1 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

**YEAS:** Anderson; Bakke; Bekkedahl; Burckhard; Clemens; Cook; Davison; Dever; Dotzenrod; Dwyer; Elkin; Erbele; Fors; Grabinger; Heckaman; Hogan; Hogue;

Holmberg; Kannianen; Klein; Krebsbach; Kreun; Larson, D.; Lee, G.; Lee, J.; Lemm; Luick; Marcellais; Mathern; Meyer; Myrdal; Oban; Oehlke; Patten; Piepkorn; Poolman; Robinson; Roers, J.; Roers, K.; Rust; Schaible; Sorvaag; Unruh; Vedaa; Wanzek; Wardner

**NAYS:** Larsen, O.

Engrossed HB 1024, as amended, passed.

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#### MOTION

**SEN. KLEIN MOVED** that pursuant to Rule 509, the 64th Legislative Day be replaced with the 67th Legislative Day, which motion prevailed.

#### CONSIDERATION OF MESSAGE FROM THE HOUSE

**SEN. UNRUH MOVED** that the Senate do concur in the House amendments to SB 2058 as printed on SJ pages 1262-1263, which motion prevailed on a voice vote.

SB 2058, as amended, was placed on the Eleventh order of business.

#### SECOND READING OF SENATE BILL

**SB 2058:** A BILL for an Act to amend and reenact subsection 6 of section 54-17.8-06 of the North Dakota Century Code, relating to the North Dakota outdoor heritage advisory board.

#### ROLL CALL

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 43 YEAS, 4 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

**YEAS:** Anderson; Bakke; Bekkedahl; Burckhard; Clemens; Cook; Davison; Dever; Dotzenrod; Dwyer; Elkin; Erbele; Grabinger; Heckaman; Hogan; Hogue; Holmberg; Kannianen; Klein; Krebsbach; Kreun; Larson, D.; Lee, G.; Lee, J.; Lemm; Marcellais; Mathern; Meyer; Oban; Oehlke; Patten; Piepkorn; Poolman; Robinson; Roers, J.; Roers, K.; Rust; Schaible; Sorvaag; Unruh; Vedaa; Wanzek; Wardner

**NAYS:** Fors; Larsen, O.; Luick; Myrdal

Engrossed SB 2058 passed.

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#### CONSIDERATION OF MESSAGE FROM THE HOUSE

**SEN. SCHAIBLE MOVED** that the Senate do concur in the House amendments to Engrossed SB 2320 as printed on SJ page 1344, which motion prevailed on a voice vote.

Engrossed SB 2320, as amended, was placed on the Eleventh order of business.

#### SECOND READING OF SENATE BILL

**SB 2320:** A BILL for an Act to create and enact chapter 15-10.4 of the North Dakota Century Code, relating to free speech at institutions under the control of the state board of higher education.

#### ROLL CALL

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 40 YEAS, 7 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

**YEAS:** Anderson; Bakke; Bekkedahl; Burckhard; Clemens; Cook; Davison; Dever; Dotzenrod; Dwyer; Elkin; Erbele; Fors; Grabinger; Heckaman; Hogan; Hogue; Holmberg; Klein; Krebsbach; Kreun; Larsen, O.; Lee, J.; Lemm; Mathern; Meyer; Oban; Oehlke; Patten; Piepkorn; Poolman; Robinson; Roers, J.; Roers, K.; Rust; Schaible; Sorvaag; Vedaa; Wanzek; Wardner

**NAYS:** Kannianen; Larson, D.; Lee, G.; Luick; Marcellais; Myrdal; Unruh

Reengrossed SB 2320 passed.

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#### CONSIDERATION OF MESSAGE FROM THE HOUSE

**SEN. KLEIN MOVED** that the Senate do not concur in the House amendments to Engrossed SB 2019 as printed on SJ pages 1349-1351 and that a conference committee be appointed to meet with a like committee from the House, which motion prevailed on a voice vote.

#### APPOINTMENT OF CONFERENCE COMMITTEE

**THE PRESIDENT APPOINTED** as a Conference Committee on:  
**Engrossed SB 2019:** Sens. Sorvaag, Bekkedahl, Mathern.

#### APPOINTMENT OF CONFERENCE COMMITTEE

**SEN. KLEIN MOVED** that the President appoint a committee of three to act with a like committee from the House as a Conference Committee on Engrossed HB 1157, Engrossed HB 1287, Engrossed HB 1346, Reengrossed HB 1359, Engrossed HB 1461, and Engrossed HB 1531, which motion prevailed.

**THE PRESIDENT APPOINTED** as a Conference Committee on:

**Engrossed HB 1157:** Sens. J. Roers, Kreun, Piepkorn  
**Engrossed HB 1287:** Sens. Rust, Schaible, Oban  
**Engrossed HB 1346:** Sens. Schaible, Elkin, Marcellais  
**Reengrossed HB 1359:** Sens. J. Lee, Anderson, K. Roers  
**Engrossed HB 1461:** Sens. Davison, Schaible, Oban  
**Engrossed HB 1531:** Sens. Rust, Schaible, Oban

#### CONSIDERATION OF CONFERENCE COMMITTEE REPORT

**SEN. KANNIANEN MOVED** that the conference committee report on SB 2078 as printed on SJ page 894 be adopted, which motion prevailed on a voice vote.

SB 2078, as amended, was placed on the Eleventh order of business.

#### SECOND READING OF SENATE BILL

**SB 2078:** A BILL for an Act to amend and reenact sections 54-44.6-08 and 54-46-12 of the North Dakota Century Code, relating to records management and forms management.

#### ROLL CALL

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 47 YEAS, 0 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

**YEAS:** Anderson; Bakke; Bekkedahl; Burckhard; Clemens; Cook; Davison; Dever; Dotzenrod; Dwyer; Elkin; Erbele; Fors; Grabinger; Heckaman; Hogan; Hogue; Holmberg; Kannianen; Klein; Krebsbach; Kreun; Larsen, O.; Larson, D.; Lee, G.; Lee, J.; Lemm; Luick; Marcellais; Mathern; Meyer; Myrdal; Oban; Oehlke; Patten; Piepkorn; Poolman; Robinson; Roers, J.; Roers, K.; Rust; Schaible; Sorvaag; Unruh; Vedaa; Wanzek; Wardner

Engrossed SB 2078 passed.

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#### CONSIDERATION OF CONFERENCE COMMITTEE REPORT

**SEN. ANDERSON MOVED** that the conference committee report on Engrossed SB 2245 as printed on SJ pages 1135-1137 be adopted, which motion prevailed on a voice vote.

Engrossed SB 2245, as amended, was placed on the Eleventh order of business.

#### SECOND READING OF SENATE BILL

**SB 2245:** A BILL for an Act to amend and reenact sections 50-11.1-02 and 50-11.1-04, subsection 10 of section 50-11.1-06.2, subsection 1 of section 50-11.1-07.2, sections 50-11.1-07.3 and 50-11.1-07.5, subsection 3 of section 50-11.1-17, and subsection

13 of section 50-25.1-02 of the North Dakota Century Code, relating to early childhood services and the definition of a neglected child; and to declare an emergency.

#### ROLL CALL

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 46 YEAS, 1 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

**YEAS:** Anderson; Bakke; Bekkedahl; Burckhard; Cook; Davison; Dever; Dotzenrod; Dwyer; Elkin; Erbele; Fors; Grabinger; Heckaman; Hogan; Hogue; Holmberg; Kannianen; Klein; Krebsbach; Kreun; Larsen, O.; Larson, D.; Lee, G.; Lee, J.; Lemm; Luick; Marcellais; Mathern; Meyer; Myrdal; Oban; Oehlke; Patten; Piepkorn; Poolman; Robinson; Roers, J.; Roers, K.; Rust; Schaible; Sorvaag; Unruh; Vedaa; Wanzek; Wardner

**NAYS:** Clemens

Reengrossed SB 2245 passed and the emergency clause was declared carried.

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#### CONSIDERATION OF CONFERENCE COMMITTEE REPORT

**SEN. ANDERSON MOVED** that the conference committee report on SB 2035 as printed on SJ page 894 be adopted, which motion prevailed on a voice vote.

#### MESSAGE TO THE HOUSE FROM THE SENATE (SHANDA MORGAN, SECRETARY)

**MR. SPEAKER:** The Senate has amended and subsequently passed: HB 1024.

#### MESSAGE TO THE SENATE FROM THE HOUSE (BUELL J. REICH, CHIEF CLERK)

**MR. PRESIDENT:** The House has amended and subsequently passed: SB 2006, SB 2261, SB 2265, SB 2346.

#### HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2006

Page 1, line 3, after the semicolon insert "to create and enact a new section to chapter 54-11 and a new section to chapter 54-27 of the North Dakota Century Code, relating to an income tax rate reduction fund and the transfer of legacy fund earnings;"

Page 1, line 4, replace "and" with "to provide a continuing appropriation;"

Page 1, line 4, after "transfer" insert "; and to provide an effective date"

Page 1, replace lines 15 through 22 with:

"Salaries and wages	\$21,724,004	\$880,914	\$22,604,918
Operating expenses	6,749,295	363,165	7,112,460
Capital assets	6,000	0	6,000
Homestead tax credit	14,800,000	1,000,000	15,800,000
Disabled veterans' tax credit	8,110,200	300,000	8,410,200
Total all funds	\$51,389,499	\$2,544,079	\$53,933,578
Less estimated income	125,000	0	125,000
Total general fund	\$51,264,499	\$2,544,079	\$53,808,578"

Page 2, after line 11, insert:

**"SECTION 4.** A new section to chapter 54-11 of the North Dakota Century Code is created and enacted as follows:

**Legacy income tax rate reduction fund - State treasurer - Tax commissioner - Income tax rate adjustment - Transfers to the general fund - Continuing appropriation.**

1. There is created in the state treasury the legacy income tax rate reduction fund. The fund consists of all moneys deposited in the fund pursuant to section 5 of this Act. All moneys in the fund are appropriated

- to the state treasurer on a continuing basis for the purpose of providing transfers to the general fund to reduce the individual income tax imposed under section 57-38-30.3 and the corporate income tax imposed under section 57-38-30.
2. If money is transferred into the fund pursuant to section 5 of this Act, the tax commissioner shall publish reduced individual and corporate income tax rates and notify taxpayers of the reduced rates by November first of the first fiscal year of the biennium. The tax commissioner may determine the form and manner for publishing the reduced rates and notifying taxpayers, including any notification that taxpayers are not required to file returns or pay taxes. The tax commissioner shall reduce the individual income tax rates and the corporate income tax rates based on the following:
    - a. The percentage reduction to the individual and corporate income tax rates is equal to the rate reduction amount divided by the total estimated tax collections, including both the individual tax collections and corporate income tax collections, for the second year of the biennium.
    - b. Any reductions to the individual income tax rates and the corporate income tax rates apply to tax years after December 31, 2021.
    - c. The reductions to the individual income tax rates and the corporate income tax rates must be proportional to the estimated tax collections for each tax relative to the combined total estimated tax collections for both taxes.
    - d. The reductions to the individual income tax rates and the corporate income tax rates must be applied equally to all tax brackets for each tax.
    - e. The reduced individual income tax rates and corporate income tax rates must be rounded to the nearest one-hundredth of a percent.
  3. If no money is transferred to the fund pursuant to section 5 of this Act, the tax commissioner may not reduce the individual and corporate income tax rates currently in effect.
  4.
    - a. If the income tax rate reduction results in a disproportionate amount of tax to be deducted and withheld under section 57-38-59, the tax commissioner may adjust the percentage that, when withheld, will as closely as possible pay the income tax liability imposed.
    - b. This section does not limit or suspend any provision in chapter 57-38 which is not in conflict with this section, including provisions for assessment and refund under sections 57-38-34.4, 57-38-38, and 57-38-40.
  5. In April of each year, the state treasurer shall transfer the amounts certified by the tax commissioner from the legacy fund income tax reduction fund to the general fund. The amount transferred to the general fund each year may not be less than the rate reduction amount determined for the current biennium plus the rate reduction amount determined for each preceding biennium.
  6. For purposes of this section:
    - a. "Base funding amount" means the total amount transferred from the legacy income tax rate reduction fund to the general fund in the preceding biennium.
    - b. "Estimated tax collections" means the income tax collection amounts included in the revenue forecast of the current biennial state budget

as approved by the most recently adjourned special or regular session of the legislative assembly.

- c. "Rate reduction amount" means one-third of any legacy fund earnings deposited in the legacy income tax rate reduction fund exceeding the base funding amount.

**SECTION 5.** A new section to chapter 54-27 of the North Dakota Century Code is created and enacted as follows:

**Transfer of legacy fund earnings - Limitations.**

Fifty percent of any legacy fund earnings transferred to the general fund at the end of each biennium in accordance with section 26 of article X of the Constitution of North Dakota must be transferred immediately by the state treasurer to the legacy income tax rate reduction fund. The state treasurer may not transfer legacy fund earnings to the income tax rate reduction fund if the amount of legacy fund earnings to be transferred to the legacy income tax rate reduction fund is less than fifty million dollars.

Page 2, line 18, replace "one hundred twenty thousand six hundred" with "one hundred twenty thousand fourteen"

Page 2, after line 18, insert:

**"SECTION 7. EFFECTIVE DATE.** Sections 4 and 5 of this Act become effective on June 1, 2021."

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

**Senate Bill No. 2006 - State Tax Commissioner - House Action**

	Base Budget	Senate Version	House Changes	House Version
Salaries and wages	\$21,724,004	\$22,938,184	(\$333,266)	\$22,604,918
Operating expenses	6,749,295	7,112,460		7,112,460
Capital assets	6,000	6,000		6,000
Homestead tax credit	14,800,000	15,800,000		15,800,000
Disabled veterans' credit	8,110,200	8,410,200		8,410,200
Total all funds	\$51,389,499	\$54,266,844	(\$333,266)	\$53,933,578
Less estimated income	125,000	125,000	0	125,000
General fund	\$51,264,499	\$54,141,844	(\$333,266)	\$53,808,578
FTE	133.00	123.00	0.00	123.00

**Department 127 - State Tax Commissioner - Detail of House Changes**

	Adjusts Funding for Salary Increases <sup>1</sup>	Reduces Funding for Temporary Employees <sup>2</sup>	Total House Changes
Salaries and wages	\$57,520	(\$390,786)	(\$333,266)
Operating expenses			
Capital assets			
Homestead tax credit			
Disabled veterans' credit			
Total all funds	\$57,520	(\$390,786)	(\$333,266)
Less estimated income	0	0	0
General fund	\$57,520	(\$390,786)	(\$333,266)
FTE	0.00	0.00	0.00

<sup>1</sup> Funding is adjusted to provide employee salary increases of 2 percent on July 1, 2019, with a minimum monthly increase of \$120 and a maximum monthly increase of \$200, and a 2.5 percent salary increase on July 1, 2020. The Senate provided funding for salary increases of 2 percent on July 1, 2019, and 3 percent on July 1, 2020.

<sup>2</sup> Funding for temporary employees is reduced by \$390,786 to provide total funding of \$258,534. The Senate provided \$649,320.

This amendment also:

- Adds three new sections to create a legacy income tax rate reduction fund; to transfer 50 percent of the legacy fund earnings at the end of the biennium to the newly created fund; and to provide an effective date of June 1, 2021. The Senate did not include these provisions. The transfer of legacy fund earnings to the legacy income tax rate reduction fund will reduce general fund revenues in the 2019-21 biennium.
- Includes a section to provide the statutory changes necessary to increase the Tax Commissioner's salary from the current salary of \$114,791 to \$117,087 (2 percent) in fiscal year 2020 and to \$120,014 (2.5 percent) in fiscal year 2021. The Senate included statutory changes necessary to increase the Tax Commissioner's salary by 2 percent in fiscal year 2020 and by 3 percent in fiscal year 2021.

#### HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2261

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 5 of section 49-22-08 of the North Dakota Century Code, relating to conditions imposed on the designation of sites, corridors, and routes.

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

**SECTION 1. AMENDMENT.** Subsection 5 of section 49-22-08 of the North Dakota Century Code is amended and reenacted as follows:

5. The commission may designate a site or corridor for a proposed facility following the study and hearings provided for in this chapter. Any designation shall be made in accordance with the evidence presented at the hearings, an evaluation of the information provided in the application, the criteria established pursuant to section 49-22-05.1, and the considerations set out in section 49-22-09 in a finding with reasons for the designation, and shall be made in a timely manner no later than six months after the filing of a completed application for a certificate of site compatibility or no later than three months after the filing of a completed application for a certificate of corridor compatibility. The time for designation of a site or corridor may be extended by the commission for just cause. The failure of the commission to act within the time limits provided in this section shall not operate to divest the commission of jurisdiction in any certification proceeding. The commission shall indicate the reasons for any refusal of designation. Upon designation of a site or corridor, the commission shall issue a certificate of site compatibility or a certificate of corridor compatibility with such terms, conditions, or modifications deemed necessary. The commission may not condition the issuance of a certificate or permit on the applicant providing a mitigation payment assessed or requested by another state agency or entity to offset a negative impact on wildlife habitat.

