

# North Dakota Library Law



*North Dakota  
State Library*

2023

# North Dakota State Library

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# **LAWS PERTAINING TO OBSCENITY**

## **CHAPTER 12.1-27.1- Obscenity Control**

### **12.1-27.1-01. Obscenity - Definitions - Dissemination - Classification of offenses.**

1. A person is guilty of a class C felony if, knowing of its character, the person disseminates obscene material or if the person produces, transports, or sends obscene material with intent that it be disseminated.
2. A person is guilty of a class C felony if the person presents or directs an obscene performance for pecuniary gain or participates in any portion of a performance which contributes to the obscenity of the performance as a whole.
3. A person is guilty of a class C felony if the person, as owner or manager of an establishment licensed under section 5-02-01, permits an obscene performance in the establishment. A person is guilty of a class C felony if that person participates, whether or not for compensation, in an obscene performance in an establishment licensed under section 5-02-01.
4. a. In addition to the penalty provided in subsection 1, 2, or 3, any person who violates subsection 1, 2, or 3 in the course of a commercial or for-profit activity or transaction in which the offender had or shared ownership, control, managerial responsibility, or a financial interest other than wages is subject to the following penalty:
  1. For an individual, a fine not to exceed ten thousand dollars; or
  2. For a corporation, limited liability company, association, partnership, or other legal entity, a fine not to exceed twenty-five thousand dollars.
- b. In addition to the penalty provided in subsection 1, 2, or 3, the court shall impose the following penalty upon the conviction of a person or entity described in subdivision a for a second or subsequent offense under subsection 1, 2, or 3:
  1. For an individual, a fine not to exceed fifty thousand dollars; or

2. For a corporation, limited liability company, association, partnership, or other legal entity, a fine not to exceed one hundred thousand dollars.
3. As used in this chapter, the terms “obscene material” and “obscene performance” mean material or a performance which:
  - a. Taken as a whole, the average person, applying contemporary North Dakota standards, would find predominantly appeals to a prurient interest;
  - b. Depicts or describes in a patently offensive manner sexual conduct, whether normal or perverted; and
  - c. Taken as a whole, the reasonable person would find lacking in serious literary, artistic, political, or scientific value.

Whether material or a performance is obscene must be judged with reference to ordinary adults, unless it appears from the character of the material or the circumstances of its dissemination that the material or performance is designed for minors or other specially susceptible audience, in which case the material or performance must be judged with reference to that type of audience.

4. As used in this chapter, “disseminate” means to sell, lease, rent, advertise, broadcast, transmit, exhibit, or distribute for pecuniary gain. “Disseminate” includes any transmission of visual material shown on a cable television system, whether or not accompanied by a soundtrack, and any sound recording played on a cable television system.
5. As used in this chapter, the term “material” means any physical object, including, but not limited to, any type of book, sound recording, film, or picture used as a means of presenting or communicating information, knowledge, sensation, image, or emotion to or through a human being’s receptive senses.
6. As used in this chapter, the term “patently offensive” means so offensive on its face as to affront the contemporary North Dakota standards of decency.
7. As used in this chapter, the term “performance” means any play, dance, or other exhibition presented before an audience.

8. As used in this chapter, the term “prurient interest” means a voyeuristic, lascivious, degrading, shameful, or morbid interest in nudity, sex, or excretion that goes substantially beyond customary limits of candor in description or representation of those matters.
9. As used in this chapter, the term “sexual conduct” means actual or simulated:
  - a. Sexual intercourse;
  - b. Sodomy;
  - c. Sexual bestiality;
  - d. Masturbation;
  - e. Sadomasochistic abuse;
  - f. Excretion; or
  - g. Lewd exhibition of the male or female genitals.

As used in this subsection, the term “sodomy” means contact between the penis and the anus, the mouth and the penis, the mouth and the vulva, or the mouth and the anus. As used in this subsection, the term “sadomasochistic abuse” means a depiction or description of flagellation or torture by or upon a person who is nude or clad in undergarments or in a bizarre or revealing costume; or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.

10. As used in this chapter, the term “book” means any book, magazine, pamphlet, newspaper, or other article made out of paper and containing printed, typewritten, or handwritten words.
11. As used in this chapter, “sexually expressive image” means a photograph or visual representation that exhibits a nude or partially denuded human figure, as defined in section 12.1-27.1-03.1, or sexual conduct.

### **12.1-27.1-02. Promoting obscenity to minors - Definitions.**

As used in this section and in section 12.1-27.1-03:

1. “Promote” means to produce, direct, manufacture, issue, sell, lend, mail, publish, distribute, exhibit, or advertise.

2. "Harmful to minors" means that quality of any description or representation, in whatever form of sexual conduct or sexual excitement, when such description or representation:
  - a. Considered as a whole, appeals to the prurient sexual interest of minors;
  - b. Is patently offensive to prevailing standards in the adult community in North Dakota as a whole with respect to what is suitable material for minors; and
  - c. Considered as a whole, lacks serious literary, artistic, political, or scientific value for minors.
3. "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

**12.1-27.1-03. Promoting obscenity to minors - Minor performing in obscene performance - Classification of offenses.**

1. It is a class C felony for a person, knowing of its character, to recklessly promote to a minor any material or performance which is harmful to minors, or to admit a minor to premises where a performance harmful to minors is exhibited or takes place.
2. It is a class C felony to permit a minor to participate in a performance which is harmful to minors.

**12.1-27.1-03.1. Objectionable materials or performance - Display to minors - Definitions - Penalty.**

1. A person is guilty of a class B misdemeanor if he willfully displays at newsstands or any other business establishment frequented by minors, or where minors are or may be invited as a part of the general public, any photograph, book, paperback book, pamphlet, or magazine, the exposed cover or available content of which exploits, is devoted to, or is principally made up of depictions of nude or partially denuded human figures posed or presented in a manner to exploit sex, lust, or perversion for commercial gain.

2. As used in this section:

- a. "Nude or partially denuded human figures" means less than completely and opaquely covered human genitals, pubic regions, female breasts or a female breast, if the breast or breasts are exposed below a point immediately above the top of the areola, or human buttocks; and includes human male genitals in a discernibly turgid state even if completely and opaquely covered.
- b. "Where minors are or may be invited as a part of the general public" includes any public roadway or public walkway.
- c. The above shall not be construed to include a bona fide school, college, university, museum, public library, or art gallery.