ReNUMBER accordingly

#### HOUSE AMENDMENTS TO REENGROSSED SENATE BILL NO. 2265

In lieu of the amendments adopted by the House as printed on pages 1352-1365 of the House Journal, Reengrossed Senate Bill No. 2265 is amended as follows:

Page 1, line 1, after "Act" insert "to create and enact a new section to chapter 15.1-02 and section 15.1-27-04.3 of the North Dakota Century Code, relating to state school aid local property tax effort and credentialing of title I certified teachers and coordinators;"

Page 1, line 1, after "sections" insert "15.1-06-04, 15.1-07-34,"

Page 1, line 1, replace the second "and" with a comma

Page 1, line 1, after "15.1-27-04.1" insert ", 15.1-27-35, 15.1-29-02.1, 15.1-29-12, and 57-15-14.2"

Page 1, line 2, after "to" insert "teacher professional development days in the school calendar, youth behavioral health training,"

Page 1, line 2, replace "and" with a comma

Page 1, line 3, after "districts" insert ", the calculation of average daily membership, a cross-border attendance contract with South Dakota, the determination of tuition payments, and school district levies"

Page 1, line 4, remove "and"

Page 1, line 4, remove the second "an"

Page 1, line 4, replace "date" with "dates; and to provide an expiration date"

Page 1, after line 5, insert:

**"SECTION 1.** A new section to chapter 15.1-02 of the North Dakota Century Code is created and enacted as follows:

**Credentials for teachers and coordinators of title I.**

The superintendent of public instruction shall create a process to reinstate and recertify title I credentials for individuals in the state who held a valid certification, issued by the department of public instruction, as of July 1, 2018. A school district may advertise employment for a title I certified teacher each year until the position is filled. The board of a school district may authorize the hiring of a teacher who is not certified as a title I teacher for the school year if the school district fails to receive applications from qualified applicants to fill the advertised position by July 1.

**SECTION 2. AMENDMENT.** Section 15.1-06-04 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-06-04. School calendar - Length.**

1. A school district shall provide for a school calendar that includes:
  - a. At least one hundred seventy-five days nine hundred sixty-two and one-half hours of instruction for elementary school students and one thousand fifty hours of instruction for middle and high school students;
  - b. Three holidays, as selected by the board ~~in consultation with district teachers~~ from the list provided for in subdivisions b through j of subsection 1 of section 15.1-06-02;
  - c. No more than two days for:
    - (1) Parent-teacher conferences; or
    - (2) Compensatory time for parent-teacher conferences held outside of regular school hours; and
  - d. ~~At least two~~three days of professional development.
2. a. ~~A~~For the first two days of professional development required by subsection 1, a day of professional development must consist of:
  - (1) Six hours of professional development, exclusive of meals and other breaks, conducted within a single day;



- (2) Six hours of cumulative professional development conducted under the auspices of a professional learning community; or
  - (3) Two four-hour periods of professional development, exclusive of meals and other breaks, conducted over two days.
- b. If a school district offers a four-hour period of professional development, as permitted in this subsection, the school district may schedule instruction during other available hours on that same day and be credited with providing one-half day of instruction to students. This subdivision does not apply unless the one-half day of instruction equals at least one-half of the time required for a full day of instruction, as defined in this section.
3. If because of weather a school must dismiss before completing a full day of instruction, the school is responsible for making up only those hours and portions of an hour between the time of early dismissal and the conclusion of a full day of classroom instruction.
4. For purposes of this section, a full day of instruction consists of:
  - a. At least five and one-half hours for kindergarten and elementary students, during which time the students are required to be in attendance for the purpose of receiving curricular instruction; and
  - b. At least six hours for high school students, during which time the students are required to be in attendance for the purpose of receiving curricular instruction.
5. Any school district intending to operate under a four-day week must file and be approved for a waiver with the superintendent of public instruction.

**SECTION 3. AMENDMENT.** Section 15.1-07-34 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-07-34. Provision of youth behavioral health training to teachers, administrators, and ancillary staff.**

1. Every two years, each school district shall provide a minimum of eight hours of professional development on youth behavioral health to elementary, middle, and high school teachers, and administrators. Each school district shall encourage ancillary and support staff to participate in the professional development. Based on the annual needs assessment of the school district, these hours must be designated from the following categories:
  - a. Trauma;
  - b. Social and emotional learning, including resiliency;
  - c. Suicide prevention;
  - d. Bullying;
  - e. Understanding of the prevalence and impact of youth behavioral health wellness on family structure, education, juvenile services, law enforcement, and health care and treatment providers;
  - f. Knowledge of behavioral health symptoms, and risks;
  - g. Awareness of referral sources and evidence-based strategies for appropriate interventions; or

- h. Other evidence-based strategies to reduce risk factors for students;  
or
  - i. Current or new evidence-based behavior prevention or mitigation techniques.
2. Each school district shall report the professional development hours to the department of public instruction.
  3. The superintendent of public instruction shall collaborate with regional education associations to disseminate information, training materials, and notice of training opportunities to school districts and nonpublic schools."

Page 3, line 3, after the underscored semicolon insert "and"

Page 3, line 4, replace "1.00" with "0.50"

Page 3, line 6, remove "; and"

Page 3, remove lines 7 through 11

Page 3, line 12, remove "students"

Page 3, after line 15, insert:

**"SECTION 5. AMENDMENT.** Section 15.1-27-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-03.1. Weighted average daily membership - Determination.**

1. For each school district, the superintendent of public instruction shall multiply by:
  - a. 1.00 the number of full-time equivalent students enrolled in an extended educational program in accordance with section 15.1-32-17;
  - b. 0.60 the number of full-time equivalent students enrolled in a summer education program, including a migrant summer education program;
  - c. 0.40 the number of full-time equivalent students who:
    - (1) On a test of English language proficiency approved by the superintendent of public instruction are determined to be least proficient and placed in the first of six categories of proficiency; and
    - (2) Are enrolled in a program of instruction for English language learners;
  - d. 0.28 the number of full-time equivalent students who:
    - (1) On a test of English language proficiency approved by the superintendent of public instruction are determined to be more proficient than students placed in the first of six categories of proficiency and therefore placed in the second of six categories of proficiency; and
    - (2) Are enrolled in a program of instruction for English language learners;
  - e. 0.25 the number of full-time equivalent students under the age of twenty-one enrolled in grades nine through twelve in an alternative high school;

- f. 0.20 the number of full-time equivalent students enrolled in a home-based education program and monitored by the school district under chapter 15.1-23;
- g. 0.17 the number of full-time equivalent students enrolled in an early childhood special education program;
- h. 0.15 the number of full-time equivalent students in grades six through eight enrolled in an alternative education program for at least an average of fifteen hours per week;
- i. 0.10 the number of students enrolled in average daily membership, if the district has fewer than one hundred students enrolled in average daily membership and the district consists of an area greater than two hundred seventy-five square miles [19424.9 hectares], provided that any school district consisting of an area greater than six hundred square miles [155399 hectares] and enrolling fewer than fifty students in average daily membership must be deemed to have an enrollment equal to fifty students in average daily membership;
- j. 0.082 the number of students enrolled in average daily membership, in order to support the provision of special education services;
- k. 0.07 the number of full-time equivalent students who:
  - (1) On a test of English language proficiency approved by the superintendent of public instruction are determined to be more proficient than students placed in the second of six categories of proficiency and therefore placed in the third of six categories of proficiency;
  - (2) Are enrolled in a program of instruction for English language learners; and
  - (3) Have not been in the third of six categories of proficiency for more than three years;
- l. 0.025 the number of students representing that percentage of the total number of students in average daily membership which is equivalent to the three-year average percentage of students in grades three through eight who are eligible for free or reduced lunches under the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.];
- m. 0.002 the number of students enrolled in average daily membership in a school district that is a participating member of a regional education association meeting the requirements of chapter 15.1-09.1; and
- n. ~~0.50~~ 0.60 the number of students by which the district's September tenth enrollment report exceeds the number of students in the prior year's average daily membership increasing the factor annually by 0.10, not to exceed 1.00; and
- o. For districts paid based on September tenth enrollment in the prior year, 0.50 the number of students determined by deducting the number of students in the prior year's September tenth enrollment from the prior year's average daily membership, increasing the factor annually by 0.10, not to exceed 1.00. If the prior year's September tenth enrollment exceeds the prior year's average daily membership, then a deduction of 0.50 the number of excess students, increasing the factor annually by 0.10, not to exceed 1.00.

2. The superintendent of public instruction shall determine each school district's weighted average daily membership by adding the products derived under subsection 1 to the district's average daily membership."

Page 3, line 23, overstrike "2012-13" and insert immediately thereafter "2018-19"

Page 3, line 24, overstrike "The district's 2012-13 mill levy reduction grant, as determined in accordance with"

Page 3, overstrike line 25

Page 3, line 26, overstrike "c."

Page 3, line 26, overstrike "that raised by the district's 2012 general fund levy or that"

Page 3, overstrike line 27

Page 3, line 28, overstrike "is less" and insert immediately thereafter "the property tax deducted by the superintendent of public instruction to determine the 2018-19 state aid payment"

Page 3, overstrike lines 29 and 30

Page 4, overstrike line 1

Page 4, line 2, overstrike "program levy;"

Page 4, line 3, overstrike "f." and insert immediately thereafter "c."

Page 4, line 4, replace "2012-13" with "2017-18"

Page 5, line 1, replace "g." with "d."

Page 5, line 2, replace "2012-13" with "2017-18"

Page 5, line 9, overstrike "2012-13" and insert immediately thereafter "2017-18"

Page 5, line 11, overstrike "In"

Page 5, line 11, after "2017-18" insert "For the"

Page 5, line 11, after "2019-20" insert "school year"

Page 5, line 11, overstrike "multiply the" and insert immediately thereafter "calculate state aid as the greater of:

(1) The"

Page 5, line 12, after "units" insert "multiplied"

Page 5, line 12, overstrike the period

Page 5, overstrike line 13

Page 5, line 14, overstrike "equal to the greater of:" and insert immediately thereafter an underscored semicolon

Page 5, line 15, replace "(1)" with "(2)"

Page 5, line 15, overstrike "eight" and insert immediately thereafter "one"

Page 5, line 17, overstrike "from the previous school year" and insert immediately thereafter ", not to exceed the district's 2017-18 baseline weighted student units, plus any weighted student units in excess of the 2017-18 baseline weighted student units multiplied by nine thousand eight hundred thirty-nine dollars"

Page 5, line 18, replace "(2)" with "(3)"

Page 5, line 24, overstrike "In"

Page 5, line 24, after "2018-19" insert "For the"

Page 5, line 24, after "2020-21" insert "school year"

Page 5, line 26, remove "one"

Page 5, line 27, overstrike "hundred"

Page 5, line 27, replace "thirty-four" with "thirty-six"

Page 5, line 29, remove "or"

Page 5, line 30, remove "The amount in paragraph 1 plus the greater of:"

Page 6, line 1, overstrike "(a)"

Page 6, line 1, overstrike "eight" and insert immediately thereafter "two"

Page 6, line 3, overstrike "from the previous school year"

Page 6, remove line 4

Page 6, line 5, replace "percent in 2020-21 and fifteen percent each year thereafter." with ", not to exceed the district's 2017-18 baseline weighted student units, plus any weighted student units in excess of the 2017-18 baseline weighted student units multiplied by ten thousand thirty-six dollars"

Page 6, line 6, overstrike "(b)" and insert immediately thereafter "(3)"

Page 6, line 8, replace "five" with "fifteen"

Page 6, line 8, replace "in 2020-21" with "for the 2021-22 school year"

Page 6, line 8, after "each" insert "school"

Page 6, line 9, after "thereafter" insert ", and then the difference added to the amount determined in paragraph 1"

Page 6, line 11, replace "In" with "For the"

Page 6, line 11, after "2019-20" insert "school year"

Page 6, line 11, replace "forty-five" with "five"

Page 6, line 15, replace "In" with "For the"

Page 6, line 15, after "2020-21" insert "school year and each school year thereafter"

Page 6, line 16, replace "fifty" with "ten"

Page 6, line 25, after "percent" insert ", adjusted pursuant to section 15.1-27-04.3"

Page 6, line 29, replace "f" with "c"

Page 6, line 29, replace "g" with "d"

Page 6, line 29, after the period insert: "Before determining the deduction for seventy-five percent of all revenue types, the superintendent of public instruction shall adjust revenues as follows:"

(1) Tuition revenue shall be adjusted as follows:

- (a) In addition to deducting tuition revenue received specifically for the operation of an educational program provided at a residential treatment facility and tuition revenue received for the provision of an adult farm management program as directed in paragraph 3 of subdivision c of subsection 1, the superintendent of public instruction also shall reduce the total tuition reported by the school district by the amount of tuition revenue received for the education of students not residing in the state and for which the state has not entered a cross-border education contract; and
  - (b) The superintendent of public instruction also shall reduce the total tuition reported by admitting school districts meeting the requirements of subdivision e of subsection 2 of section 15.1-29-12 by the amount of tuition revenue received for the education of students residing in an adjacent school district.
- (2) After adjusting tuition revenue as provided in paragraph 1, the superintendent shall reduce all remaining revenues from all revenue types by the percentage of mills levied in 2018 by the school district for sinking and interest relative to the total mills levied in 2018 by the school district for all purposes."

Page 7, after line 6, insert:

- "7. For purposes of the calculation in subsection 4, each county auditor shall report the following to the superintendent of public instruction on an annual basis:
- a. The amount of revenue received by each school district in the county during the previous school year for each type of revenue identified in subdivisions c and d of subsection 1;
  - b. The total number of mills levied in the previous calendar year by each school district for all purposes; and
  - c. The number of mills levied in the previous calendar year by each school district for sinking and interest fund purposes.

**SECTION 7. AMENDMENT.** Subdivision a of subsection 4 of section 15.1-27-04.1 of the North Dakota Century Code is amended and reenacted as follows:

- a. ~~Subtract an amount equal to sixty mills multiplied by the taxable valuation of the school district, except the amount in dollars subtracted for purposes of this subdivision may not exceed the previous year's amount in dollars subtracted for purposes of this subdivision by more than twelve percent, adjusted pursuant to section 15.1-27-04.3; and~~

**SECTION 8.** Section 15.1-27-04.3 of the North Dakota Century Code is created and enacted as follows:

**15.1-27-04.3. Adjustment to state aid - Local property tax effort.**

If the amount subtracted from a school district's state aid payment under subdivision a of subsection 4 of section 15.1-27-04.1 is less than the amount generated by sixty mills, the superintendent of public instruction shall adjust the amount subtracted as follows:

- 1. For the 2020-21 school year, increase the amount subtracted by an amount equal to ten percent of the difference between the amount generated by sixty mills and the amount determined pursuant to

- subdivision a of subsection 4 of section 15.1-27-04.1 before adjustment under this section:
2. For the 2021-22 school year, increase the amount subtracted by an amount equal to twenty percent of the difference between the amount generated by sixty mills and the amount determined pursuant to subdivision a of subsection 4 of section 15.1-27-04.1 before adjustment under this section:
  3. For the 2022-23 school year, increase the amount subtracted by an amount equal to forty percent of the difference between the amount generated by sixty mills and the amount determined pursuant to subdivision a of subsection 4 of section 15.1-27-04.1 before adjustment under this section:
  4. For the 2023-24 school year, increase the amount subtracted by an amount equal to sixty percent of the difference between the amount generated by sixty mills and the amount determined pursuant to subdivision a of subsection 4 of section 15.1-27-04.1 before adjustment under this section; and
  5. For the 2024-25 school year, increase the amount subtracted by an amount equal to eighty percent of the difference between the amount generated by sixty mills and the amount determined pursuant to subdivision a of subsection 4 of section 15.1-27-04.1 before adjustment under this section.

**SECTION 9. AMENDMENT.** Section 15.1-27-35 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-35. Average daily membership - Calculation.**

1. Average daily membership is calculated at the conclusion of the school year by adding the total number of days that each student in a given grade, school, or school district is in attendance during a school calendar and the total number of days that each student in a given grade, school, or school district is absent during a school calendar, and then dividing the sum by the ~~greater of~~:
  - a. ~~The school district's calendar; or~~
  - b. ~~One hundred eighty-two.~~
2. For purposes of calculating average daily membership, all students are deemed to be in attendance on:
  - a. The three holidays listed in subdivisions b through j of subsection 1 of section 15.1-06-02 and selected by the school board in consultation with district teachers;
  - b. The ~~two~~three days set aside for professional development activities under section 15.1-06-04; and
  - c. The two full days, or portions thereof, during which parent-teacher conferences are held or which are deemed by the board of the district to be compensatory time for parent-teacher conferences held outside regular school hours.
3. For purposes of calculating average daily membership:
  - a. A student enrolled full time in any grade from one through twelve may not exceed an average daily membership of 1.00. The membership may be prorated for a student who is enrolled less than full time.

- b. A student enrolled full time in an approved regular education kindergarten program may not exceed an average daily membership of 1.00. The membership may be prorated for a student who is enrolled less than full time.
- c. A student enrolled full time, as defined by the superintendent of public instruction, in an approved early childhood special education program may not exceed an average daily membership of 1.00. The membership may be prorated for a student who is enrolled less than full time.