**12.1-27.1-03.2. Exhibition of X-rated motion picture in unscreened outdoor theater - Penalty.**

Any person who, knowing of its character, exhibits any motion picture rated X by the motion picture association of America in any outdoor theater where the screen is visible beyond the limits of the theater audience area, so that the motion picture may be seen and its content or character distinguished by normal unaided vision by a minor viewing it from beyond the limits of the theater audience area, is guilty of a class B misdemeanor.

**12.1-27.1-03.3. Creation, possession, or dissemination of sexually expressive images prohibited - Exception.**

- 1. A person is guilty of a class A misdemeanor if, knowing of its character and content, that person:
  - a. Without written consent from each individual who has a reasonable expectation of privacy in the image, surreptitiously creates or willfully possesses a sexually expressive image that was surreptitiously created; or
  - b. Distributes or publishes, electronically or otherwise, a sexually expressive image with the intent to cause emotional harm or humiliation to any individual depicted in the sexually expressive image who has a reasonable expectation of privacy in the image, or after being given

notice by an individual or parent or guardian of the individual who is depicted in a sexually expressive image that the individual, parent, or guardian does not consent to the distribution or publication of the sexually expressive image.

2. A person is guilty of a class B misdemeanor if, knowing of its character and content, that person acquires and knowingly distributes any sexually expressive image that was created without the consent of the subject of the image.
3. This section does not authorize any act prohibited by any other law. If the sexually expressive image is of a minor and possession does not violate section 12.1-27.2-04.1, a parent or guardian of the minor may give permission for a person to possess or distribute the sexually expressive image.
4. This section does not apply to any book, photograph, video recording, motion picture film, or other visual representation sold in the normal course of business through wholesale or retail outlets that possess a valid sales tax permit or used by an attorney, attorney's agent, or any other person obtaining evidence for a criminal investigation or pending civil action, or by a medical professional or a peace officer acting within that individual's scope of employment.

**12.1-27.1-03.5. Public libraries prohibited from maintaining explicit sexual material - Report**

1. As used in this section:
  - a. "Explicit sexual material" means any material which:
    - (1) Taken as a whole, appeals to the prurient interest of minors;
    - (2) Is patently offensive to prevailing standards in the adult community in North Dakota as a whole with respect to what is suitable material for minors; and
    - (3) Taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.
  - b. "Public library" means a library established under chapter 40-38.
2. A public library may not maintain in its children's collection inventory books that contain explicit sexual material.

3. By January 1, 2024, each public library shall develop a policy and process for reviewing library collections to ensure conformance with the requirements of this section. The policy must include a procedure:
  - a. For the removal or relocation of explicit sexual material in the public library;
  - b. For the development of a book collection that is appropriate for the age and maturity levels of the individuals who may access the materials, and which is suitable for, and consistent with, the purpose of the library;
  - c. For the public library to receive, evaluate, and respond to a request from an individual regarding the removal or relocation of one or more of the books or other materials in the library collection containing explicit sexual material; and
  - d. To periodically review the library collection to ensure the library collection does not contain explicit sexual material in the children's collection.
4. Each public library shall provide a compliance report to the legislative management before May 1, 2024, on the implementation of collection development and relocation of materials policies as required by this section and to ensure sufficient compliance with this section.

**12.1-27.1-11. Exceptions to criminal liability.**

Sections 12.1-27.1-01 and 12.1-27.1-03 shall not apply to the possession or distribution of material in the course of law enforcement, judicial, or legislative activities; or to the possession of material by a bona fide school, college, university, museum, or public library for limited access for educational research purposes carried on at such an institution by adults only. Sections 12.1-27.1-01 and 12.1-27.1-03 shall also not apply to a person who is returning material, found to be obscene, to the distributor or publisher initially delivering it to the person returning it.

## **12.1-27.1-12. State pre-emption of local laws regulating obscenity.**

This chapter is applicable throughout the state, and a political subdivision may not enact new, or enforce existing, ordinances or resolutions regulating or prohibiting the dissemination of obscene materials, or controlling obscene or adult-oriented performances, except ordinances authorized by section 5-02-09, section 58-03-11, chapter 11-33, or chapter 40-47.

### **12.1-27.2-04.1. Possession of certain materials prohibited.**

A person is guilty of a class C felony if, knowing of its character and content, that person knowingly possesses any motion picture, photograph, or other visual representation that includes sexual conduct by a minor.

### **12.1-27.2-05. Sexual performance by a minor - Affirmative defenses.**

It is an affirmative defense to a prosecution under this chapter that:

1. The defendant in good faith reasonably believed the person appearing in the performance was eighteen years of age or older, if the minor was in fact fifteen years of age or older; or
2. The material or performance involved was disseminated or presented for a bona fide medical, scientific, educational, religious, governmental, judicial, or other appropriate purpose by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, prosecutor, judge, or other person having a similar interest in the material or performance.

# **LAWS PERTAINING TO PUBLIC LIBRARIES**

## **CHAPTER 40-38- Public Libraries**

### **40-38-01. Public library and reading room - Establishment - Election.**

The governing body of any city or county upon petition of not less than fifty-one percent of the qualified electors of the city or county as determined by the total number of votes cast at the last general election or upon a majority vote of the qualified electors thereof voting on the question shall establish and maintain public library service within its geographic limits by means of a public library and reading room or other public library service, either singly or in cooperation with the state library, or with one or more cities or counties, or by participation in an approved state plan for rendering public library service under the Library Services and Construction Act [20 U.S.C. 351-358], and acts amendatory thereof. Such question shall be submitted to the qualified electors upon resolution of the governing body or upon the petition of not less than twenty-five percent of that number of qualified electors of the city or county that voted at the last general election, filed with the governing body not less than ninety days before the next regular election. Library service may be discontinued within any city or county by any of the methods by which library services may be established, except that once established, such service shall not be discontinued until after it has been in operation for at least five years from the date of establishment.

### **40-38-02. Library fund - Financial Report - Levy - Kept separate - Exemption for city levying tax - Increasing levy.**

1. For the purpose of establishing and maintaining public library service, the governing body of a municipality or county authorizing the same shall establish a library fund. The library fund shall consist of annually levying and causing to be collected as other taxes are collected a municipal or county tax not exceeding the limitations in subsection 6 of section 57-15-06.7 and subsection 4 of section 57-15-10 and any other moneys received for library purposes from federal, state, county, municipal, or private sources. In the year for which the levy is sought, a library board seeking approval of a property

tax levy under this chapter must file with the auditor of each participating municipality or county, at a time and in a format prescribed by the auditors, a financial report for the preceding calendar year showing the ending balances of each fund held for the library board during that year.

2. The city auditor or county treasurer shall establish and maintain the fund to account for library revenues and shall make payments from the fund for invoices that have been submitted and approved by the governing body of the library. In the case of a contract with another library for service delivery, the city auditor or county treasurer shall promptly transmit all funds received to the established library fund of the agency delivering service. On request of the city auditor or county treasurer and during an audit, the governing board of the library shall supply its records. The records must be provided on a timely basis. The fund may not revert to the governing body of the city or county at the end of any fiscal year. The fund must be used exclusively for the establishment and maintenance of public library service.
3. The governing board of the library may request annually from the governing body of a city or county a tax not exceeding the limitation in subsection 5 of section 57-15-10. Such tax may be levied by the governing body of a city or county.
4. If a county levies for county library service and a city levies a tax for public library service under this section the county tax levy within that city must be reduced so the total levy in that city does not exceed four mills. If the city has been totally exempted from a county library service levy under this section, the phrase "not less than fifty-one percent of the qualified electors of the city or county as determined by the total number of votes cast at the last general election" as stated in section 40-38-01 shall mean fifty-one percent of the total number of votes cast at the last general election in the county less the total number of votes cast at the last general election in the city. If an election on the question is held, the qualified electors of any city so exempted from the county library tax shall not be entitled to vote on the establishment or discontinuance of the county library service.

5. Upon motion of the governing body or upon petition of not less than twenty-five percent of the qualified electors in the last general election of any city, school district, township, or county, filed not less than sixty days before the next election, the governing body shall submit to the qualified electors at the next election the question of whether the governing body shall increase the mill levy a specified amount for public library service above the mill levy limitation set out in this section. The governing body may call a special election at any time for the purpose of voting on the question, and the election shall be called, conducted, and certified as are other elections in that political subdivision. Upon approval by sixty percent of the qualified electors voting in the election, the governing body shall increase the levy for public library service in the amount approved by the qualified electors.

**40-38-03. Board of directors - Appointment - Term of office - Compensation - Filling vacancies - Organization.**

1. The governing body of a municipality that has established a public library and reading room, or the board of county commissioners for a county library, shall appoint a board of five directors who must be residents of the municipality or county, as the case may be, to govern the library and reading room. One member of the governing body of the municipality or designated representative must be a member of the board of directors of a municipal library, and must be a resident of the municipality that establishes and maintains the municipal library; and one member of the board of county commissioners or designated representative must be a member of the county board of directors.
2. The terms of office of the members of the first board of directors must be established so one member holds office for one year, two members hold office for two years, and two members hold office for three years. The members, at their first meeting, shall determine the length of their respective terms by lot. Thereafter, the number of directors required to fill expired terms must be appointed each year, and each director may hold office for a term of three years from the first day

of July in the year of appointment and until a successor has been appointed. No member of the board may serve for more than two consecutive terms, after which an interval of one year must elapse before the same member may be reappointed. All vacancies on the board of directors must be reported by the board to the governing body of the municipality or the board of county commissioners, as the case may be, and must be filled thereby. An appointment to fill an unexpired term may be for the residue of the term only.

3. The appointing authority shall establish the rate of compensation for directors and actual expenses incurred by directors may be reimbursed at the official reimbursement rates of the appointing authority.
4. Immediately after the appointment of its members, the board of directors shall meet and organize by electing a president. The governing board of a municipality or county establishing public library service may, in lieu of appointing a library board, contract directly with a library board established by another governing body of a municipality or county for the purpose of extending public library service.

#### **40-38-04. General powers and duties of board of directors.**

The board of directors shall have the following powers and duties:

1. To make and adopt such bylaws, rules, and regulations relating to the duties of the officers of the board as may be expedient and not inconsistent with the provisions of this chapter.
2. To make and adopt such bylaws, rules, and regulations for the management of the library and reading room as are expedient and not inconsistent with the provisions of this chapter.
3. To control, exclusively, the expenditures of all moneys collected for or contributed to the library fund.
4. To have the supervision, care, and custody of the library property, and of the rooms or buildings constructed, leased, or set apart for use of library purposes.

5. To contract to furnish library service and to receive library service from other counties, school districts, and cities of the state of North Dakota and adjoining states, and the state library.
6. To employ qualified personnel to administer the public library and dispense library services.

**40-38-05. Board of directors may purchase, build, or lease building for library - Library building fund - Public hearing required.**

The board of directors, with the approval of the city or county governing body, may build, lease, lease-purchase, or purchase an appropriate building for a library and purchase a site therefor. Such lease, purchase, or contract shall not be valid without the approval of the governing body of the city or county. Prior to any actions on such proposals, the governing body shall hold a public hearing on the proposals. Notice of the hearing shall be published at least once, not less than six days prior to the hearing, in a newspaper of general circulation within the city or county. The governing body shall seek the advice and comment of the state library and the general public at the hearing. After such hearing, the governing body of a city or county may establish by resolution a library building fund for the purpose of construction, enlargement, or alteration of a building or for the purchase of an existing building to be used as a public library. The city auditor or county treasurer shall place in the library building fund all moneys for such purposes as may be appropriated by the governing body or received for such purposes from federal, state, county, city, or private sources. The library building fund shall not revert to the library general fund or the general fund of the city or county without authorization by formal resolution from both the library's board of directors and the governing body of the city or county.

**40-38-06. Vouchers - How drawn.**

The duly bonded secretary or treasurer of the board of directors may draw money from the library fund upon vouchers of the board of directors without any other audit.

**40-38-07. Library free to inhabitants of political subdivision - Subject to rules published by board of directors.**

Every library and reading room established under this chapter shall be free for the use of inhabitants of the political subdivision where it is located subject to such reasonable rules and regulations as the board of directors may deem necessary to adopt and publish to render the use of the library and reading room of the greatest benefit. The board may exclude from the use of the library and reading room any and all persons who willfully shall violate such rules.

**40-38-08. Donations - How accepted - Board of directors as trustee.**

All persons desirous of making donations of money, books, personal property, or real estate for the benefit of the library may vest the same in the board of directors. The board shall hold and control all property accepted for the use of the library and reading room as a special trustee.