**SECTION 10. AMENDMENT.** Section 15.1-29-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-29-02.1. Cross-border attendance - Contract with South Dakota.**

1. A student who resides in a North Dakota school district contiguous to the South Dakota border may attend school in South Dakota, and a student who resides in a South Dakota school district contiguous to the North Dakota border may attend school in North Dakota, provided the superintendent of public instruction has entered into a contract with the secretary of the South Dakota department of education for the cross-border attendance of eligible students.
2. A contract entered under subsection 1 must set forth:
  - a. An application procedure;
  - b. Causes for denial of an application; and
  - c. The manner and notification of acceptance.
3. A contract entered under subsection 1 must authorize the superintendent of public instruction to count any South Dakota student participating in cross-border attendance under this section for the purposes of determining the amount of state aid to which a school district in this state is entitled. The superintendent of public instruction may not count a North Dakota student participating in cross-border attendance in accordance with the contract for purposes of determining the amount of state aid to which a school district in this state is entitled.
4. A contract entered under subsection 1 must provide that if there are more students from North Dakota than South Dakota participating in cross-border attendance under this section, the superintendent of public instruction shall forward to the secretary of the South Dakota department of education, on behalf of each excess student, an amount annually agreed to by the superintendent and the secretary as reflecting the average cost of education per student in the school districts participating in cross-border attendance in accordance with the contract. The contract must also provide that if there are more students from South Dakota than North Dakota participating in cross-border attendance under this section, the secretary shall forward to the superintendent, on behalf of each excess student, an amount annually agreed to by the superintendent and the secretary as reflecting the average cost of education per student in the school districts participating in cross-border attendance in accordance with the contract. The superintendent shall pay the cost of cross-border attendance from funds appropriated by the legislative assembly for state aid to schools. Payments received by the superintendent under this subsection shall be deposited in the general fund.
5. ~~The superintendent of public instruction shall annually reconcile the number of students from each school district in this state who participate in cross-border attendance under this section with the number of students from school districts in South Dakota who participate in cross-~~



~~border attendance under this section. The superintendent of public instruction shall withhold from each school district's state aid an amount equal to the cost incurred by the state on the part of the school district in permitting the cross-border attendance of students under this section.~~

6. A student who requires special education services may participate in cross-border attendance under this section, provided the contract entered under subsection 1 sets forth each school district's and each state's responsibilities for payment of any excess costs incurred as a result of providing the services to the student.
- ~~7.6.~~ Each school district may provide transportation to students participating in cross-border attendance under this section. However, the superintendent of public instruction may include only transportation provided within this state for purposes of determining the state transportation aid to which a district is entitled.
- ~~8.7.~~ Sections 15.1-29-01 through 15.1-29-13 do not apply to students participating in cross-border attendance under this section.

**SECTION 11. AMENDMENT.** Section 15.1-29-12 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-29-12. Tuition payments - Determination.**

1. Except as provided in section 15.1-29-13, a school district sending a student to another district for purposes of education shall pay the full cost of education per student incurred by the admitting district.
2.
  - a. The admitting district shall determine the cost of education per student for its kindergarten, elementary, and high school students on the basis of its average daily membership and those expenditures permitted in determining the cost of education per student in section 15.1-27-03.
  - b. To the cost of education per student, the admitting district shall add the latest available statewide average per student cost for extracurricular activities and the state average capital outlay per student. The state average capital outlay per student is determined by dividing the total of all school districts' annual expenditures for sinking and interest funds, tax receipts to the building funds, and general fund expenditures for capital outlay by the average daily membership of the state.
  - c. The admitting district shall subtract the following from the amount arrived at under subdivision b:
    - (1) The per student payment multiplied by the admitting district's school size weighting factor; and
    - (2) Any credit for taxes paid to the admitting district by the student's parent.
  - d. The amount remaining is the full cost of education per student incurred by the admitting district. The tuition amount payable for the individual student is the lesser of:
    - (1) The full cost of education per student incurred by the admitting district; or
    - (2) One hundred fifty percent of the state average full cost of education per student.

- e. Admitting school districts shall charge the tuition amount payable determined in subdivision d multiplied by two hundred percent or four thousand dollars, whichever is greater, if the admitting school district:
- (1) Is located in an oil-producing county;
  - (2) Is eligible to receive gross production tax revenue in lieu of property taxes;
  - (3) Is located in cities with populations over twenty-four thousand;
  - (4) Has a tax base fewer than twenty square miles;
  - (5) Levies greater than sixty mills for local property taxes;
  - (6) Has student enrollments of greater than four thousand;
  - (7) Has average student growth of over two hundred per year over the preceding five years;
  - (8) Uses portable classrooms; and
  - (9) Has enrollment exceeding school facility capacity.
3. This section does not affect the right of a school board to charge and collect tuition from students who are not residents of this state, in accordance with section 15.1-29-02.

**SECTION 12. AMENDMENT.** Section 57-15-14.2 of the North Dakota Century Code is amended and reenacted as follows:

**57-15-14.2. School district levies.**

1. ~~For taxable years after 2013, the~~The board of a school district may levy a tax not exceeding the amount in dollars that the school district levied for the prior year, plus twelve percent and the dollar amount of the adjustment required in section 15.1-27-04.3, up to a levy of seventy mills on the taxable valuation of the district, for any purpose related to the provision of educational services. The proceeds of this levy must be deposited into the school district's general fund and used in accordance with this subsection. The proceeds may not be transferred into any other fund.
2. ~~For taxable years after 2013, the~~The board of a school district may levy no more than twelve mills on the taxable valuation of the district, for miscellaneous purposes and expenses. The proceeds of this levy must be deposited into a special fund known as the miscellaneous fund and used in accordance with this subsection. The proceeds may not be transferred into any other fund.
3. The board of a school district may levy no more than three mills on the taxable valuation of the district for deposit into a special reserve fund, in accordance with chapter 57-19.
4. The board of a school district may levy no more than the number of mills necessary, on the taxable valuation of the district, for the payment of tuition, in accordance with section 15.1-29-15. The proceeds of this levy must be deposited into a special fund known as the tuition fund and used in accordance with this subsection. The proceeds may not be transferred into any other fund.
5. Nothing in this section limits the board of a school district from levying:
  - a. Mills for a building fund, as permitted in sections 15.1-09-49 and 57-15-16; and

- b. Mills necessary to pay principal and interest on the bonded debt of the district, including the mills necessary to pay principal and interest on any bonded debt incurred under section 57-15-17.1 before July 1, 2013.

**SECTION 13. AMENDMENT.** Subsection 1 of section 57-15-14.2 of the North Dakota Century Code is amended and reenacted as follows:

1. The board of a school district may levy a tax not exceeding sixty mills. For school districts that levied at or above sixty mills the prior year, the levy may not exceed the amount in dollars that the school district levied for the prior year, plus twelve percent ~~and the dollar amount of the adjustment required in section 15.1-27-04.3~~, up to a levy of seventy mills on the taxable valuation of the district, for any purpose related to the provision of educational services. The proceeds of this levy must be deposited into the school district's general fund and used in accordance with this subsection. The proceeds may not be transferred into any other fund."

Page 7, line 8, after the first boldfaced hyphen insert "**RAPID ENROLLMENT GRANT**"

Page 8, after line 2, insert:

**"SECTION 15. APPROPRIATION - DEPARTMENT OF PUBLIC INSTRUCTION - FOUNDATION AID STABILIZATION FUND - MUSIC EDUCATION GRANTS.** There is appropriated out of any moneys in the foundation aid stabilization fund in the state treasury, not otherwise appropriated, the sum of \$600,000, or so much of the sum as may be necessary, to the department of public instruction for the purpose of providing music education grants, for the biennium beginning July 1, 2019, and ending June 30, 2021. The department shall establish award criteria, review grant applications, and administer the grant program. A school district may not receive more than \$20,000 in grant funds. The department must report to the sixty-seventh legislative assembly regarding the grants awarded and outcomes, including the program's impact on student behavior and mental health. The funding provided in this section is considered a one-time funding item."

Page 8, remove lines 3 through 9

Page 8, line 17, replace "1" with "4"

Page 8, line 17, replace "is" with "becomes"

Page 8, line 17, after "effective" insert "on"

Page 8, line 17, after the period insert "Section 5 of this Act becomes effective on July 1, 2021. Section 12 of this Act is effective for taxable years beginning after December 31, 2018. Section 13 of this Act is effective for taxable years beginning after December 31, 2024. Section 7 of this Act becomes effective on July 1, 2025."

**SECTION 18. EXPIRATION DATE.** Section 8 of this Act is effective through June 30, 2025, and after that date is ineffective."

Re-number accordingly

#### **HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2346**

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 60-01, a new section to chapter 60-02, and three new sections to chapter 60-02.1 of the North Dakota Century Code, relating to the definition of agriculture commissioner, licensing and bonding for cash grain brokers, and records confidentiality for warehousemen and grain buyers; and to amend and reenact section 49-02-01, subsection 1 of section 60-02-01, sections 60-02-02, 60-02-03, 60-02-04, 60-02-05.1, 60-02-07, 60-02-07.2, 60-02-09, 60-02-09.1, 60-02-10.1, 60-02-11, 60-02-14, 60-02-17, 60-02-24, 60-02-27, 60-02-35.1, 60-02-38, 60-02-40, 60-02-41, 60-02-42, 60-02.1-01, 60-02.1-02, 60-02.1-03,

60-02.1-04, 60-02.1-06, 60-02.1-07, 60-02.1-07.1, 60-02.1-08, 60-02.1-09, 60-02.1-11, 60-02.1-16, 60-02.1-17, 60-02.1-19, 60-02.1-22, 60-02.1-26, 60-02.1-27, 60-02.1-29, 60-02.1-30, 60-02.1-32, 60-02.1-33, 60-02.1-34, 60-02.1-35, 60-02.1-36, 60-02.1-37, 60-02.1-38, and 60-02.1-39, subsection 1 of section 60-04-01, and sections 60-04-03, 60-04-03.1, 60-04-03.2, 60-04-03.3, 60-04-04, 60-04-05, 60-04-06, 60-04-07, 60-04-08, 60-04-09, 60-04-10, 60-05-01, 60-05-02, 60-05-03, 60-05-04, 60-06-05, 60-06-06.1, 60-10-01, 60-10-02, 60-10-03, 60-10-05, 60-10-07, 60-10-08, 60-10-09, 60-10-10, 60-10-11, 60-10-12, 60-10-14, and 60-10-15 of the North Dakota Century Code, relating to moving the authority over grain, grain buyers, warehousing, deposits, and warehousemen from the public service commission to the agriculture commissioner; to provide a penalty; and to provide a continuing appropriation.

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

**SECTION 1. AMENDMENT.** Section 49-02-01 of the North Dakota Century Code is amended and reenacted as follows:

**49-02-01. General jurisdiction of the public service commission over public utilities.**

The general jurisdiction of the commission shall extend to and include:

1. Contract and common carriers engaged in the transportation of persons and property, excluding air carriers.
2. Telecommunications companies engaged in the furnishing of telecommunications services as provided for in chapter 49-21.
3. Pipeline utilities engaged in the transportation of gas, oil, coal, and water.
4. Electric utilities engaged in the generation and distribution of light, heat, or power.
5. Gas utilities engaged in the distribution of natural, synthetic, or artificial gas.
6. All heating utilities engaged in the distribution of heat.
7. ~~Warehouse companies engaged in the marketing, storage, or handling of agricultural products.~~
8. All other public utilities engaged in business in this state or in any county, city, township, or other political subdivision of the state.

**SECTION 2.** A new section to chapter 60-01 of the North Dakota Century Code is created and enacted as follows:

**Definition.**

For purposes of this title, "commissioner" means the agriculture commissioner.

**SECTION 3. AMENDMENT.** Subsection 1 of section 60-02-01 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~"Commissioner"~~ means the public service-  
commission agriculture commissioner.

**SECTION 4. AMENDMENT.** Section 60-02-02 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-02. ~~Commission~~Commissioner - Powers and duties.**

The ~~commissioner~~ has the powers and duties imposed by the provisions-  
of enumerated under this chapter and the powers conferred herein devolve upon the ~~commission~~.

**SECTION 5. AMENDMENT.** Section 60-02-03 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-03. Duties and powers of the ~~commission~~commissioner.**

The ~~commission~~ shall have the duty and power to commissioner has the following powers and duties:

1. Exercise general supervision of the public warehouses of this state, including the handling, weighing, and storing of grain, and the management of public warehouses.
2. Investigate all complaints of fraud and injustice, unfair practices, and unfair discrimination.
3. Examine and inspect, during ordinary business hours, any licensed warehouse, including all books, documents, and records.
4. Require the filing of reports pertaining to the operation of the warehouse.
5. Make all proper rules for carrying out and enforcing any law in this state regarding public warehouses.

**SECTION 6. AMENDMENT.** Section 60-02-04 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-04. Federal licensed inspector -- ~~Appointed by commission.~~**

The ~~commission~~ commissioner may employ a federal licensed inspector whose duties are hereinafter prescribed and ~~such~~ enumerated under this chapter and may employ other employees as ~~may be necessary~~ to carry out the provisions of this chapter.

**SECTION 7. AMENDMENT.** Section 60-02-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-05.1. Notice of procedures for resolving disputes over grain.**

A public warehouse shall post a notice containing the procedures specified in section 60-02-05 for resolving disputes. The ~~commission~~ commissioner shall prescribe the form of the notice and shall provide a copy of the notice to each public warehouse. The public warehouseman shall post the notice in the grain inspection room of the warehouse. The notice must specifically mention ~~that~~ the procedure for resolving disputes applies to the grade, dockage, moisture content, and protein content of grain and to the quality factors of grain for which inspection rules and grades have not been adopted by the secretary of agriculture of the United States.

**SECTION 8. AMENDMENT.** Section 60-02-07 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-07. Public warehouse license - Fee - Financial statement.**

A license must be obtained from the ~~commission~~ commissioner for each public warehouse in operation in this state.

1. a. ~~The commission shall stagger by lot the expiration date of all licenses issued for the period beginning August 1, 2015, so that one-half of all the licenses issued expire on July 31, 2016, and one-half of all the licenses issued expire on July 31, 2017. Thereafter, all~~ All

licenses issued under this section must be for a period of two years and terminate on the thirty-first day of July in the year of expiration.

- b. (1) Notwithstanding the provisions of subdivision a, the ~~commission~~commissioner shall license a warehouse annually, for the first six years of the warehouse's operation.
  - (2) An initial annual license application that becomes effective on or after June first does not expire until July thirty-first of the following calendar year.
2. No license may describe more than one public warehouse nor grant permission to operate any public warehouse other than the one described.
  3. a. The annual license fee for a public warehouse is:
    - (1) ~~Three~~Four hundred dollars for a warehouse having a maximum capacity of two hundred thousand bushels [7047.8 cubic meters];
    - (2) ~~Four~~Five hundred fifty dollars for a warehouse having a capacity of more than two hundred thousand bushels [7047.8 cubic meters] but not more than five hundred thousand bushels [17619.54 cubic meters]; and
    - (3) ~~Five~~Six hundred fifty dollars for a warehouse having a capacity of more than five hundred thousand bushels [17619.54 cubic meters].
  - b. The biennial license fee for a public warehouse is:
    - (1) ~~Six~~Seven hundred dollars for a warehouse having a maximum capacity of two hundred thousand bushels [7047.8 cubic meters];
    - (2) ~~Nine hundred~~One thousand dollars for a warehouse having a capacity of more than two hundred thousand bushels [7047.8 cubic meters] but not more than five hundred thousand bushels [17619.54 cubic meters]; and
    - (3) One thousand ~~one~~two hundred dollars for a warehouse having a capacity of more than five hundred thousand bushels [17619.54 cubic meters].
  - c. An application for an annual license renewal that is received after July fifteenth must include an additional one hundred dollar fee per warehouse. An application for a biennial license renewal that is received after July fifteenth must include an additional two hundred dollar fee per warehouse.
4. If a public warehouseman operates two or more warehouses in the same city or siding, in conjunction with each other and with the same working force, and keeps one set of books and records for all such warehouses, and issues one series of scale tickets, warehouse receipts, checks, and credit-sale contracts for the grain stored and purchased therein, only one license is required for the operation of all such warehouses. When two or more warehouses are operated under one license, the license fee is based upon the combined bushel capacity of the warehouses.
  5. If required to obtain United States department of agriculture approval of the ~~commission's~~commissioner's warehouse inspection program, the ~~commission~~commissioner may require that the applicant submit a current financial statement prepared in accordance with generally accepted

accounting principles. A financial statement furnished under this subsection is a confidential trade secret and is not a public record.

**SECTION 9. AMENDMENT.** Section 60-02-07.2 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-07.2. Receiving stations.**

A licensed public warehouseman may establish a receiving station without a separate warehouse license for that facility if all of the following conditions are met:

1. The station is colocated with another licensed public warehouse, the operator of which will take delivery of the grain on behalf of the warehouseman who established the receiving station.
2. The storage space used by the receiving station is used solely by the receiving station and is not licensed as part of the warehouse that is located at that site.
3. The grain taken in by the receiving station is not commingled with other grain at that site.
4. The warehouseman establishing the station requests and receives ~~commission~~ permission from the commissioner to increase licensed capacity to include the space to be used at the receiving station.
5. Grain received at the receiving station is recorded on scale tickets issued by the warehouseman who established the station and is covered by that warehouseman's bond.
6. Warehouse-receipted grain received at the receiving station is available for redelivery to the receipt holder at that location even if the station has been closed. A charge for redelivery must be stated in the warehouseman's redelivery policy.

The storage space used by a receiving station need not be physically disconnected from the facilities of the other licensed warehouse located at that site.

**SECTION 10. AMENDMENT.** Section 60-02-09 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-09. Bond filed by public warehouseman.**

Before any license is effective for any public warehouseman under this chapter, the applicant for the license shall file a bond with the ~~commission~~commissioner which must:

1. Be in a sum not less than five thousand dollars for any one warehouse.
2. Be continuous, unless the corporate surety by certified mail notifies the licensee and the ~~commission~~commissioner the surety bond will be canceled ninety days after receipt of the notice of cancellation.
3. Run to the state of North Dakota for the benefit of all persons storing or selling grain in that warehouse.
4. Be conditioned:
  - a. For the faithful performance of the licensee's duties as a public warehouseman.
  - b. For compliance with the provisions of law and the rules of the ~~commission~~commissioner relating to the storage and purchase of grain by such warehouseman.

5. Specify the location of each public warehouse intended to be covered by such bond.
6. Be for the specific purpose of:
  - a. Protecting the holders of outstanding receipts.
  - b. Covering the costs incurred by the ~~commissioner~~ commissioner in the administration of chapter 60-04 in the event of the licensee's insolvency.
7. Not accrue to the benefit of any person entering into a credit-sale contract with a public warehouseman.
8. The aggregate liability of the surety under a bond does not accumulate for each successive annual license renewal period during which the bond is in force but, for losses during any annual license renewal period, is limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider.

The ~~commissioner~~ commissioner shall set the amount of the bond and may require an increase in the amount of any bond, from time to time, as the ~~commissioner~~ commissioner deems necessary to accomplish the purposes of this section. The surety on the bond must be a corporate surety company, approved by the ~~commissioner~~ commissioner, and authorized to do business within the state. The ~~commissioner~~ commissioner may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond ~~whenif, in its~~ the ~~commissioner's~~ commissioner's judgment, the cash, negotiable instrument, or personal surety bond properly will protect the holders of outstanding receipts. One bond only may be given for any line of elevators, mills, or warehouses, owned, controlled, or operated by one individual, firm, corporation, or limited liability company, and the bond must be construed to cover ~~such~~ the elevators, mills, or warehouses, as a whole and not a specific amount for each.

**SECTION 11. AMENDMENT.** Section 60-02-09.1 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-09.1. Bond cancellation - Release of surety.**

The surety on a bond is released from all future liability accruing on the bond after the expiration of ninety days from the date of receipt by the ~~commissioner~~ commissioner of notice of cancellation by the surety or on a later date specified by the surety. This provision does not operate to relieve, release, or discharge the surety from any liability already accrued or which accrues before the expiration of the ninety-day period. Unless the warehouseman files a new bond at least thirty days before liability ceases, the ~~commissioner~~ commissioner, without hearing, shall immediately suspend the warehouseman's license and the suspension may not be removed until a new bond has been filed and approved by the ~~commissioner~~ commissioner. ~~Whenif~~ When a license is so suspended, the warehouseman shall give notice of such suspension to each receiptholder having grain stored in the warehouse. The warehouseman shall further notify each receiptholder having grain stored in the warehouse that the grain must be removed from the warehouse or ~~it~~ the ~~grain~~ grain will be priced and redeemed in cash in accordance with section 60-02-41.

**SECTION 12. AMENDMENT.** Section 60-02-10.1 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-10.1. Revocation and suspension.**

The ~~commissioner~~ commissioner may suspend or revoke the license of any warehouseman for cause upon notice and hearing. Notwithstanding any other provisions of this chapter, the license of a warehouseman must automatically be suspended for failure at any time to have or to maintain either a bond or insurance policy in the amount and type required. During a suspension of a license the



warehouseman may, upon the ~~commission's~~ commissioner's approval, operate the warehouse and purchase or redeliver grain previously received, but may not receive additional grain for purchase, storage, shipping, or processing. Grain may be sold only with the prior approval of the ~~commission~~ commissioner.

**SECTION 13. AMENDMENT.** Section 60-02-11 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-11. Scale ticket - Contents - Conversion.**

1. a. Every public warehouseman, upon receiving grain into the warehouse, shall issue a uniform scale ticket for each load of grain received. The scale tickets must be numbered consecutively, and one copy of each ticket must be retained and remain as a permanent record. The original ticket must be delivered to the person from whom the grain is received, upon receipt of each load of grain.
  - b. All scale tickets must be converted into cash, noncredit-sale contracts, credit-sale contracts, or warehouse receipts, within forty-five days after the grain is delivered to the warehouse, unless:
    - (1) The person to whom the scale ticket is issued signs a form waiving all rights to trust benefits under section 60-04-03.1;
    - (2) The form identifies by number each scale ticket to which the waiver applies; and
    - (3) The form is signed by the warehouseman.
  - c. The ~~commission~~ commissioner shall prepare the waiver form required by subdivision b and make the form available to each warehouse.
  - d. The warehouseman shall keep one copy of the signed waiver form with the records of the warehouse, provide one copy to the person who was issued the scale ticket and signed the form, and file one copy with the ~~commission~~ commissioner.
2. Nothing in this chapter requires a warehouseman to receive grain for storage. A warehouseman shall publish and post, in a conspicuous place in the warehouse, a publication identifying whether storage will be available to patrons or whether grain will be accepted via cash or a credit-sale contract arrangement.

**SECTION 14. AMENDMENT.** Section 60-02-14 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-14. Warehouse receipts - Copy.**

Provision ~~shall~~ must be made for a stub record or copy of each warehouse receipt issued by a warehouseman, showing:

1. The serial number and date of receipt.
2. The kind and grade of grain.
3. The dockage and net weight of the grain.

The record or copy ~~shall~~ must remain in the possession of the warehouseman for inspection by the ~~commission~~ commissioner and persons properly interested.

**SECTION 15. AMENDMENT.** Section 60-02-17 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-17. Warehouse and storage contract - Storage rates - Terminal delivery.**

1. A warehouse receipt must contain, either on its face or reverse side, the following warehouse and storage contract:

This grain is received, insured, and stored subject to the laws and rules of the state of North Dakota, the terms of this contract, and the charges and conditions stated herein and as filed with the North Dakota ~~public service~~ ~~commission~~ agriculture commissioner. Upon surrender of this receipt and payment or tender of all applicable charges, the amount, kind, and grade of grain identified in this receipt will be delivered to the person named above or the person's order as rapidly as due diligence, care, and prudence will permit. At the option of the holder of this receipt, the amount, kind, and grade of grain for which this receipt is issued, upon demand, must be delivered back to the holder at any terminal point customarily shipped to, or at the place where received, upon the payment of any charges for receiving, handling, storage, and insurance and in case of terminal delivery, the payment in addition to the above of the regular freight charges on the gross amount called for by this ticket or in lieu thereof, a receipt issued by a bonded warehouse or elevator company doing business at the terminal point. This receipt does not require the delivery of the identical grain specified herein, but an equal amount of grain of the same kind and grade must be delivered.

2. A warehouseman shall publish and post, in a conspicuous place in its warehouse, the fees that will be assessed for receiving, storing, processing, or redelivering grain and the termination date of its warehouse receipts. This publication must be filed with the ~~commission~~ commissioner as a part of the warehouse license process or annual renewal. The fees and termination date must be stated on the warehouse receipt issued for the grain. The fees or termination date may be changed upon filing a revised publication with the ~~commission~~ commissioner.

**SECTION 16. AMENDMENT.** Section 60-02-24 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-24. Reports to be made by public warehouseman - Penalty for failure.**

Each licensed and bonded public warehouseman shall:

1. Prepare for each month a report giving facts and information called for on the form of report prepared by the ~~commission~~ commissioner. The report must contain or be verified by a written declaration ~~that it~~ the report is made under the penalties of perjury. The report may be called for more frequently if the ~~commission~~ commissioner deems it necessary. Information pertaining to the volume of grain handled is a confidential trade secret and is not a public record. The ~~commission~~ commissioner may make the information available for use by other governmental entities, but the ~~commission~~ commissioner may not release the information in a manner that jeopardizes the confidentiality of individual licensees.
2. File the report with the ~~commission~~ commissioner not later than the last day of the following month, and failure to file this report promptly will be considered cause for revoking the warehouse license after due notice and hearing.
3. Keep a separate account of the grain business, if the warehouseman is engaged in handling or selling any other commodity, and under no circumstances ~~shall~~ may the grain account and other accounts be mixed.

The ~~commission~~commissioner may refuse to renew a license to any public warehouseman who fails to make a required report.

**SECTION 17. AMENDMENT.** Section 60-02-27 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-27. Federal grades to control - Grades to be posted.**

All public warehousemen shall purchase and store grain except dry edible beans in accordance with the official grades established from time to time by the secretary of agriculture of the United States, except as otherwise provided in rules and regulations applicable thereto adopted by federal officials pursuant to law. ~~They~~Public warehousemen shall post in a conspicuous place in ~~their~~the public warehousemen's warehouse the official grades so established and also any change that may be made from time to time. Warehousemen of dry edible beans shall purchase, store, and deliver beans in accordance with ~~their~~the policy of the warehousemen which must be filed with the ~~commission~~commissioner and posted in a conspicuous place in ~~their~~the warehouse of the public warehousemen. Other grading standards may be used if mutually agreed to in writing by the warehouseman and the owner of the grain. However, the owner may demand the use of federal grading standards. The ~~commission~~commissioner, after hearing, may prohibit the use of nonfederal grades.

**SECTION 18. AMENDMENT.** Section 60-02-35.1 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-35.1. Insurance - Cancellation - Suspension of license.**

An insurance company shall give at least sixty days' notice to the ~~commission~~commissioner and the insured by certified mail return receipt requested before cancellation of an insurance policy required in section 60-02-35. Unless the warehouseman files proof of new or renewed insurance at least thirty days before the existing policy ceases, the ~~commission~~commissioner, without hearing, shall immediately suspend the warehouseman's license and the suspension may not be removed until a new policy has been filed and approved by the ~~commission~~commissioner. ~~When~~If a license is so suspended, the warehouseman shall give notice of ~~such~~the suspension to each receipt holder having grain stored in the warehouse. The warehouseman shall further notify each receipt holder having grain stored in the warehouse ~~that~~the grain must be removed from the warehouse or ~~it~~the grain will be priced and redeemed in cash in accordance with section 60-02-41.

**SECTION 19. AMENDMENT.** Section 60-02-38 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-38. Refund of license fee by ~~commission~~commissioner.**

~~When~~If requested in writing, the ~~commission~~commissioner shall refund the license fee of a public warehouse, or so much as in ~~its~~the commissioner's judgment is just and reasonable, ~~when~~if satisfactory proof is furnished ~~that~~the warehouse has been transferred to some other person, and the new owner has obtained a license for the same warehouse for the unexpired period for which the original license was issued. ~~When~~If a warehouse is destroyed by fire or other cause, the license fee may be prorated as the ~~commission~~commissioner may determine.

**SECTION 20. AMENDMENT.** Section 60-02-40 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-40. Transfer of warehouse - Redemption of receipts.**

~~Whenever~~If a public warehouseman desires to transfer a warehouse, either by sale or lease to any other individual, firm, or corporation, the warehouseman shall:

1. Notify the ~~commission~~commissioner first of ~~its~~the warehouseman's intention to transfer the warehouse, giving the name and address of the proposed lessee or purchaser.
2. Furnish a statement of all proper claims that may be filed or pending against the warehouseman pertaining to the storage, inspection, and marketing of grain, together with a statement of:
  - a. The number of bushels [cubic meters] of grain of each kind and grade in store in the warehouse;
  - b. The number and amount of receipts outstanding; and
  - c. The names and addresses of the receipt holders.
3. Serve notice by registered or certified mail, at least thirty days before the transfer, upon all receipt holders having claims against the warehouse to call for delivery of the grain covered by the receipts, and to pay all storage charges due, the warehouseman in such case to make no charge for redelivery. The ~~commission~~commissioner may waive the thirty-day notice period upon receipt of written consent of all receipt holders.
4. Transfer all stored grain undelivered at the expiration of such thirty-day period to ~~its~~the warehouseman's successor, if licensed, or to the nearest licensed warehouse for restorage, taking receipts for the same in favor of the owner of the grain so transferred.
5. Surrender to the ~~commission~~its commissioner ~~the warehouseman's~~ license for cancellation ~~and at such, at which time~~ the proposed lessee or purchaser shall file in due form for a new license and tender a new bond for review by the ~~commission, whereupon, it~~commissioner, at which time, the commissioner, first being duly satisfied ~~that all the outstanding receipts have been redeemed, or that the redemption thereof of all outstanding receipts~~ has been provided for, the ~~commission~~commissioner may permit a new license to become effective for the lessee or purchaser.

No sale, lease, or transfer of any warehouse will be recognized by the ~~commission~~commissioner except when made in accordance with the provisions of this section.

**SECTION 21. AMENDMENT.** Section 60-02-41 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-41. Going out of business - Redemption of receipts.**

~~When~~If a public warehouseman ceases business through the destruction of a warehouse by fire or other cause, or through insolvency, ~~such~~the warehouseman shall redeem all outstanding unconverted scale tickets or warehouse receipts at the price prevailing on the date the warehouse was destroyed or closed because of insolvency. The holder of such receipts, upon due notice, ~~must~~shall accept this price and surrender the receipts. Any public warehouseman who voluntarily ceases business or fails to renew an existing warehouse license or whose warehouse license is revoked shall notify the ~~commission~~commissioner and all outstanding receipt holders of such closing and redeem all outstanding unconverted scale tickets or warehouse receipts at the price prevailing on the date the warehouse closed or at the option of the owner of the receipt redeliver the kind, grade, and quantity of grain called for by the unconverted scale ticket or warehouse receipt. On commingled grain the value of over and under deliveries in quantity, grade, and protein ~~shall~~must be settled in cash and priced on the market on the day of closing.

**SECTION 22. AMENDMENT.** Section 60-02-42 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-42. Cease and desist.**

~~Whenever~~ If an entity engages in an activity or practice that is contrary to the provisions of this chapter or related rules, the ~~commissioner~~ commissioner, upon ~~its~~ the commissioner's own motion without complaint, with or without hearing, may order the entity to cease and desist from the activity until further order of the ~~commissioner~~ commissioner. Such orders may include any corrective action up to and including license suspensions. Cease and desist orders must be accompanied by a notice of opportunity to be heard on the order within fifteen days of the issuance of the order.

**SECTION 23.** A new section to chapter 60-02 of the North Dakota Century Code is created and enacted as follows:

**Release of records - Confidentiality.**

1. As a condition of licensure under section 60-02-07, an applicant shall agree to provide to the commissioner, upon request, any financial record the commissioner deems relevant for purposes related to:
  - a. The issuance or renewal of a public warehouse license; or
  - b. An investigation after issuance or renewal of a public warehouse license.
2. As a condition of licensure, an applicant shall file a records release with the commissioner, authorizing the commissioner to obtain from any source any financial record the commissioner deems relevant for purposes related to:
  - a. The issuance or renewal of a public warehouse license; or
  - b. An investigation after issuance or renewal of a public warehouse license.
3. Any information obtained by the commissioner under this section is confidential and may be provided only:
  - a. To federal authorities in accordance with federal law;
  - b. To the attorney general, state agencies, and law enforcement agencies, for use in the pursuit of official duties; and
  - c. As directed by an order of a court pursuant to a showing of good cause.

**SECTION 24. AMENDMENT.** Section 60-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-01. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Cash grain broker" means a person who:
  - a. Is involved in the negotiation of cash grain transactions in the state;
  - b. Receives compensation from at least one party to the transaction; and
  - c. Does not take title to the grain and is not under any financial or contractual obligation related to the transaction.
2. "~~Commissioner~~Commissioner" means the public service commission-agriculture commissioner.