**40-38-09. Annual report of board of directors - Contents - To whom made.**

The board of directors shall make a report by July first of each year to the governing body of the city or board of county commissioners, as the case may be, stating:

1. The condition of the library and property.
2. The various sums of money received from all sources.
3. How much money has been expended and for what purpose.
4. The number of library materials on hand.
5. The number of library materials added, withdrawn or lost, and number of materials loaned out.
6. The type of library materials contained in the library.
7. Such other statistics, information, and suggestions as the board may deem of general interest or as may be required by the state library.

Copies of the report shall be filed with the governing body of the political subdivision and with the state library.

**40-38-10. Contributions by political subdivision to establishment of library without election authorized.**

Repealed by S.L. 2023, ch. 477, § 6.

**40-38-11. Joint public library services by cities and counties.**

1. Upon compliance with section 40-38-01 for the establishment of public library services, public library services may be jointly provided through a written agreement between the governing bodies of any city or county or both to establish and maintain joint library services with one or more cities or counties or both.
2. A party shall be bound to an agreement entered into under subsection 1 for an initial five-year term and subsequent five-year terms unless it provides other parties to the agreement with notice of intent to withdraw from the agreement at least two years before the proposed date of withdrawal.
3. The parties to the agreement shall appoint a single joint library board to govern public library services covered by the agreement. The method of representation on the joint library board and the establishment of the initial board with staggered terms shall be determined in the agreement. Provided, the joint library board shall consist of an equal number of appointees from each party to the agreement and, in any case, shall consist of not less than five members nor more than eleven members. No member of the board shall serve for more than two consecutive three-year terms, after which an interval of one year must elapse before the same member may be reappointed.
4. The joint library board shall have all power and duties provided in sections 40-38-04 through 40-38-09.
5. A joint library fund shall be established for the public library services covered by the agreement. Each city or county represented in the agreement shall provide its pro rata share of funds for the services, as specified in the agreement, from the funds received under section 40-38-02. Taxes within the service area covered by the written agreement under subsection 1 which is outside city limits may be levied within

the limitations and according to the procedures provided by law for a county library fund levy and taxes within the service area that is within city limits may be levied within the limitations and according to the procedures provided by law for a city library fund levy.

6. The joint library board shall appoint, and may remove, a treasurer to administer the joint library fund. The treasurer may be a treasurer of one of the parties to the agreement or a member of the board or both. The city auditor and county treasurer of each city or county represented in the agreement and the state librarian shall promptly transmit all funds authorized under subsection 5 and chapter 54-24.2, respectively, directly to the treasurer of the joint library board. The treasurer shall pay out moneys belonging to the joint library board only upon properly drawn vouchers, pursuant to order of the joint library board. The funds received by the treasurer shall not revert to or be considered funds on hand by any governmental unit furnishing the same, at the end of any biennium or fiscal year. The treasurer shall be bonded in such amount as may be specified by resolution adopted by the joint library board.
7. The agreement shall include provisions for the dissolution of the joint library board and distribution of assets in the event the agreement is terminated.
8. Joint libraries established and operated under this section are eligible to receive financial aid under chapter 54-24.2 to the extent that each city and county represented in the agreement would be eligible for the aid..
9. Agreements for public library services between cities or counties or both may be provided under this section or other provisions of this chapter and may not be provided under chapter 54-40 or other provisions of law.
10. After July 1, 1981, the establishment of joint library services pursuant to this section shall not be permitted unless approved by the electors of each individual city or county considering the question.

**40-38-12. Library records - Open records exception.**

Any record maintained or received by a library receiving public funds, which provides a library patron's name or information sufficient to identify a patron together with the subject about which the patron requested information, is considered private and is excepted from the public records disclosure requirements of section 44-04-18. These records may be released when required pursuant to a court order or a subpoena.

# **LAWS PERTAINING TO THE CONDUCT OF MEETINGS**

## **CHAPTER 44-04- Duties, Records, and Meetings**

### **44-04-17.1. Definitions.**

As used in this section through section 44-04-32:

1. “Closed meeting” means all or part of an exempt meeting that a public entity in its discretion has not opened to the public, although any person necessary to carry out or further the purposes of a closed meeting may be admitted.
2. “Closed record” means all or part of an exempt record that a public entity in its discretion has not opened to the public.
3. “Confidential meeting” or “confidential record” means all or part of a record or meeting that is either expressly declared confidential or is prohibited from being open to the public.
4. “Executive session” means all or part of a meeting that is closed or confidential.
5. “Exempt meeting” or “exempt record” means all or part of a record or meeting that is neither required by law to be open to the public, nor is confidential, but may be open in the discretion of the public entity.
6. “Governing body” means the multimember body responsible for making a collective decision on behalf of a public entity. “Governing body” also includes any group of persons, regardless of membership, acting collectively pursuant to authority delegated to that group by the governing body.
7. “Information technology resources” includes data processing hardware and software or technology support services necessary to facilitate a response to a request for electronic records.
8. “Law” includes federal statutes, applicable federal regulations, and state statutes.

9. a. "Meeting" means a formal or informal gathering or a work session, whether in person or through any electronic means, of:
- (1) A quorum of the members of the governing body of a public entity regarding public business; or
  - (2) Less than a quorum of the members of the governing body of a public entity regarding public business, if the members attending one or more of the smaller gatherings collectively constitute a quorum and if the members hold the gathering for the purpose of avoiding the requirements of section 44-04-19.
- b. "Meeting" does not include:
- (1) A chance or social gathering at which public business is not considered;
  - (2) Emergency operations during a disaster or emergency declared under section 37-17.1-10 or an equivalent ordinance if a quorum of the members of the governing body are present but are not discussing public business as the full governing body or as a task force or working group;
  - (3) The attendance of members of a governing body at meetings of any national, regional, or state association to which the public entity, the governing body, or individual members belong;
  - (4) Training seminars at which no other public business is considered or discussed; and
  - (5) Administration of examinations by a regulatory board when no other public business is considered or discussed.
- c. Notwithstanding subdivisions a and b, as applied to the legislative assembly, "meeting" means any gathering subject to section 14 of article IV of the Constitution of North Dakota.
- d. Notwithstanding subdivisions a and b, "meeting" does not include any meeting of the judicial branch or a committee or workgroup of the judicial branch. Such meetings are governed by section 5 of article XI of the Constitution of North Dakota.

10. "Organization or agency supported in whole or in part by public funds" means an organization or agency in any form which has received public funds exceeding the fair market value of any goods or services given in exchange for the public funds, whether through grants, membership dues, fees, or any other payment. An exchange must be conclusively presumed to be for fair market value, and does not constitute support by public funds, when an organization or agency receives a benefit under any authorized economic development program.
11. "Political subdivision" includes any county or city, regardless of the adoption of any home rule charter, and any airport authority, township, school district, park district, rural fire protection district, water resource district, solid waste management authority, rural ambulance service district, irrigation district, hospital district, soil conservation district, recreation service district, railroad authority, or district health unit.
12. "Public business" means all matters that relate or may foreseeably relate in any way to:
  - a. The performance of the public entity's governmental functions, including any matter over which the public entity has supervision, control, jurisdiction, or advisory power; or
  - b. The public entity's use of public funds.
13. "Public entity" means all:
  - a. Public or governmental bodies, boards, bureaus, commissions, or agencies of the state, including any entity created or recognized by the Constitution of North Dakota, state statute, or executive order of the governor or any task force or working group created by the individual in charge of a state agency or institution, to exercise public authority or perform a governmental function;
  - b. Public or governmental bodies, boards, bureaus, commissions, or agencies of any political subdivision of the state and any entity created or recognized by the Constitution of North Dakota, state statute, executive order of the governor, resolution, ordinance, rule, bylaw, or executive order of the chief executive authority of a political

subdivision of the state to exercise public authority or perform a governmental function; and

- c. Organizations or agencies supported in whole or in part by public funds, or expending public funds.
14. "Public funds" means cash and other assets with more than minimal value received from the state or any political subdivision of the state.
15. "Quorum" means one-half or more of the members of the governing body, or any smaller number if sufficient for a governing body to transact business on behalf of the public entity.
16. "Record" means recorded information of any kind, regardless of the physical form or characteristic by which the information is stored, recorded, or reproduced, which is in the possession or custody of a public entity or its agent and which has been received or prepared for use in connection with public business or contains information relating to public business. "Record" does not include unrecorded thought processes or mental impressions, but does include preliminary drafts and working papers. "Record" also does not include records in the possession of a court of this state.
17. "Task force or working group" means a group of individuals who have been formally appointed and delegated to meet as a group to assist, advise, or act on behalf of the individual in charge of a state agency or institution when a majority of the members of the group are not employees of the agency or institution.

#### **44-04-18. Access to public records - Electronically stored information.**

1. Except as otherwise specifically provided by law, all records of a public entity are public records, open and accessible for inspection during reasonable office hours. As used in this subsection, "reasonable office hours" includes all regular office hours of a public entity. If a public entity does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the public entity's records must be posted on the door of the office of

the public entity, if any. Otherwise, the information regarding the contact person must be filed with the secretary of state for state-level entities, for public entities defined in subdivision c of subsection 13 of section 44-04-17.1, the city auditor or designee of the city for city-level entities, or the county auditor or designee of the county for other entities.

2. Upon request for a copy of specific public records, any entity subject to subsection 1 shall furnish the requester one copy of the public records requested. An initial request need not be made in person or in writing, and the copy must be mailed upon request. A public entity may require written clarification of the request to determine what records are being requested, but may not ask for the motive or reason for requesting the records or for the identity of the person requesting public records. A public entity may charge up to twenty-five cents per impression of a paper copy. As used in this section, "paper copy" means a one-sided or two-sided duplicated copy of a size not more than eight and one-half by fourteen inches [19.05 by 35.56 centimeters]. For any copy of a record that is not a paper copy as defined in this section, the public entity may charge a reasonable fee for making the copy. As used in this section, "reasonable fee" means the actual cost to the public entity of making the copy, including labor, materials, and equipment. The entity may charge for the actual cost of postage to mail a copy of a record. An entity may require payment before locating, redacting, making, or mailing the copy. The public entity may withhold records pursuant to a request until such time as a requester provides payment for any outstanding balance for prior requests. An entity may impose a fee not exceeding twenty-five dollars per hour per request, excluding the initial hour, for locating records, including electronic records, if locating the records requires more than one hour. An entity may impose a fee not exceeding twenty five dollars per hour per request, excluding the initial hour, for excising confidential or closed material under section 44-04-18.10 from the records, including electronic records. If a public entity receives five or more requests from the same requester within seven days, the public entity may treat the requests as one request in computing the time it takes to locate and excise the records. If the entity is not authorized to use the fees to

cover the cost of providing or mailing the copy, or both, or if a copy machine is not readily available, the entity may make arrangements for the copy to be provided or mailed, or both, by another entity, public or private, and the requester shall pay the fee to that other entity. This subsection does not apply to copies of public records for which a different fee is specifically provided by law.

3. Automation of public records must not erode the right of access to those records. As each public entity increases its use of and dependence on electronic recordkeeping, each agency must provide reasonable public access to records electronically maintained and must ensure that exempt or confidential records are not disclosed except as otherwise permitted by law. A public entity may not enter into a contract for the creation or maintenance of a public records database if that contract impairs the ability of the public to inspect or copy the public records of the agency, including public records online or stored in an electronic recordkeeping system used by the agency. An electronic copy of a record must be provided upon request at no cost, other than costs allowed in subsection 2, except if the nature or volume of the public records requested to be accessed or provided requires extensive use of information technology resources, the agency may charge no more than the actual cost incurred for the extensive use of information technology resources incurred by the public entity. "Extensive" is defined as a request for copies of electronic records which take more than one hour of information technology resources to produce.
4. Except as provided in this subsection, nothing in this section requires a public entity to create or compile a record that does not exist. Access to an electronically stored record under this section, or a copy thereof, must be provided at the requester's option in either a printed document or through any other available medium. A computer file is not an available medium if no means exist to separate or prevent the disclosure of any closed or confidential information contained in that file. Except as reasonably necessary to reveal the organization of data contained in an electronically stored record, a public entity is not required to provide an electronically stored record in a

different structure, format, or organization. This section does not require a public entity to provide a requester with access to a computer terminal or mobile device. A public entity is not required to provide a copy of a record that is available to the requester on the public entity's website or on the internet. The public entity shall notify the requester the record is available online and direct the requester to the website where the record can be accessed. If the requester does not have reasonable access to the internet due to lack of computer, lack of internet availability, or inability to use a computer or the internet, the public entity shall produce paper copies for the requester, but may charge the applicable fees under this section.