- 2-3. "Credit-sale contract" means a written contract for the sale of grain pursuant to which the sale price is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale and which contains the notice provided in subsection 7 of section 60-02.1-14. If a part of the sale price of a contract for the sale of grain is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale, only such part of the contract is a credit-sale contract.
- 3-4. "Facility" means a structure in which grain purchased by a grain buyer is received or held.
- 4-5. "Facility-based grain buyer" means a grain buyer who operates a facility licensed under the United States Warehouse Act [7 U.S.C. 241-273] where grain is received.
- 5-6. "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz, safflower, sunflower seeds, tame mustard, peas, beans, soybeans, corn, clover, millet, alfalfa, and any other commercially grown grain or grass seed. "Grain" does not include grain or grass seeds owned by or in the possession of the grain buyer which have been cleaned, processed, and specifically identified for an intended use of planting for reproduction and for which a warehouse receipt has not been issued.
- 6-7. "Grain buyer" means any person, other than a public warehouseman as defined in chapter 60-02, who purchases or otherwise merchandises grain for compensation. The term does not include:
- a. A producer of grain who purchases grain from other producers to complete a carload or truckload in which the greater portion of the load is grain grown by the producer or on-farm feedlot operations in which at least fifty percent of the livestock is owned by the owner of the farm.
  - b. A person who is permitted to sell seed under chapter 4.1-53, if that person buys grain only for processing and subsequent resale as seed.
  - c. A person who is an authorized dealer or agent of a seed company holding a permit in accordance with section 4.1-53-38.
8. "Grain processor" means an entity that purchases grain to process into end products that are of a substantially different makeup or nature than the original grain.
- 7-9. "Noncredit-sale contract" means a contract for the sale of grain other than a credit-sale contract.
- 8-10. "Receipts" means scale tickets, checks, or other memoranda given by a grain buyer for, or as evidence of, the receipt or sale of grain except when such memoranda was received as a result of a credit-sale contract.
- 9-11. "Roving grain buyer" means a grain buyer who does not operate a facility where grain is received.

**SECTION 25. AMENDMENT.** Section 60-02.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-02. ~~Commission~~Commissioner - Powers and duties.**

~~The powers and duties imposed and the powers conferred by this chapter devolve upon the commission of the commissioner are enumerated in this chapter.~~

**SECTION 26. AMENDMENT.** Section 60-02.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-03. Duties and powers of the ~~commission~~ commissioner.**

The ~~commission~~ commissioner has the duty and power to:

1. Exercise general supervision of grain buyers of this state.
2. Investigate all complaints of fraud and injustice, unfair practices, and unfair discrimination.
3. Examine and inspect, during ordinary business hours, any books, documents, and records.
4. Make all proper rules for carrying out and enforcing any law in this state regarding grain buyers.

**SECTION 27. AMENDMENT.** Section 60-02.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-04. Federal licensed inspector – ~~Appointed by commission.~~**

The ~~commission~~ commissioner may employ a federal licensed inspector whose duties are hereinafter prescribed, and such ~~enumerated in this chapter and may employ~~ other employees as ~~may be necessary~~ to carry out the provisions of this chapter.

**SECTION 28. AMENDMENT.** Section 60-02.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-06. Notice of procedures for resolving disputes over grain.**

A facility-based grain buyer shall post a notice containing the procedures specified in section 60-02.1-05 for resolving disputes. The ~~commission~~ commissioner shall prescribe the form of the notice and shall provide a copy of the notice to each facility-based grain buyer. The facility-based grain buyer shall post the notice in the grain inspection room of the facility. The notice must specifically mention that the procedure for resolving disputes applies to the grade, dockage, moisture content, and protein content of grain and to the quality factors of grain for which inspection rules and grades have not been adopted by the secretary of agriculture of the United States.

**SECTION 29. AMENDMENT.** Section 60-02.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-07. Grain buyer license - How obtained - Fee - Financial statement.**

Grain buyers ~~must~~ shall obtain an annual license from the ~~commission~~ commissioner. Except as provided in this section, each license expires on July thirty-first of each year. ~~When~~ If a licensee's initial license is issued effective after May thirty-first, that license expires on July thirty-first of the following year. A facility-based grain buyer ~~must~~ shall obtain a license for each receiving location operated in the state. If a grain buyer operates two or more facilities in the same city or siding, in conjunction with each other and with the same working force, and where but one set of books and records is kept for all such facilities, and scale tickets and checks of but one series are issued for the grain, purchased, only one license is required for the operation of all such facilities. The annual license fee for a facility-based grain buyer is ~~three~~ four hundred dollars and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee per receiving location.

If required to obtain United States department of agriculture approval of the ~~commission~~ commissioner's grain buyer inspection program, the ~~commission~~ commissioner may require that grain buyers submit a current financial statement prepared in accordance with generally accepted accounting principles. A

financial statement furnished under this section is a confidential trade secret and is not a public record.

**SECTION 30. AMENDMENT.** Section 60-02.1-07.1 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-07.1. Roving grain buyer license - How obtained - Fee.**

Roving grain buyers that purchase, solicit, merchandise, or take possession of grain in this state ~~must~~ shall obtain an annual license from the ~~commissioner~~ commissioner. Except as provided in this section, each license expires on July thirty-first of each year. ~~When~~ If a licensee's initial license is issued effective after May thirty-first, that license expires on July thirty-first of the following year. The annual license fee for a roving grain buyer is ~~two~~ three hundred dollars, and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee.

**SECTION 31.** A new section to chapter 60-02.1 of the North Dakota Century Code is created and enacted as follows:

**Cash grain broker license - Application - Bond - How obtained - Fee - Report - Disclosure.**

1. Before conducting business in the state, a cash grain broker must submit an application to obtain an annual license from the commissioner. To conduct business in the state, a cash grain broker must also register and be in good standing with the secretary of state. Except as provided in this section, each license expires on July thirty-first of each year. When a licensee's initial license is issued effective after May thirty-first, that license expires on July thirty-first of the following year. The annual license fee of a cash grain broker is two hundred dollars, and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee. A license issued under this section is not transferable.
2. An application for licensure must include:
  - a. The name under which the applicant intends to conduct business in the state as a cash grain broker;
  - b. The name of each partner if the cash grain broker is in a partnership;
  - c. The name of each corporate officer and the state of incorporation if the cash grain broker is a corporation;
  - d. The name of each manager and the state of organization if the cash grain broker is a limited liability company;
  - e. The mailing address of the applicant; and
  - f. The location of the principal place of business of the applicant.
3. The commissioner may refuse to issue, renew, or may revoke a license if:
  - a. The licensee or applicant has been convicted of a criminal offense;
  - b. The licensee or applicant has failed to comply with the requirements of this section;
  - c. The commissioner has evidence the licensee negotiated in bad faith; or
  - d. Any other reason determined by the commissioner.



4. A licensed cash grain broker must submit a monthly report to the commissioner by the tenth day of each month. The report must include:
  - a. The total volume of each commodity brokered in the preceding month; and
  - b. The name and contact information of any buyer who had more than two hundred fifty thousand dollars in total purchases in transactions brokered by the cash grain broker during the preceding month.
5. A licensed cash grain broker must notify each potential commodity seller of the identity of the potential commodity buyer before the final confirmation of the transaction.
6. Before a license is effective for a cash grain broker under this section, the licensee or applicant must file a bond with the commissioner for ten thousand dollars.

**SECTION 32. AMENDMENT.** Section 60-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**Grain processor license - Application - Bond - How obtained - Fee - Report - Disclosure.**

1. Before conducting business in the state, a grain processor must submit an application to obtain an annual license from the commissioner. To conduct business in the state, a grain processor must also register and be in good standing with the secretary of state. Except as provided in this section, each license expires on July thirty-first of each year. When a licensee's initial license is issued effective after May thirty-first, that license expires on July thirty-first of the following year. The annual license fee of a grain processor is two hundred dollars, and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee. A license issued under this section is not transferable.
2. An application for licensure must include:
  - a. The name under which the applicant intends to conduct business in the state as a grain processor;
  - b. The name of each partner if the grain processor is in a partnership;
  - c. The name of each corporate officer and the state of incorporation if the grain processor is a corporation;
  - d. The name of each manager and the state of organization if the grain processor is a limited liability company;
  - e. The mailing address of the applicant; and
  - f. The location of the principal place of business of the applicant.
3. The commissioner may refuse to issue, renew, or may revoke a license if:
  - a. The licensee or applicant has been convicted of a criminal offense;
  - b. The licensee or applicant has failed to comply with the requirements of this section;
  - c. The commissioner has evidence the licensee negotiated in bad faith; or
  - d. Any other reason determined by the commissioner.

4. A licensed grain processor must submit a monthly report to the commissioner by the tenth day of each month. The report must include the total volume of each commodity processed in the preceding month.
5. Before a license is effective for a grain processor under this section, the licensee or applicant must file a bond with the commissioner for ten thousand dollars.

**SECTION 33. AMENDMENT.** Section 60-02.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-08. Bond filed by grain buyer.**

Before any license is effective for any grain buyer under this chapter, the applicant for the license shall file a bond with the ~~commission~~commissioner which must:

1. Be in a sum not less than ~~five~~ten thousand dollars.
2. Be continuous, unless the corporate surety by certified mail notifies the licensee and the ~~commission~~commissioner the surety bond will be canceled ninety days after receipt of the notice of cancellation.
3. Run to the state of North Dakota for the benefit of all persons selling grain to or through the grain buyer.
4. Be conditioned:
  - a. For the faithful performance of the licensee's duties as a grain buyer.
  - b. For compliance with the provisions of law and the rules of the ~~commission~~commissioner relating to the purchase of grain by such grain buyer.
5. For facility-based grain buyers, specify the location of each facility intended to be covered by the bond.
6. Be for the specific purpose of:
  - a. Protecting the sellers of grain.
  - b. Covering the costs incurred by the ~~commission~~commissioner in the administration of the licensee's insolvency.
7. Not accrue to the benefit of any person entering ~~into~~ a credit-sale contract with a grain buyer.
8. The aggregate liability of the surety under a bond does not accumulate for each successive annual license renewal period during which the bond is in force but, for losses during any annual license renewal period, is limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider.

The ~~commission~~commissioner may require an increase in the amount of any bond, from time to time, as ~~the commissioner~~ deems necessary to accomplish the purposes of this section. The surety on the bond must be a corporate surety company, approved by the ~~commission~~commissioner, and authorized to do business within the state. The ~~commission~~commissioner may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond when, in ~~its~~the commissioner's judgment, cash, a negotiable instrument, or a personal surety bond properly will protect the holders of outstanding receipts. Only one bond may be required for any series of facilities operated by a facility-based grain buyer, and the bond must be construed to cover those facilities as a whole and not a specific amount for each.

**SECTION 34. AMENDMENT.** Section 60-02.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-09. Bond cancellation - Release of surety.**

The surety on a bond is released from all future liability accruing on the bond after the expiration of ninety days from the date of receipt by the ~~commissioner~~ commissioner of notice of cancellation by the surety or on a later date specified by the surety. This provision does not operate to relieve, release, or discharge the surety from any liability already accrued or which accrues before the expiration of the ninety-day period. Unless the grain buyer files a new bond at least thirty days before liability ceases, the ~~commissioner~~ commissioner, without hearing, shall immediately suspend the grain buyer's license and the suspension may not be removed until a new bond has been filed and approved by the ~~commissioner~~ commissioner.

**SECTION 35. AMENDMENT.** Section 60-02.1-11 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-11. Revocation and suspension.**

The ~~commissioner~~ commissioner may suspend or revoke the license of any grain buyer for cause upon notice and hearing. Notwithstanding any other provisions of this chapter, the license of a grain buyer must automatically be suspended for failure at any time to have or to maintain either a bond or insurance policy in the amount and type required. During a suspension of a license a facility-based grain buyer, upon the ~~commissioner's~~ commissioner's approval, may operate its facility and purchase or redeliver grain previously received, but may not receive additional grain for purchase, shipping, or processing. Grain may be sold only with the prior approval of the ~~commissioner~~ commissioner.

**SECTION 36. AMENDMENT.** Section 60-02.1-16 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-16. Records required to be kept by grain buyers.**

Each grain buyer shall keep such accounts, records, and memoranda concerning the buyer's dealing as such grain buyer as from time to time may be required by the ~~commissioner~~ commissioner and shall make such reports of purchases of grain as may be required by the rules ~~made~~ adopted by the ~~commissioner~~ commissioner. The ~~commissioner~~ commissioner at all times shall ~~must~~ must have access to such accounts, records, and memoranda.

**SECTION 37. AMENDMENT.** Section 60-02.1-17 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-17. Reports to be made by grain buyers - Penalty for failure.**

Each licensed and bonded grain buyer shall:

1. Prepare for each month a report giving facts and information called for on the form of report prepared by the ~~commissioner~~ commissioner. The report must contain or be verified by a written declaration ~~that the report is~~ made under the penalties of perjury. The report may be called for more frequently if the ~~commissioner~~ commissioner deems it necessary. Information pertaining to the volume of grain handled is a confidential trade secret and is not a public record. The ~~commissioner~~ commissioner may make this information available for use by other governmental entities, but the information may not be released by those entities in a manner that jeopardizes the confidentiality of individual licensees.
2. File the report with the ~~commissioner~~ commissioner not later than the last day of the following month. Failure to file this report promptly will be considered cause for revoking the grain buyer license after due notice and hearing.

3. Keep a separate account of the grain business, if the grain buyer is engaged in handling or selling any other commodity, and under no circumstances may the grain account and other accounts be mixed.

The ~~commission~~commissioner may refuse to renew a license to any grain buyer who fails to make a required report.

**SECTION 38. AMENDMENT.** Section 60-02.1-19 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-19. Federal grades to control - Grades to be posted.**

All grain buyers shall purchase grain, except dry edible beans, in accordance with the official grades established from time to time by the secretary of agriculture of the United States, except as otherwise provided in applicable rules and regulations ~~applicable thereto~~ adopted by federal officials pursuant to law. A facility-based grain buyer shall post in a conspicuous place in the buyer's facility the official grades so established and also any change that may be made from time to time. A grain buyer of dry edible beans shall purchase and deliver beans in accordance with the buyer's policy, which must be filed with the ~~commission~~commissioner and, if applicable, posted in a conspicuous place in the buyer's facility. Other grading standards may be used if mutually agreed to in writing by the grain buyer and the owner of the grain. However, the owner may demand the use of federal grading standards. After hearing, the ~~commission~~commissioner may prohibit the use of nonfederal grades.

**SECTION 39. AMENDMENT.** Section 60-02.1-22 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-22. Insurance - Cancellation - Suspension of license.**

An insurance company shall give at least sixty days' notice to the ~~commission~~commissioner and the insured by registered mail return receipt requested before cancellation of an insurance policy required in section 60-02.1-21. Unless the grain buyer files proof of new or renewed insurance at least thirty days before the existing policy ceases, the ~~commission~~commissioner, without hearing, shall immediately suspend the grain buyer's license and the suspension may not be removed until a new policy has been filed and approved by the ~~commission~~commissioner.

**SECTION 40. AMENDMENT.** Section 60-02.1-26 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-26. Transfer of facility - Redemption of receipts.**

~~Whenever~~If a facility-based grain buyer desires to transfer a facility, either by sale or lease to any other individual, firm, or corporation, the grain buyer shall:

1. Notify the ~~commission~~commissioner first of its intention to transfer the facility, giving the name and address of the proposed lessee or purchaser.
2. Provide related information as may be required by the ~~commission~~commissioner.
3. Surrender to the ~~commission~~commissioner the grain buyer's license for cancellation and at that time the proposed lessee or purchaser shall file in due form for a new license and tender a new bond for review by the ~~commission~~commissioner, whereupon, it first being duly satisfied that all the outstanding receipts have been redeemed, or that the redemption thereof has been provided for, the ~~commission~~commissioner may permit a new license to become effective for the lessee or purchaser.

No sale, lease, or transfer of any facility will be recognized by the ~~commission~~commissioner except when made in accordance with the provisions of this section.

**SECTION 41. AMENDMENT.** Section 60-02.1-27 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-27. Going out of business - Redemption of receipts.**

~~When~~ If a facility-based grain buyer ceases business through closure, the destruction of a facility by fire or other cause, or through insolvency, ~~such~~ the grain buyer shall redeem all outstanding receipts at the price prevailing on the date the facility was closed, destroyed, or became insolvent. The holder of ~~such~~ the receipts, upon due notice, ~~must~~ shall accept this price and surrender the receipts. Any facility-based grain buyer who voluntarily ceases business or fails to renew an existing grain buyer license or whose grain buyer license is revoked shall notify the ~~commission~~ commissioner and all receiptholders of such closing and redeem all such receipts at the price prevailing on the date the business closed or at the option of the owner of the receipt redeliver the kind, grade, and quantity of grain called for by the receipt. On commingled grain the value of over and under deliveries in quantity, grade, and protein shall ~~must~~ be settled in cash and priced on the market on the day of closing.

**SECTION 42. AMENDMENT.** Section 60-02.1-29 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-29. Appointment of ~~commission~~ commissioner.**

Upon the insolvency of any roving grain buyer, the ~~commission~~ commissioner shall apply to the district court of Burleigh County for authority to take all action necessary to act as trustee of the trust fund described in section 60-02.1-30. If the insolvency involves a facility-based grain buyer, application must be to the district court of a county in which the licensee operates a licensed facility. Upon notice to the licensee as the court prescribes, but not exceeding twenty days, or upon waiver of notice in writing by the licensee, the court shall hear and determine the application in a summary manner. If the court determines ~~that~~ the licensee is insolvent within the meaning of this chapter and that it would be in the best interests of the receiptholders that the ~~commission~~ commissioner secure and execute the trust, the court shall issue an order granting the application, without bond, and the ~~commission~~ commissioner shall proceed to exercise ~~its~~ the commissioner's authority without further direction from the court.

Upon the filing of the ~~commission's~~ commissioner's application, the court may issue ex parte a temporary order to preserve or protect the assets of the trust fund until the court issues ~~its~~ an order granting or denying the application.

**SECTION 43. AMENDMENT.** Section 60-02.1-30 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-30. Trust fund established.**

Upon the insolvency of any licensee, a trust fund must be established for the benefit of noncredit-sale receiptholders and to pay the costs incurred by the ~~commission~~ commissioner in the administration of the insolvency. The trust fund must consist of the following:

1. Nonwarehouse receipt grain of the insolvent licensee held in storage or the proceeds obtained from the conversion of such grain.
2. The proceeds, including accounts receivable, from any grain sold from the time of the filing of the claim that precipitated an insolvency until the ~~commission~~ commissioner is appointed trustee must be remitted to the ~~commission~~ commissioner and included in the trust fund.
3. The proceeds of insurance policies on destroyed grain.
4. The claims for relief, and proceeds ~~therefrom~~ from the claims for relief, for damages upon bond given by the licensee to ensure faithful performance of the duties of a licensee.

5. The claim for relief, and proceeds ~~therefrom~~from the claim for relief, for the conversion of any grain stored in the warehouse.
6. Unencumbered accounts receivable for grain sold prior to the filing of the claim that precipitated an insolvency.
7. Unencumbered equity in grain hedging accounts.
8. Unencumbered grain product assets.

**SECTION 44. AMENDMENT.** Section 60-02.1-32 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-32. Notice to receiptholders and credit-sale contract claimants.**

Upon ~~its~~the commissioner's appointment, the ~~commissioner~~commissioner may take possession of relevant books and records of the licensee. If the insolvency involves a roving grain buyer, the ~~commissioner~~commissioner shall publish a notice of ~~its~~the commissioner's appointment once each week for two consecutive weeks in all daily newspapers in the state and may notify, by ordinary mail, the holders of record of outstanding receipts and those who are potential credit-sale contract claimants, disclosed by the licensee's records. If the insolvency involves a facility-based grain buyer, the notice must be published once each week for two consecutive weeks in a newspaper in the county in which the warehouse is located. The notice must require outstanding receiptholders and credit-sale contract claimants to file their claims with the ~~commissioner~~commissioner along with the receipts, contracts, or other evidence of the claims required by the ~~commissioner~~commissioner. If an outstanding receiptholder or credit-sale contract claimant fails to submit a claim within forty-five days after the last publication of the notice or a longer time set by the ~~commissioner~~commissioner, the ~~commissioner~~commissioner is relieved of further duty in the administration of the insolvency on behalf of the receiptholder or credit-sale contract claimant and the receiptholder may be barred from participation in the trust fund, and the credit-sale contract claimant may be barred from payment for any amount due. Outstanding receiptholders and credit-sale contract claimants are not parties to the insolvency action unless admitted by the court upon a motion for intervention.

**SECTION 45. AMENDMENT.** Section 60-02.1-33 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-33. Remedy of receiptholders.**

~~No~~A receiptholder ~~has~~does not have a separate claim for relief upon any insolvent licensee's bond, nor for insurance, nor against any person converting grain, nor against any other receiptholder, except through the trustee, unless, upon demand of five or more receiptholders, the ~~commissioner~~commissioner fails or refuses to apply for ~~its~~the commissioner's own appointment or unless the district court denies the application. This chapter does not prohibit any receiptholder, either individually or in conjunction with other receiptholders, from pursuing concurrently any other remedy against the person or property of the licensee.

**SECTION 46. AMENDMENT.** Section 60-02.1-34 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-34. ~~Commissioner~~Commissioner to marshal trust assets.**

Upon ~~its~~the commissioner's appointment, the ~~commissioner~~commissioner shall marshal all of the trust fund assets. The ~~commissioner~~commissioner may maintain suits in the name of the state of North Dakota for the benefit of all receiptholders against the licensee's bonds, insurers of grain, any person who may have converted any grain, and any person who may have received preferential treatment by being paid by the insolvent licensee after the first default.

**SECTION 47. AMENDMENT.** Section 60-02.1-35 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-35. Power of ~~commission~~commissioner to prosecute or compromise claims.**

The ~~commission~~commissioner may:

1. Prosecute any action provided in sections 60-02.1-28 through 60-02.1-38 in any court in this state or in any other state.
2. Appeal from any adverse judgment to the courts of last resort.
3. Settle and compromise any action ~~when~~if it will be in the best interests of the receiptholders.
4. Settle and compromise any action ~~when~~if it is in the best interests of the credit-sale contract claimants.
5. Upon payment of the amount of any settlement or of the full amount of any bond, exonerate the person so paying from further liability growing out of the action.

**SECTION 48. AMENDMENT.** Section 60-02.1-36 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-36. Money received by trustee - Deposited in Bank of North Dakota.**

All funds received by the ~~commission~~commissioner as trustee must be deposited in the Bank of North Dakota.

**SECTION 49. AMENDMENT.** Section 60-02.1-37 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-37. Report of trustee to court - Approval - Distribution.**

1. Upon the receipt and evaluation of claims, the ~~commission~~commissioner shall file with the court a report showing the amount and validity of each claim after recognizing:
  - a. Relevant liens or pledges.
  - b. Relevant assignments.
  - c. Relevant deductions due to advances or offsets accrued in favor of the licensee.
  - d. In case of relevant cash claims or checks, the amount of the claim.
  - e. In case of a relevant credit-sale contract or noncredit-sale contract, the amount remaining to be paid based on the terms of the contract.
2. The report must also contain the proposed reimbursement to the ~~commission~~commissioner for the expenses of administering the insolvency, the proposed distribution of the trust fund assets to receiptholders, less expenses incurred by the ~~commission~~commissioner in the administration of the insolvency, and the proposed credit-sale contract indemnity fund payments to credit-sale contract claimants. If the trust fund is insufficient to redeem all receiptholder claims in full, the report should list the funds as prorated.
3. The court shall set a hearing and the appropriate notice for interested persons to show cause why the ~~commission's~~commissioner's report should not be approved and distribution of the trust fund be made as proposed. Copies of the report and notice of hearing must be served by the ~~commission~~commissioner by certified mail upon the licensee and the

surety and by ordinary mail upon all persons having claims filed with the ~~commission~~ commissioner.

4. Any aggrieved person having an objection to the ~~commission's~~ commissioner's report shall file the objection with the court and serve copies on the ~~commission~~ commissioner, the licensee, and the surety at least twenty days before the hearing. Failure to file and serve objections in the time set is a waiver of the objection.
5. Following the hearing, the court shall approve or modify the report and issue an order directing payment of the necessary bond proceeds, distribution of the trust fund, payments from the credit-sale contract indemnity fund, and discharge of the ~~commission~~ commissioner from ~~its~~ the commissioner's trust.

**SECTION 50. AMENDMENT.** Section 60-02.1-38 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-38. Filing fees and court costs - Expenses.**

The ~~commission~~ commissioner may not be required to pay any filing fee or other court costs or disbursements. The attorney general may appoint outside legal counsel to assist the ~~commission~~ commissioner in the prosecution of the action and the cost of employing outside counsel must be paid from the trust fund and the credit-sale contract indemnity fund as appropriate. All other necessary expenses incurred by the ~~commission~~ commissioner in carrying out the provisions of this chapter, including adequate insurance to protect the ~~commission, its~~ commissioner, the commissioner's employees, and others engaged in carrying out the provisions of sections 60-02.1-28 through 60-02.1-38, must be reimbursed to the ~~commission~~ commissioner from the trust fund and credit-sale contract indemnity funds as appropriate.

**SECTION 51. AMENDMENT.** Section 60-02.1-39 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-39. Cease and desist.**

~~Whenever~~ If an entity engages in an activity or practice that is contrary to the provisions of this chapter or related rules, the ~~commission~~ commissioner, upon ~~its~~ the commissioner's own motion without complaint, with or without hearing, may order the entity to cease and desist from the activity until further order of the ~~commission~~ commissioner. Such orders may include any corrective action up to and including license suspensions. Cease and desist orders must be accompanied by a notice of opportunity to be heard on the order within fifteen days of the issuance of the order.

**SECTION 52.** A new section to chapter 60-02.1 of the North Dakota Century Code is created and enacted as follows:

**Release of records - Confidentiality.**

1. As a condition of licensure under section 60-02.1-07, an applicant shall agree to provide to the commissioner, upon request, any financial record the commissioner deems relevant for purposes related to:
  - a. The issuance or renewal of a grain buyer license; or
  - b. An investigation after issuance or renewal of a grain buyer license.
2. As a condition of licensure, an applicant shall file a records release with the commissioner, authorizing the commissioner to obtain from any source any financial record the commissioner deems relevant for purposes related to:
  - a. The issuance or renewal of a grain buyer license; or



- b. An investigation after issuance or renewal of a grain buyer license.
- 3. Any information obtained by the commissioner under this section is confidential and may be provided only:
  - a. To federal authorities in accordance with federal law;
  - b. To the attorney general, state agencies, and law enforcement agencies for use in the pursuit of official duties; and
  - c. As directed by an order of a court pursuant to a showing of good cause.

**SECTION 53. AMENDMENT.** Subsection 1 of section 60-04-01 of the North Dakota Century Code is amended and reenacted as follows:

- 1. ~~Commission~~Commissioner means the ~~public service-~~agriculture commissioner.

**SECTION 54. AMENDMENT.** Section 60-04-03 of the North Dakota Century Code is amended and reenacted as follows:

**60-04-03. Appointment of ~~commission~~commissioner.**

Upon the insolvency of any warehouseman, the ~~commission~~commissioner shall apply to the district court of a county in which the warehouseman operates a licensed warehouse for authority to take all action necessary and appropriate to secure and act as trustee of the trust fund described in section 60-04-03.1. Upon such notice to the warehouseman as the court shall prescribe, but not exceeding twenty days, or upon waiver of such notice in writing by the warehouseman, the court shall proceed to hear and determine such application in a summary manner. If it shall appear to the court ~~that such~~the warehouseman is insolvent within the meaning of this chapter and ~~that~~ it would be for the best interests of the receipt holders that the ~~commission~~commissioner secure and execute such trust, the court shall issue an order granting the application, without bond, ~~whereupon at which time~~ the ~~commission~~commissioner shall proceed to exercise ~~its~~the commissioner's authority without further direction from the court.

Upon the filing of the ~~commission's~~commissioner's application, the court may issue ex parte such temporary order as may be necessary to preserve or protect the assets of the trust fund, or the value ~~thereof of the trust fund~~, until the court issues ~~its~~an order granting or denying the application.

**SECTION 55. AMENDMENT.** Section 60-04-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**60-04-03.1. Trust fund established.**

- 1. Upon the insolvency of any warehouseman, a trust fund ~~shall~~must be established:
  - a. For the benefit of noncredit-sale receipt holders of the insolvent warehouseman, other than those who have waived their rights as beneficiaries of the trust fund in accordance with section 60-02-11; and
  - b. To pay the costs incurred by the ~~commission~~commissioner in the administration of this chapter.
- 2. The trust fund consists of the following:
  - a. The grain in the warehouse of the insolvent warehouseman or the proceeds as obtained through the sale of such grain;

- b. The proceeds, including accounts receivable, from any grain sold from the time of the filing of the claim that precipitated an insolvency until the ~~commission~~commissioner is appointed trustee;
- c. The proceeds of insurance policies upon grain destroyed in the elevator;
- d. The claims for relief, and proceeds ~~therefrom~~from the claims for relief, for damages upon any bond given by the warehouseman to ensure faithful performance of the duties of a warehouseman;
- e. The claims for relief, and proceeds ~~therefrom~~from the claims for relief, for the conversion of any grain stored in the warehouse;
- f. Unencumbered accounts receivable for grain sold ~~prior to~~before the filing of the claim that precipitated an insolvency;
- g. Unencumbered equity in grain hedging accounts; and
- h. Unencumbered grain product assets.

**SECTION 56. AMENDMENT.** Section 60-04-03.2 of the North Dakota Century Code is amended and reenacted as follows:

**60-04-03.2. Possession of grain.**

Upon ~~its~~the commissioner's appointment by the district court, the ~~commission~~commissioner shall seek possession of the grain to be included in the trust fund. Upon ~~its~~the commissioner's possession of any grain in the warehouse, the ~~commission~~commissioner shall sell such grain and apply the proceeds to the trust fund.

**SECTION 57. AMENDMENT.** Section 60-04-03.3 of the North Dakota Century Code is amended and reenacted as follows:

**60-04-03.3. Joinder of surety - Deposit of proceeds.**

The surety on the warehouseman's bond must be joined as a party to the insolvency proceeding upon a motion by the ~~commission~~commissioner if the ~~commission~~commissioner believes that proceeds from the warehouseman's bond may be needed to redeem outstanding receipts issued by the warehouseman. ~~When~~If it appears in the best interests of the receiptholders, the court may order the surety to deposit the penal sum of the bond, or so much ~~thereof~~of the sum as may be deemed necessary, into the trustee's trust account pending a final determination of the surety's liability under the bond.

**SECTION 58. AMENDMENT.** Section 60-04-04 of the North Dakota Century Code is amended and reenacted as follows:

**60-04-04. Notice to receiptholders and credit-sale contract claimants.**

Upon ~~its~~the commissioner's appointment by the district court, the ~~commission~~commissioner may take possession of relevant books and records of the warehouseman. The ~~commission~~commissioner shall cause a notice of ~~its~~the commissioner's appointment to be published once each week for two consecutive weeks in a newspaper in the county in which the warehouse is located and may notify by ordinary mail the holders of record of outstanding receipts and those who are potential credit-sale contract claimants, as shown by the warehouseman's records. The notices must require outstanding receiptholders and credit-sale contract claimants to file their claims against the warehouseman with the ~~commission~~commissioner along with the receipts, contracts, or any other evidence of the claims as required by the ~~commission~~commissioner. If an outstanding receiptholder or credit-sale contract claimant fails to submit a claim within forty-five days after the last publication of the notice or a longer time as prescribed by the ~~commission~~commissioner, the ~~commission~~commissioner is relieved of further duty or

action under this chapter on behalf of the receipt holder or credit-sale contract claimant and the receipt holder or credit-sale contract claimant may be barred from payment for any amount due. Outstanding receipt holders and credit-sale contract claimants are not parties to the insolvency action unless admitted by the court upon a motion for intervention.

**SECTION 59. AMENDMENT.** Section 60-04-05 of the North Dakota Century Code is amended and reenacted as follows:

**60-04-05. Remedy of receipt holders.**

~~No~~A receipt holder ~~has~~does not have a separate claim for relief upon the warehouseman's bond, nor for insurance, nor against any person converting grain, nor against any other receipt holder, except through the trustee, unless, upon demand of five or more receipt holders, the ~~commissioner~~commissioner fails or refuses to apply for ~~its~~the commissioner's own appointment from the district court or unless the district court denies the application for appointment. This chapter does not prohibit or prevent any receipt holder, either individually or in conjunction with other receipt holders, from pursuing concurrently such other remedy against the person or property of ~~such~~the warehouseman, for the whole, or any deficiency occurring in the redemption, of the receipts.

**SECTION 60. AMENDMENT.** Section 60-04-06 of the North Dakota Century Code is amended and reenacted as follows:

**60-04-06. ~~Commission~~Commissioner to marshal trust assets.**

Upon ~~its~~the commissioner's appointment by the district court, the ~~commissioner~~commissioner may maintain suits at law or in equity, or any special proceeding, in the name of the state of North Dakota, upon ~~its~~the commissioner's own relation, but for the benefit of all such receipt holders against:

1. The insurers of grain;
2. The warehouseman's bond;
3. Any person who may have converted any grain; or
4. Any receipt holder who ~~shall have received more than its~~the receipt holder's just and pro rata share of grain,

for the purpose of marshalling all of the trust fund assets and distributing the same among the receipt holders. The ~~commissioner~~commissioner shall seek possession of any grain in the warehouse before recourse is had against the insurers of grain, and the remedy against the insurers of grain ~~shall~~must be exhausted before recourse is had against the bond, and against the bond before recourse is had against the person honestly converting grain, unless the ~~commission shall deem~~commissioner deems it necessary to the redemption of the receipts that all the above remedies be pursued at the same time.

**SECTION 61. AMENDMENT.** Section 60-04-07 of the North Dakota Century Code is amended and reenacted as follows:

**60-04-07. Power of ~~commissioner~~commissioner to prosecute or compromise claims.**

The ~~commissioner~~commissioner may:

1. Prosecute any action provided in this chapter in any court in this state or in any other state.
2. Appeal from any adverse judgment to the courts of last resort.

3. Settle and compromise any action ~~whenever~~ if it is in the best interests of the receiptholders.
4. Settle and compromise any action ~~when~~ if it is in the best interests of the credit-sale contract claimants.
5. Upon payment of the amount of the compromise or of the full amount of any insurance policy, bond, or conversion claim, exonerate the person so compromising or paying in full from further liability growing out of the action.

**SECTION 62. AMENDMENT.** Section 60-04-08 of the North Dakota Century Code is amended and reenacted as follows:

**60-04-08. Money received by trustee - Deposited in Bank of North Dakota.**

All moneys collected and received by the ~~commission~~ commissioner as trustee under this chapter, pending the marshalling of the fund, ~~shall~~ must be deposited in the Bank of North Dakota.