5. A state-level public entity as defined in subdivision a of subsection 13 of section 44-04-17.1 or a political subdivision as defined in subsection 11 of section 44-04-17.1, may establish procedures for providing access from an outside location to any computer database or electronically filed or stored information maintained by that entity. The procedures must address the measures that are necessary to maintain the confidentiality of information protected by federal or state law. Except for access provided to another state-level public entity or political subdivision, the state or political subdivision may charge a reasonable fee for providing that outside access. If the original information is keyed, entered, provided, compiled, or submitted by any political subdivision, the fees must be shared by the state and the political subdivision based on their proportional costs to make the data available.
6. Any request under this section for records in the possession of a public entity by a party to a criminal or civil action, adjudicative proceeding as defined in subsection 1 of section 28-32-01, or arbitration in which the public entity is a party, or by an agent of the party, must comply with applicable discovery rules or orders and be made to the attorney representing that entity in the criminal or civil action, adjudicative proceeding, or arbitration. The public entity may deny a request from a party or an agent of a party under this subsection if the request seeks records that are privileged under applicable discovery rules.

7. A denial of a request for records made under this section must describe the legal authority for the denial, or a statement that a record does not exist, and must be in writing if requested.
8. This section is violated when a person's right to review or receive a copy of a record that is not exempt or confidential is denied or unreasonably delayed or when a fee is charged in excess of the amount authorized in subsections 2 and 3.
9. It is not an unreasonable delay or a denial of access under this section to withhold from the public a record that is prepared at the express direction of, and for presentation to, a governing body until the record is mailed or otherwise provided to a member of the body or until the next meeting of the body, whichever occurs first. It also is not an unreasonable delay or a denial of access to withhold from the public a working paper or preliminary draft until a final draft is completed, the record is distributed to a member of a governing body or discussed by the body at an open meeting, or work is discontinued on the draft but no final version has been prepared, whichever occurs first.
10. For public entities headed by a single individual, it is not an unreasonable delay or a denial of access to withhold from the public a working paper or preliminary draft until a final draft is completed, or work is discontinued on the draft but no final version has been prepared, whichever occurs first. A working paper or preliminary draft shall be deemed completed if it can reasonably be concluded, upon a good-faith review, that all substantive work on it has been completed.
11. A disclosure of a requested record under this section is not a waiver of any copyright held by the public entity in the requested record or of any applicable evidentiary privilege.
12. A public entity may allow an individual to utilize the individual's own personal devices for duplication of records and, if so, shall establish reasonable procedures to protect the integrity of the records as long as the procedures are not used to prevent access to the records.

13. If repeated requests for records disrupt other essential functions of the public entity, the public entity may refuse to permit inspection of the records, or provide copies of the records. A public entity refusing to provide access or copies of public records under this section shall state in writing the reasons supporting the refusal and provide the reasoning to the requester. The requester may seek an attorney general's opinion under section 44-04-21.1, on whether the public entity's decision was proper.

#### **44-04-18.10. Disclosure of public records.**

1. A public entity may not deny a request for an open record on the ground that the record also contains confidential or closed information.
2. Subject to subsection 3 of section 44-04-18, if confidential or closed information is contained in an open record, a public entity shall permit inspection and receipt of copies of the information contained in the record that is not confidential or closed, but shall delete, excise, or otherwise withhold the confidential or closed information.
3. An officer or employee of a public entity may disclose or comment on the substance of an open record. Any agreement prohibiting the disclosure or comment is void and against public policy.
4. Unless otherwise prohibited by federal law, records of a public entity which are otherwise closed or confidential may be disclosed to any public entity or federal agency for the purpose of law enforcement or collection of debts owed to a public entity, provided that the records are not used for other purposes and the closed or confidential nature of the records is otherwise maintained. For the purpose of this subsection, "public entity" is limited to those entities defined in subdivision a or b of subsection 13 of section 44-04-17.1.
5. Confidential records that are authorized by law to be disclosed to another entity continue to be confidential in the possession of the receiving entity, except as otherwise provided by law.

6. Records confidential or exempt under subsection 7 of section 44-04-18.4 and which are required to be disclosed to another entity for emergency or disaster prevention, protection, mitigation, response, and recovery or for cybersecurity planning, mitigation, or threat remain confidential or exempt after the required disclosure.

#### **44-04-18.11. Disclosure pursuant to subpoena or order.**

1. Unless disclosure under a court order is otherwise prohibited or limited by law, closed records must be disclosed pursuant to a subpoena issued by a court, administrative law judge, or administrative hearing officer, or other court order.
2. Unless disclosure under a court order is otherwise prohibited or limited by law, confidential records must be disclosed pursuant to a court order. Upon request of the public entity ordered to make the disclosure, the court ordering the disclosure shall issue a protective order to protect the confidential nature of the records.
3. Any person who discloses confidential records of a public entity under this section is immune from prosecution for violating section 12.1-13-01.

#### **44-04-18.13. Lists of minors.**

Any record of a public entity that is a compilation of minor's names, addresses, telephone numbers, or any combination thereof, is exempt.

#### **44-04-18.15. Fundraising and donor records exempt.**

2. Any private donor or prospective donor name, address, telephone number, electronic mail address, estate planning information, tax record or financial information, or other personal information or correspondence received or retained by a nonprofit organization that is a public entity is exempt.
3. For the purposes of this section, "financial information" includes data that provides details regarding a gift, a payment schedule of a gift, the form of a gift, or the specific amount of a gift made by a donor.

**44-04-18.21. Electronic mail addresses and telephone numbers exempt.**

The electronic mail address or telephone number of an individual which is provided to a public entity for the purpose of or in the course of communicating with that public entity is an exempt record. This section may not be used to shield the identity of the individual communicating with the public entity

**44-04-18.23. Library, archive, and museum collections - Exempt records.**

A public library, archive, or museum may designate a donated record as an exempt record if the donor of the record requests as a condition of the donation that the record not be released to the public for a specific amount of time, which may not exceed twenty years beyond the death of the donor.

**44-04-19. Access to public meetings.**

Except as otherwise specifically provided by law, all meetings of a public entity must be open to the public. That portion of a meeting of the governing body of a public entity as defined in subdivision c of subsection 13 of section 44-04-17.1 which does not regard public business is not required to be open under this section.

1. This section is violated when any person is denied access to a meeting under this section, unless such refusal, implicitly or explicitly communicated, is due to a lack of physical space in the meeting room for the persons seeking access or lack of electronic capacity to allow public viewing of the meeting through electronic means.
2. For purposes of this section, if the meeting is held in person, the meeting room must be accessible to, and the size of the room must accommodate, the number of persons reasonably expected to attend the meeting. If the meeting is held by electronic means, the electronic capacity must accommodate the number of persons reasonably expected to attend the meeting remotely.

3. The right of a person to attend a meeting under this section includes the right to photograph, to record on audiotape or videotape, and to broadcast live on radio or television the portion of the meeting that is not held in executive session, provided there is no active interference with the conduct of the meeting. The exercise of this right may not be dependent upon the prior approval of the governing body. However, the governing body may impose reasonable limitations on recording activity to minimize the possibility of disruption of the meeting.
4. For meetings subject to this section, if the meeting is held through any electronic means, the information necessary to join or view the meeting electronically must be included in the notice issued under section 44-04-20.

#### **44-04-19.2. Confidential or closed meetings.**

1. A governing body may hold an executive session to consider or discuss closed or confidential records.
2. Unless a different procedure is provided by law, an executive session that is authorized by law may be held if:
  - a. The governing body first convenes in an open session and, unless a confidential meeting is required, passes a motion to hold an executive session;
  - b. The governing body announces during the open portion of the meeting the topics to be discussed or considered during the executive session and the body's legal authority for holding an executive session on those topics;
  - c. The executive session is recorded under subsection 5;
  - d. The topics discussed or considered during the executive session are limited to those for which an executive session is authorized by law and that have been previously announced under this subsection; and
  - e. Final action concerning the topics discussed or considered during the executive session is taken at a meeting open to the public, unless final action is otherwise required by law to be taken during a closed or confidential meeting. For purposes of this subsection, "final action" means a

collective decision or a collective commitment or promise to make a decision on any matter, including formation of a position or policy, but does not include guidance given by members of the governing body to legal counsel or other negotiator in a closed attorney consultation or negotiation preparation session authorized in section 44-04-19.11.

3. The remainder of a meeting during which an executive session is held is an open meeting unless a specific exemption is otherwise applicable.
4. The minutes of an open meeting during which an executive session is held must indicate the names of the members attending the executive session, the date and time the executive session was called to order and adjourned, a summary of the general topics that were discussed or considered that does not disclose any closed or confidential information, and the legal authority for holding the executive session.
5. All meetings of the governing body of a public entity that are not open to the public must be recorded electronically or on audiotape or videotape. The recording must be disclosed pursuant to court order under subsection 2 of section 44-04-18.11 or to the attorney general for the purpose of administrative review under section 44-04-21.1. The attorney general may not disclose to the public any recording received under this subsection and must return the recording to the governing body upon completion of the administrative review. The recording may be disclosed upon majority vote of the governing body unless the executive session was required to be confidential. Disclosure of the recording by a public servant except as provided in this subsection is a violation of section 12.1-13-01. All recordings under this subsection must be retained for a minimum of six months after the executive session that is the subject of the recording.
6. A public entity may sequester all competitors in a competitive selection or hiring process from that portion of a public meeting wherein presentations are heard or interviews are conducted.

#### **44-04-20. Notice of public meetings required - Exceptions - Schedule set by statute, ordinance, or resolution.**

1. Unless otherwise provided by law, public notice must be given in advance of all meetings of a public entity as defined in section 44-04-17.1, including executive sessions and meetings held remotely. Unless otherwise specified by law, resolution, or ordinance, or as decided by the public entity, notices required by this section need not be published.
2. The notice required in this section must contain the date, time, and location of the meeting and, if practicable, the topics to be considered. However, the lack of an agenda in the notice, or a departure from, or an addition to, the agenda at a meeting, does not affect the validity of the meeting or the actions taken thereat. The notice also must contain the general subject matter of any executive session expected to be held during the meeting. For meetings to be held by electronic means, the location of the meeting is the electronic address and any other information necessary to allow the public to join or view the electronic meeting as required under section 44-04-19.
3. If the governing body holds regularly scheduled meetings, the schedule of these meetings, including the aforementioned notice information, if available, must be filed annually with the secretary of state for state-level bodies or for public entities defined in subdivision c of subsection 13 of section 44-04-17.1, the city auditor or designee of the city for city-level bodies, and the county auditor or designee of the county for all other bodies or the schedule must be posted on the public entity's website. This schedule must be furnished to anyone who requests the information. When reasonable and practicable, a governing body of a public entity should attempt to set a regular schedule for its meetings by statute, ordinance, or resolution. This subsection does not apply to meetings of the legislative assembly or any committee thereof. Filing a yearly schedule of upcoming meetings does not relieve a public entity from its obligation to post an agenda for each meeting as required in subsections 2 and 4.

4. The notice required in this section must be posted at the principal office of the governing body holding the meeting, if such exists, and at the location of the meeting on the day of the meeting. In addition, unless all the information contained in the notice was previously filed with the appropriate office under subsection 3, the notice must be filed in the office of the secretary of state for state-level bodies or for public entities defined in subdivision c of subsection 13 of section 44-04-17.1, the city auditor or designee of the city for city-level bodies, the county auditor or designee of the county for all other bodies. If the public entity has a website, notice also must be posted on the public entity's website. This subsection does not apply to meetings of the legislative assembly or any committee thereof.
5. The governing body's presiding officer has the responsibility of assuring that public notice of a meeting's date, time, and location, is given at the same time as such governing body's members are notified, and that this notice is available to anyone requesting such information. As soon as an agenda is prepared for a meeting with the information required in subsection 2 and given to members of the governing body, the agenda must be posted at the locations as required by subsection 4 and given to anyone requesting the information. When a request is made for notice of meetings, the request is effective for one year unless a different time period is specified.
6. In the event of emergency or special meetings of a governing body, the person calling such a meeting shall, in addition to the notices in subsection 4, also notify the public entity's official newspaper, if any, and any representatives of the news media which have requested to be so notified of such special or emergency meetings, of the time, place, date, and topics to be considered at the same time as such governing body's members are notified. If the public entity does not have an official newspaper, then it must notify the official newspaper of the county where its principal office or mailing address is located. Topics that may be considered at an emergency or special meeting are limited to those included in the notice.

7. A committee of an institution under the authority of the state board of higher education, in lieu of the notice requirements in this section, may file in the office of the president of the institution the name, address, and telephone number of a person who may be contacted to obtain specific times, dates, and locations of any meetings of that committee or to request specific notification of each meeting of that committee.
8. The attorney general shall prepare general guidelines to assist public entities in following the provisions of this section.
9. This section is violated when a notice is not provided in substantial compliance with this section.