**SECTION 63. AMENDMENT.** Section 60-04-09 of the North Dakota Century Code is amended and reenacted as follows:

**60-04-09. Report of trustee to court - Approval - Distribution.**

Upon the receipt and evaluation of claims filed with ~~it~~ the commissioner, the ~~commission~~ commissioner shall file with the court a report showing the amount and validity of each claim after recognizing:

1. Any proper liens or pledges ~~thereon~~ on the claims.
2. Assignments ~~thereof~~ of the claims.
3. Deductions ~~therefrom~~ from the claims by reason of advances or offsets accrued in favor of the warehouseman.
4. In case of cash claims or checks, the amount ~~thereof~~ of the claims or checks.
5. In the case of scale tickets or warehouse receipts, the amount ~~thereof~~ based upon the market price prevailing on the date the ~~commission~~ commissioner first received a copy of the written demand required by section 60-04-02.
6. In the case of a credit-sale or noncredit-sale contract, the amount remaining to be paid based on the terms of the contract.

The report must also contain the proposed reimbursement to the ~~commission~~ commissioner for the expenses of administering the insolvency, a proposed distribution of the trust fund assets, less expenses incurred by the ~~commission~~ commissioner in the administration of this chapter, and the proposed credit-sale contract indemnity fund payments to credit-sale contract claimants as ~~their~~ the interests of the claimants are determined. If the trust fund is insufficient to redeem all receiptholder claims in full, the fund must be shown prorated in the report in the manner the ~~commission~~ commissioner deems fair and equitable.

The court shall set a hearing and the appropriate notice for interested persons to show cause why the ~~commission's~~ commissioner's report should not be approved and credit-sale contract indemnity fund payments and distribution of the trust fund be made as proposed, and payments from the credit-sale contracts be made as proposed. Copies of the report and notice of hearing must be served by the ~~commission~~ commissioner by certified mail upon the warehouseman and the surety and by ordinary mail upon all persons having claims filed with the ~~commission~~ commissioner.

Any aggrieved person having an objection to the ~~commission's~~commissioner's report shall file the objection with the court and serve copies on the ~~commission~~commissioner, the warehouseman, and the surety at least twenty days before the hearing. Failure to file and serve objections in the time set is a waiver of the objection.

Following hearing, the court shall approve or modify the report and issue an order directing payment of the necessary bond proceeds, distribution of the trust fund, payments from the credit-sale contract indemnity fund, and discharge of the ~~commission~~commissioner from ~~its~~the commissioner's trust.

**SECTION 64. AMENDMENT.** Section 60-04-10 of the North Dakota Century Code is amended and reenacted as follows:

**60-04-10. Filing fees and court costs - Expenses.**

In any action in a state court in this state, the ~~commission shall~~commissioner may not be required to pay any filing fee or other court costs or disbursements if the fees accrue to the county or to the state. The attorney general may employ outside legal services to assist the ~~commission~~commissioner in the prosecution of such action as in the attorney general's judgment may be necessary and the ~~commission~~commissioner shall deduct the expenses of the same from the trust fund and the credit-sale contract indemnity fund as appropriate. All other necessary expenses incurred by the ~~commission~~commissioner in carrying out the provisions of this chapter, including adequate insurance to protect the ~~commission~~commissioner, ~~its~~the commissioner's employees, and others engaged in carrying out the provisions of this chapter, must be reimbursed to the ~~commission~~commissioner from the trust fund and credit-sale indemnity funds as appropriate.

**SECTION 65. AMENDMENT.** Section 60-05-01 of the North Dakota Century Code is amended and reenacted as follows:

**60-05-01. Public elevators and warehouses - ~~Commission~~Commissioner may require uniform accounting system.**

The ~~public service~~ ~~commission~~commissioner may require every association, copartnership, corporation, or limited liability company conducting a public elevator or warehouse in this state to adopt a uniform accounting system established by ~~such~~ ~~commission~~the commissioner.

**SECTION 66. AMENDMENT.** Section 60-05-02 of the North Dakota Century Code is amended and reenacted as follows:

**60-05-02. Examination of financial accounts of elevator or warehouse by competent examiner - Request by percentage of stockholders.**

The ~~commission~~commissioner may install, and ~~whenever~~if requested by not less than fifteen percent of the partners, stockholders, or members of any association, copartnership, corporation, or limited liability company conducting such public elevator or warehouse, shall install, the uniform system of accounting mentioned in section 60-05-01. The ~~commission~~commissioner ~~on its~~the commissioner's own motion may, or on request of the required percentage of partners, stockholders, or members, the ~~commission~~commissioner shall, send a competent examiner to examine the books and financial accounts of ~~such~~the elevator or warehouse. ~~Whenever~~if a request for the examination of the accounts of any association, copartnership, corporation, or limited liability company has been made to the ~~commission~~commissioner, as provided for in this section, ~~an~~ ~~examination thereafter shall~~subsequent examinations must be made at least once every year until the ~~commission shall be~~commissioner is requested to discontinue such examination by resolution adopted by the partners, stockholders, or members at any annual meeting. ~~When~~if such examination has been made, the examiner shall report immediately the results ~~thereof~~of the examination to the president and the secretary of such association, copartnership, corporation, or limited liability company and to the ~~commission~~commissioner.

**SECTION 67. AMENDMENT.** Section 60-05-03 of the North Dakota Century Code is amended and reenacted as follows:

**60-05-03. Certificate issued by ~~commission~~ commissioner after its examination of accounts.**

If the ~~commission~~ commissioner is satisfied from ~~its~~ the commissioner's examination that the person, association, copartnership, corporation, or limited liability company examined is solvent and ~~its~~ the method of doing business is such as is likely to be beneficial to all of its members or persons interested therein, the ~~commission~~ commissioner shall issue a certificate, countersigned by the examiner, to the agent or manager. Such certificate ~~shall~~ must be kept posted conspicuously in the warehouse or elevator of such person, association, copartnership, corporation, or limited liability company and ~~shall~~ must state:

1. That said methods of doing business are sound.
2. That such person, association, copartnership, corporation, or limited liability company is solvent.
3. That its books and accounts are kept properly.

If the affairs and methods of doing business of such person, association, copartnership, corporation, or limited liability company ~~shall~~ do not seem sound or satisfactory to the ~~commission~~, ~~it~~ commissioner, the commissioner shall issue a certificate or statement, countersigned by the person who made the examination, stating in what particular and in what respect the business methods practiced or methods of keeping books and accounts of such person, association, copartnership, corporation, or limited liability company are not deemed safe. The ~~commission~~ commissioner shall mail a copy of ~~said~~ the statement or certificate to each of such shareholders or stockholders as may have requested the ~~commission~~ commissioner to make such examination. The ~~commission~~ commissioner also shall send a copy ~~thereof~~ to the president and the secretary of such association, copartnership, corporation, or limited liability company.

**SECTION 68. AMENDMENT.** Section 60-05-04 of the North Dakota Century Code is amended and reenacted as follows:

**60-05-04. Fees of examiner for installing and examining accounting system.**

For making installation of a uniform accounting system and examining the financial accounts of an elevator or public warehouse, an association, copartnership, corporation, or limited liability company shall pay the examiner a reasonable fee, as determined by the ~~commission~~ commissioner. In case any such association, copartnership, corporation, or limited liability company shall wrongfully refuse or neglect to pay such fees, then the ~~commission~~ commissioner may cancel the license to do business. All such fees shall be paid into the state treasury. The expenses incurred by the examiner under the provisions of this chapter ~~shall~~ must be paid out of the appropriations made by the legislative assembly for this purpose and such expenses ~~shall~~ must be audited and paid in the same manner as other expenses are audited and paid.

**SECTION 69. AMENDMENT.** Section 60-06-05 of the North Dakota Century Code is amended and reenacted as follows:

**60-06-05. Sidetracks to be provided ~~by railroad company on its land~~.**

Every railroad company or corporation organized under the laws of this state or doing business ~~therein~~ in this state, upon application in writing, shall provide reasonable sidetrack facilities and running connections between its main track and elevators and warehouses upon or contiguous to its right of way at such stations. Every such railroad corporation shall permit connections to be made and maintained in a reasonable manner with its sidetracks to and from any warehouse or elevator

without reference to its size, cost, or capacity, ~~whereif~~ grain or potatoes are or may be stored. The railroad company is not required to construct or furnish any sidetracks except upon its own land or right of way. Such elevators and warehouses may not be constructed within one hundred feet [30.48 meters] of any existing structure and must be at safe fire distance from the station buildings so as not to conflict essentially with the safe and convenient operation of the road. ~~Whereif~~ stations are ten miles [16.09 kilometers] or more apart the railroad company, ~~whenif~~ required so to do by the ~~public-service-commissioner~~ commissioner, shall construct and maintain a sidetrack for the use of shippers between such stations.

**SECTION 70. AMENDMENT.** Section 60-06-06.1 of the North Dakota Century Code is amended and reenacted as follows:

**60-06-06.1. Determination - Appropriation.**

Any party may petition the ~~public-service-commissioner~~ commissioner to determine rights governed under this chapter. The ~~commissioner~~ commissioner shall determine the matter in accordance with chapter 28-32 and the parties' rights of appeal are as limited by chapter 28-32. The value of a leaseholder's improvements may not be considered in determining a reasonable lease rate or selling price. The parties to such a proceeding shall pay the expenses of the proceeding, as determined by the ~~commissioner~~ commissioner, directly to the entities owed. The ~~commissioner~~ commissioner may adopt rules to carry out this section.

**SECTION 71. AMENDMENT.** Section 60-10-01 of the North Dakota Century Code is amended and reenacted as follows:

**60-10-01. Credit-sale contracts - Assessment on grain - Submission of assessment.**

An assessment at the rate of two-tenths of one percent is placed on the value of all grain sold in this state under a credit-sale contract, as provided for in sections 60-02-19.1 and 60-02.1-14. The licensee purchasing the grain shall note the assessment on the contract required under sections 60-02-19.1 and 60-02.1-14 and shall deduct the assessment from the purchase price payable to the seller. The licensee shall submit any assessment collected under this section to the ~~public-service-commissioner~~ commissioner no later than thirty days after each calendar quarter. The ~~commissioner~~ commissioner shall deposit the assessments received under this section in the credit-sale contract indemnity fund.

**SECTION 72. AMENDMENT.** Section 60-10-02 of the North Dakota Century Code is amended and reenacted as follows:

**60-10-02. Credit-sale contract indemnity fund - Creation - Continuing appropriation.**

There is created in the state treasury the credit-sale contract indemnity fund. The state treasurer shall invest available moneys in the fund in accordance with section 21-10-07 and in cooperation with the ~~public-service-commissioner~~ commissioner and shall deposit any income earned through the investments into the fund. The fund and earnings of the fund are appropriated to the ~~public-service-commissioner~~ commissioner on a continuing basis to be used exclusively to carry out the intent and purpose of this chapter.

**SECTION 73. AMENDMENT.** Section 60-10-03 of the North Dakota Century Code is amended and reenacted as follows:

**60-10-03. Credit-sale contract indemnity fund - Suspension of assessment.**

At the end of the calendar quarter in which the credit-sale contract indemnity fund reaches a level of six million dollars, the ~~public-service-commissioner~~ commissioner shall suspend collection of the assessment required by this chapter. If after suspension of collection the balance in the fund is less than

three million dollars, the ~~public service commissioner~~ commissioner shall require collection of the assessment.

**SECTION 74. AMENDMENT.** Section 60-10-05 of the North Dakota Century Code is amended and reenacted as follows:

**60-10-05. Credit-sale contract indemnity fund - Availability of money.**

Upon the insolvency of a licensed warehouse or a grain buyer and a declaration that the ~~public service commissioner~~ commissioner serve as the trustee, the ~~public service commissioner~~ commissioner shall make the proceeds of the credit-sale contract indemnity fund available for use in meeting the licensee's obligations with respect to the reimbursement of any person who sold grain to the licensee under a credit-sale contract and who was not fully compensated in accordance with the contract.

**SECTION 75. AMENDMENT.** Section 60-10-07 of the North Dakota Century Code is amended and reenacted as follows:

**60-10-07. Credit-sale contract indemnity fund - Prorated claims.**

If claims for indemnity payments from the credit-sale contract indemnity fund exceed the amount in the fund, the ~~public service commissioner~~ commissioner shall prorate the claims and pay the prorated amounts. As future assessments are collected, the ~~public service commissioner~~ commissioner shall continue to forward indemnity payments to each eligible person until the person receives the maximum amount payable in accordance with this chapter.

**SECTION 76. AMENDMENT.** Section 60-10-08 of the North Dakota Century Code is amended and reenacted as follows:

**60-10-08. Reimbursement for later insolvencies.**

The ~~public service commissioner~~ commissioner shall ensure that all persons eligible for payment from the indemnity fund as a result of an insolvency are fully compensated to the extent permitted by this chapter before any payments from the indemnity fund are initiated as a result of a later insolvency. The chronological order of insolvencies is determined by the date the ~~public service commissioner~~ commissioner is appointed trustee under section 60-02.1-29 or 60-04-03.

**SECTION 77. AMENDMENT.** Section 60-10-09 of the North Dakota Century Code is amended and reenacted as follows:

**60-10-09. Credit-sale contract indemnity fund - Reimbursement for administrative expenses.**

Any expense incurred by the ~~public service commissioner~~ commissioner in administering the credit-sale contract indemnity fund must be reimbursed from the fund before any other claim for indemnity is paid.

**SECTION 78. AMENDMENT.** Section 60-10-10 of the North Dakota Century Code is amended and reenacted as follows:

**60-10-10. Credit-sale contract indemnity fund assessment - Failure to collect assessment - Penalty.**

Any person who knowingly or intentionally refuses or fails to collect the assessment required under this chapter from producers or to submit any assessment collected from producers to the ~~public service commissioner~~ commissioner for deposit in the credit-sale contract indemnity fund is guilty of a class A misdemeanor.

**SECTION 79. AMENDMENT.** Section 60-10-11 of the North Dakota Century Code is amended and reenacted as follows:



**60-10-11. Revocation and suspension.**

The ~~commission~~commissioner may suspend or revoke the license of any licensee for cause upon notice and hearing for violation of this chapter.

**SECTION 80. AMENDMENT.** Section 60-10-12 of the North Dakota Century Code is amended and reenacted as follows:

**60-10-12. Cease and desist.**

If a person engages in an activity or practice that is contrary to this chapter or rules adopted by the ~~commission~~commissioner, the ~~commission~~commissioner, upon ~~its~~the commissioner's own motion without complaint and with or without a hearing, may order the person to cease and desist from the activity until further order of the ~~commission~~commissioner. The order may include any corrective action up to and including license suspension. A cease and desist order must be accompanied by a notice of opportunity to be heard on the order within fifteen days of the issuance of the order.

**SECTION 81. AMENDMENT.** Section 60-10-14 of the North Dakota Century Code is amended and reenacted as follows:

**60-10-14. Subrogation.**

Money paid from the credit-sale contract indemnity fund in satisfaction of a valid claim constitutes a debt obligation of the person against whom the claim was made. The ~~commission~~commissioner may take action on behalf of the fund against a person to recover the amount of payment made, plus costs and attorney's fees. Any recovery for reimbursement to the fund must include interest computed at the weight average prime rate charged by the Bank of North Dakota. Upon payment of a claim from the credit-sale contract indemnity fund, the claimant shall subrogate ~~its~~the interest of the claimant, if any, to the ~~commission~~commissioner in a cause of action against all parties, to the amount of the loss that the claimant was reimbursed by the fund.

**SECTION 82. AMENDMENT.** Section 60-10-15 of the North Dakota Century Code is amended and reenacted as follows:

**60-10-15. Unlicensed facility-based grain buyer.**

This chapter also applies to a facility-based grain buyer, as defined in section 60-02.1-01, which is licensed under the United States Warehouse Act but which does not possess a state grain buyer license. The ~~commission~~commissioner has the duty and power to examine and inspect, during regular business hours, all books, documents, and records related to collections and remittances pertaining to the credit-sale contract indemnity fund. In the case of insolvency, credit-sale contract payments to valid claimants must be reduced by an amount equal to the credit-sale contract indemnity payments received from payments administered by the United States department of agriculture."

Renumber accordingly

**MESSAGE TO THE HOUSE FROM THE SENATE (SHANDA MORGAN, SECRETARY)**

**MR. SPEAKER:** The Senate does not concur in the House amendments to SB 2019, and the President has appointed as a conference committee to act with a like committee from the House on:

**SB 2019:** Sens. Sorvaag; Bekkedahl; Mathern

**MESSAGE TO THE SENATE FROM THE HOUSE (BUELL J. REICH, CHIEF CLERK)**

**MR. PRESIDENT:** The House has appointed as a conference committee to act with a like committee from the Senate on:

**SB 2004:** Reps. Brandenburg; Howe; Mock

**SB 2321:** Reps. Bellew; Schatz; D. Ruby

**MESSAGE TO THE SENATE FROM THE HOUSE (BUELL J. REICH, CHIEF CLERK)**

**MR. PRESIDENT:** The House does not concur in the Senate amendments to HB 1002, HB 1004, HB 1006, HB 1007, HB 1008, HB 1009, HB 1010, HB 1012, HB 1013, HB 1019, and HB 1022, and the Speaker has appointed as a conference committee to act with a like committee from the Senate on:

**HB 1002:** Reps. Bellew; Beadle; Mock

**HB 1004:** Reps. Kreidt; Meier; Holman

**HB 1006:** Reps. Beadle; Kempenich; Mock

**HB 1007:** Reps. Kreidt; B. Anderson; Holman

**HB 1008:** Reps. Howe; Beadle; Bellew

**HB 1009:** Reps. Schmidt; Martinson; Nathe

**HB 1010:** Reps. Meier; Schobinger; Holman

**HB 1012:** Reps. Brandenburg; Vigesaa; Howe

**HB 1013:** Reps. Kempenich; Bellew; Mock

**HB 1019:** Reps. Schatz; Monson; Boe

**HB 1022:** Reps. Howe; Beadle; Mock

**MESSAGE TO THE HOUSE FROM THE SENATE (SHANDA MORGAN, SECRETARY)**

**MR. SPEAKER:** The Senate has appointed as a conference committee to act with a like committee from the House on:

**HB 1157:** Sens. J. Roers; Kreun; Piepkorn

**HB 1287:** Sens. Rust; Schaible; Oban

**HB 1346:** Sens. Schaible; Elkin; Marcellais

**HB 1359:** Sens. J. Lee; Anderson; K. Roers

**HB 1461:** Sens. Davison; Schaible; Oban

**HB 1531:** Sens. Rust; Schaible; Oban

**MESSAGE TO THE HOUSE FROM THE SENATE (SHANDA MORGAN, SECRETARY)**

**MR. SPEAKER:** The Senate has adopted the conference committee report on: SB 2035.

**MESSAGE TO THE HOUSE FROM THE SENATE (SHANDA MORGAN, SECRETARY)**

**MR. SPEAKER:** The Senate has adopted the conference committee report and subsequently passed: SB 2078.

**MESSAGE TO THE HOUSE FROM THE SENATE (SHANDA MORGAN, SECRETARY)**

**MR. SPEAKER:** The Senate has adopted the conference committee report, subsequently passed, and the emergency clause carried: SB 2245.

**MESSAGE TO THE HOUSE FROM THE SENATE (SHANDA MORGAN, SECRETARY)**

**MR. SPEAKER:** Your signature is respectfully requested on: SB 2041.

**MESSAGE TO THE SENATE FROM THE HOUSE (BUELL J. REICH, CHIEF CLERK)**

**MR. PRESIDENT:** The Speaker has signed: SB 2041.

**MESSAGE TO THE HOUSE FROM THE SENATE (SHANDA MORGAN, SECRETARY)**

**MR. SPEAKER:** The President has signed: SB 2011, SB 2041, SCR 4016.

**DELIVERY OF ENROLLED BILLS AND RESOLUTIONS**

The following bills were delivered to the Governor for approval on April 10, 2019: SB 2011, SB 2041.

**COMMUNICATION FROM GOVERNOR DOUG BURGUM**

This is to inform you that on April 9, 2019, I have signed the following: SB 2328.

**DELIVERY OF ENROLLED BILLS AND RESOLUTIONS**

The following resolution was delivered to the Secretary of State for filing on April 10, 2019: SCR 4016.

**MOTION**

**SEN. KLEIN MOVED** that the Senate be on the Fourth, Fifth, Thirteenth, and Sixteenth orders of business and at the conclusion of those orders, the Senate stand adjourned until 1:00 p.m., Thursday, April 11, 2019, which motion prevailed.

**REPORT OF STANDING COMMITTEE**

**HB 1015, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1015 was placed on the Sixth order on the calendar.

Page 1, line 2, after the semicolon insert "to amend and reenact subsection 5 of section 12-47-36 of the North Dakota Century Code, relating to disclosure of confidential records;"

Page 1, line 3, replace "for a legislative management study; and" with "a statement of legislative intent; to provide for a study;"

Page 1, line 3, after "report" with insert "; to provide for an exemption; and to declare an emergency"

Page 1, replace lines 13 through 18 with:

"Adult services	\$220,757,448	\$30,293,935	\$251,051,383
Youth services	<u>30,740,509</u>	<u>1,545,821</u>	<u>32,286,330</u>
Total all funds	\$251,497,957	\$31,839,756	\$283,337,713
Less estimated income	<u>37,161,253</u>	<u>8,038,937</u>	<u>45,200,190</u>
Total general fund	\$214,336,704	\$23,800,819	\$238,137,523
Full-time equivalent positions	845.29	88.30	933.59"

Page 2, replace lines 12 through 17 with:

"Rough Rider industries building	0	1,140,000
James River correctional center minimum security facilities	0	2,390,334
Missouri River correctional center renovation	0	1,854,301
Gender-responsive services and facilities study	0	100,000
Electronic medical records system	935,907	0
Pipeline protest law enforcement support	500,000	0
Justice reinvestment initiative	<u>500,000</u>	<u>0</u>
Total all funds	\$2,102,907	\$8,482,585
Less estimated income	<u>2,102,907</u>	<u>5,076,001</u>
Total general fund	\$0	\$3,406,584"

Page 2, after line 21, insert:

**"SECTION 3. APPROPRIATION - 2017-19 BIENNIUM - WORKFORCE DEVELOPMENT - EXEMPTION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$3,000,000, or so much of the sum as may be necessary, to the department of corrections and rehabilitation to enhance vocational opportunities, educational opportunities, and workforce development for individuals sentenced to the department of corrections and rehabilitation, including individuals placed in contract housing, for the period beginning with the effective date of this Act, and ending June 30, 2019. The department of corrections and rehabilitation shall consult with the southwest multi-county correction center regarding potential providers of vocational opportunities, educational opportunities, and workforce development. The appropriation in this section is not subject to section 54-44.1-11 and any unexpended funds from the appropriation may be used for enhancing vocational opportunities, educational opportunities, and workforce development for individuals sentenced to the department of corrections and rehabilitation during the biennium beginning July 1, 2019, and ending June 30, 2021."

Page 2, line 23, replace "\$1,468,000" with "\$3,322,301"

Page 2, line 25, after the fourth comma insert "renovation of the Missouri River correctional center,"

Page 2, after line 26, insert:

**"SECTION 5. AMENDMENT.** Subsection 5 of section 12-47-36 of the North Dakota Century Code is amended and reenacted as follows:

5. Medical, psychological, or treatment records may be disclosed without prior application to the court to a public hospital or treatment facility, the department of human services, a community behavioral health program, a vocational rehabilitation program, a transitional living facility, or to a licensed private medical or treatment facility, when necessary for the evaluation, treatment, or care of a person who is or who has been in the custody of, or is or who has been under the supervision and management of, the adult services division of the department of corrections and rehabilitation.

**SECTION 6. DEPARTMENT OF CORRECTIONS AND REHABILITATION STUDY OF GENDER-RESPONSIVE SERVICES AND FACILITIES - REPORT.** The appropriation in section 1 of this Act includes \$100,000 from the general fund for the department of corrections and rehabilitation to study long-term gender-responsive correctional and rehabilitation facility and service needs during the 2019-20 interim. The department of corrections and rehabilitation, in consultation with representatives of the department of human services, judicial branch, tribal governments, and other private and public entities as determined by the department of corrections and rehabilitation, shall study gender-responsive facility and service needs of individuals sentenced to the department of corrections and rehabilitation. The study must include the preferable location of facilities, the service needs of individuals sentenced to the department of corrections and rehabilitation, and the impact on families of individuals sentenced to the department of corrections and rehabilitation. The department of corrections and rehabilitation may contract with consultants to assist in the study of gender-responsive correctional and rehabilitation facility and service needs and shall consider the results of the study in future appropriation requests. The department of corrections and rehabilitation shall report the results of its study to the legislative management by June 30, 2020.

**SECTION 7. LEGISLATIVE INTENT - CONTRACT HOUSING FOR STATE INMATES.** It is the intent of the sixty-sixth legislative assembly that the \$11,905,311 appropriated in section 1 of this Act to house inmates at the southwest multi-county correction center's correctional facility in New England during the 2019-21 biennium be applied to house male inmates or female inmates, as determined by the governor with the approval of the southwest multi-county correction center. The governor shall consult with the department of corrections and rehabilitation and the southwest multi-county correction center in making the determination. The governor shall also consider the potential for workforce training and work release in making the determination. If the southwest multi-county correction center does not approve the governor's determination by June 30, 2021, the department of corrections and rehabilitation may use the funding appropriated to house inmates at another facility.

**SECTION 8. LEGISLATIVE INTENT - JAMES RIVER CORRECTIONAL CENTER AND STATE HOSPITAL CAMPUS INFRASTRUCTURE STUDY.** It is the intent of the sixty-sixth legislative assembly that the \$175,000 appropriated in section 1 of this Act for a campus infrastructure study of the James River correctional center and the state hospital consider the potential for the placement of minimum security male inmates in current structures on the state hospital campus.

**SECTION 9. LEGISLATIVE INTENT - MINIMUM SECURITY FACILITY - JAMES RIVER CORRECTIONAL CENTER.** It is the intent of the sixty-sixth legislative assembly that any minimum security facilities on the campus of the James River correctional center and state hospital not be enclosed with a fence.

**SECTION 10. PRETRIAL SERVICES - PILOT PROGRAM - REPORT.** The appropriation in section 1 of this Act includes \$755,034 and seven full-time equivalent positions for pretrial services. The department of corrections and

rehabilitation may establish a pretrial services program as a pilot project in one or more judicial districts of the state during the biennium beginning July 1, 2019, and ending June 30, 2021. The department of corrections and rehabilitation and the judicial branch shall collaborate to develop guidelines and procedures for the administration of pretrial services for the district courts. The department of corrections and rehabilitation and the judicial branch shall provide a report regarding the process and outcome measures of the pretrial services program to the sixty-seventh legislative assembly."

Page 3, line 1, after "program" insert "for individuals in custody or under the supervision of the department of corrections and rehabilitation or for the continuation of programming, when necessary, for individuals no longer in custody or under the supervision of the department,"

Page 3, line 15, remove "The provisions of chapters 48-01.1 and 54-44.7"

Page 3, remove line 16

Page 3, line 17, replace "services for construction and renovation" with "Sections 54-01-05.2 and 54-01-05.5"

Page 3, remove lines 18 through 31

Page 4, replace lines 1 through 11 with:

**"SECTION 14. CONVEYANCE OF LAND AND BUILDINGS - 12 WEST AND 16 WEST - EXEMPTION.** The state of North Dakota, by and through the department of human services, may convey ownership of the 12 west and 16 west buildings and surrounding real property on the grounds of the state hospital, to the department of corrections and rehabilitation. Sections 54-01-05.2 and 54-01-05.5 do not apply to this conveyance.

**SECTION 15. EMERGENCY.** The appropriation of \$175,000 from the strategic investment and improvements fund for the James River correctional center and state hospital campus infrastructure study in section 1, the appropriation of \$100,000 from the general fund for a gender-responsive services and facilities study in section 1, and sections 3, 6, and 8 of this Act are declared to be an emergency measure."

ReNUMBER accordingly

#### STATEMENT OF PURPOSE OF AMENDMENT:

#### House Bill No. 1015 - Department of Corrections and Rehab. - Senate Action

	Base Budget	House Version	Senate Changes	Senate Version
Adult services	\$220,757,448	\$236,440,488	\$14,610,895	\$251,051,383
Youth services	30,740,509	32,095,945	190,385	32,286,330
Total all funds	\$251,497,957	\$268,536,433	\$14,801,280	\$283,337,713
Less estimated income	37,161,253	42,139,308	3,060,882	45,200,190
General fund	\$214,336,704	\$226,397,125	\$11,740,398	\$238,137,523
FTE	845.29	899.79	33.80	933.59

#### Department 530 - Department of Corrections and Rehab. - Detail of Senate Changes

	Adjusts Funding for Salary and Benefit Increases <sup>1</sup>	Adds FTE Positions and Related Operating Expenses <sup>2</sup>	Adjusts Funding for Transitional Services <sup>3</sup>	Adds One-Time Funding for Minimum Security Facilities <sup>4</sup>	Adds One-Time Funding for a Study <sup>5</sup>	Adds One-Time Funding for Female Facility Renovations <sup>6</sup>
Adult services	\$1,411,771	\$6,115,122	\$1,599,367	\$2,390,334	\$100,000	\$1,854,301
Youth services	190,385					
Total all funds	\$1,602,156	\$6,115,122	\$1,599,367	\$2,390,334	\$100,000	\$1,854,301
Less estimated income	66,581	0	0	0	0	1,854,301
General fund	\$1,535,575	\$6,115,122	\$1,599,367	\$2,390,334	\$100,000	\$0
FTE	0.00	33.80	0.00	0.00	0.00	0.00

	Adds One-Time Funding for a Rough Rider Industries Building <sup>7</sup>	Total Senate Changes
Adult services	\$1,140,000	\$14,610,895
Youth services		190,385
<hr/>		
Total all funds	\$1,140,000	\$14,801,280
Less estimated income	1,140,000	3,060,882
General fund	\$0	\$11,740,398
<hr/>		
FTE	0.00	33.80

<sup>1</sup> Funding is adjusted to provide employee salary increases of 2 percent on July 1, 2019, with a minimum monthly increase of \$120 and a maximum monthly increase of \$200, and 2.5 percent on July 1, 2020. The House provided funding for a 2 percent salary increase on July 1, 2019, and a 2 percent salary increase on July 1, 2020.

<sup>2</sup> The following FTE positions and related funding are added:

	FTE	General Fund
Missouri River Correctional Center treatment positions	8.60	\$1,891,810
James River Correctional Center minimum security positions	<u>25.20</u>	<u>4,223,312</u>
Total	33.80	\$6,115,122

<sup>3</sup> Funding is adjusted for transitional services, including the addition of \$549,626 for the Bismarck Transition Center contract and the restoration of \$1,049,741 removed by the House.

<sup>4</sup> One-time funding is added for facilities for minimum security inmates at the James River Correctional Center. The funding may be used to renovate facilities transferred from the State Hospital to the Department of Corrections and Rehabilitation or for the lease or purchase of two temporary housing units for use as minimum security housing at the James River Correctional Center.

<sup>5</sup> One-time funding of \$100,000 from the general fund is added for a Department of Corrections and Rehabilitation study of gender-responsive services and facilities.

<sup>6</sup> One-time funding of \$1,854,301 from the strategic investment and improvements fund is added to convert the Missouri River Correctional Center into a female correctional and rehabilitation facility.

<sup>7</sup> One-time funding from the Rough Rider Industries fund is added for the construction of a Rough Rider Industries building at the James River Correctional Center.

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### House Bill No. 1015 - Other Changes - Senate Action

This amendment also:

- Adds a section to provide a 2017-19 biennium appropriation of \$3 million from the general fund to the Department of Corrections and Rehabilitation to enhance vocational and education opportunities for inmate workforce development.
- Adjusts the section identifying the amount appropriated in Section 1 from the strategic investment and improvements fund.
- Adds a section to amend North Dakota Century Code Section 12-47-36(5) relating to disclosure of confidential records.
- Adds a section to provide for a Department of Corrections and Rehabilitation study of gender-responsive services and facilities.
- Adds a section to provide legislative intent that the Governor determine the location of male and female inmates in consultation with the Department of Corrections and Rehabilitation and the Southwest Multi-County Correction Center.
- Adds a section to provide legislative intent that the campus infrastructure study of the James River Correctional Center and the State Hospital consider the potential for placement of minimum security male inmates in current structures on the campus.

- Adds a section to provide legislative intent that no fence be placed around facilities used for minimum security male inmates.
- Adds a section to provide for the establishment of a pretrial services pilot project.
- Adjusts the section providing carryover authority relating to the free through recovery program to allow the funding to be used for the continuation of programming for individuals no longer in the custody or under the supervision of the Department of Corrections and Rehabilitation.
- Adds a section to allow for the conveyance of the West 12 and West 16 buildings from the State Hospital to the Department of Corrections and Rehabilitation for use as a minimum security facility.

#### **REPORT OF STANDING COMMITTEE**

**HB 1365, as engrossed and amended: Appropriations Committee (Sen. Holmberg, Chairman)** recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1365, as amended, was placed on the Fourteenth order on the calendar.

#### **REPORT OF STANDING COMMITTEE**

**HB 1402, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman)** recommends **DO NOT PASS** (12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1402 was placed on the Fourteenth order on the calendar.

#### **REPORT OF CONFERENCE COMMITTEE**

**SB 2040, as engrossed:** Your conference committee (Sens. Cook, Kannianen, Patten and Reps. B. Koppelman, Toman, Eidson) recommends that the **SENATE ACCEDE** to the House amendments as printed on SJ page 1053 and place SB 2040 on the Seventh order.

Engrossed SB 2040 was placed on the Seventh order of business on the calendar.

The Senate stood adjourned pursuant to Senator Klein's motion.

**Shanda Morgan, Secretary**