**44-04-21. Open voting at public meetings required - Results recorded in minutes.**

1. Unless otherwise specifically provided by law, all votes of whatever kind taken at any public meeting governed by the provisions of section 44-04-19 must be open, public votes, and all nonprocedural votes must be recorded roll call votes, with the votes of each member being made public at the open meeting. Procedural votes must be recorded roll call votes upon the request of any member of a governing body holding a meeting subject to this section. As used in this section, "nonprocedural" should be broadly interpreted and includes all votes that pertain to the merits of the matter before the governing body.
2. Minutes must be kept of all open meetings and are records subject to section 44-04-18. The minutes must include, at a minimum:
  - a. The names of the members attending the meeting;
  - b. The date and time the meeting was called to order and adjourned;
  - c. A list of topics discussed regarding public business;
  - d. A description of each motion made at the meeting and whether the motion was seconded;
  - e. The results of every vote taken at the meeting; and
  - f. The vote of each member on every recorded roll call vote.

Notwithstanding subsection 8 of section 44-04-18, the disclosure of minutes kept under this subsection may not be conditioned on the approval of the minutes by the governing body.

3. Subsection 1 does not apply to a nonprocedural vote relating to the consideration of an amendment by a legislative committee or the legislative assembly during a legislative session, unless otherwise required by legislative rule.

#### **44-04-21.1. Administrative review procedure.**

1. Any interested person may request an attorney general's opinion to review a written denial of a request for records under section 44-04-18, a denial of access to a meeting under section 44-04-19, or other alleged violation of section 44-04-18, 44-04-19, 44-04-19.2, 44-04-20, or 44-04-21 by any public entity other than the legislative assembly or any committee thereof. A request made under this section must be made within thirty days of the alleged violation, except that a request based on allegations that a meeting occurred without the notice required by section 44-04-20, must be made within ninety days of the alleged violation. In preparing an opinion under this section, the attorney general has discretion to obtain and review a recording made under section 44-04-19.2. The attorney general may request and obtain information claimed to be exempt or confidential for the purpose of determining whether the information is exempt or confidential. Any such information may not be released by the attorney general and may be returned to the provider of the information. The attorney general shall issue to the public entity involved an opinion on the alleged violation, which may be a summary opinion, unless the request is withdrawn by the person requesting the opinion or a civil action has been filed involving the possible violation. The attorney general may decline to issue an opinion if the person requesting the opinion has made more than one request within the last thirty days or more than five requests for opinions in twelve months. If the request pertains to a public entity as defined in subdivision c of subsection 13 of section 44-04-17.1, the opinion must be issued to the public entity providing the public funds. In any opinion issued under this section, the attorney general shall base the opinion on the facts given by the public entity.

2. If the attorney general issues a written opinion concluding that a violation has occurred, the public entity has seven days after the opinion is issued, regardless of whether a civil action is filed under section 44-04-21.2, to disclose the record, to issue a notice of a meeting that will be held within a reasonable time to correct the violation, or to take steps to correct any other violation. If the public entity fails to take the required action within the seven-day period and the person requesting the opinion prevails in a civil action brought under section 44-04-21.2, the person must be awarded costs, disbursements, and reasonable attorney's fees in the action and on appeal. The attorney general may require officials of the public entity at issue in the opinion to obtain mandatory training by a certain date. The consequences for failing to comply with an attorney general's opinion issued under this section will be the same as for other attorney general's opinions, including potential personal liability for the person or persons responsible for the noncompliance.

#### **44-04-21.2. Remedies for violations and enforcement procedure.**

1. A violation of section 44-04-18, 44-04-19, 44-04-19.2, 44-04-20, or 44-04-21 may be the subject of a civil action brought by an interested person or entity. For an alleged violation of section 44-04-18, the complaint must be accompanied by a dated, written request for the requested record. If a court finds that any of these sections have been violated by a public entity, the court may award declaratory relief, an injunction, a writ of prohibition or mandamus, costs, disbursements, and reasonable attorney's fees against the entity. For an intentional or knowing violation of section 44-04-18, 44-04-19, 44-04-19.2, 44-04-20, or 44-04-21, the court may also award damages in an amount equal to one thousand dollars or actual damages caused by the violation, whichever is greater. An action under this subsection must be commenced within sixty days of the date the person knew or should have known of the violation or within thirty days of issuance of an attorney general's opinion on the alleged violation, whichever is later. Venue for an action is in the county where the entity has its principal office or, if the entity does not have a principal office within the state, in Burleigh County.

2. Any action that is a product of a violation of section 44-04-19, 44-04-20, or 44-04-21 is voidable by a court in a civil action authorized by this section.
3. The remedies provided in this section are not available if a violation of section 44-04-18, 44-04-19, 44-04-19.2, 44-04-20, or 44-04-21 has been corrected before a civil action is filed and no person has been prejudiced or harmed by the delay. An interested person or entity may not file a civil action under this section seeking attorney's fees or damages, or both, until at least three working days after providing notice of the alleged violation to the chief administrative officer for the public entity. This subsection does not apply if the attorney general has found under section 44-04-21.1, on a prior occasion, that the public entity has violated section 44-04-18, 44-04-19, 44-04-19.2, 44-04-20, or 44-04-21.

### **Special or Emergency Meetings.**

The provision relative to special or emergency meetings is a substitute for the notice ordinarily required and is not an additional requirement for meetings held on short notice; it was not the intent of the legislature to require a more cumbersome notice for a special or emergency meeting than for a regularly scheduled meeting. *Quarles v. McKenzie Pub. Sch. Dist. No. 34*, 325 N.W.2d 662 (N.D. 1982).

# **LAWS PERTAINING TO THE STATE LIBRARY COMMISSION**

## **CHAPTER 54-24- State Library Commission**

### **54-24-01. State library - State librarian appointed by the superintendent of public instruction.**

The superintendent of public instruction shall appoint an executive officer to be known as the state librarian, who shall report to the superintendent and must receive a salary within the amount appropriated for salaries by the legislative assembly. The state librarian shall control the work and is the director of the state library. The position of state librarian is included in the classified service, as provided in section 54-44.3-20. The state library is an autonomous agency and retains a budget and staff separate from that of the superintendent of public instruction.

### **54-24-02. Library offices.**

The state library must be furnished with adequate office room, with such suitable quarters as may be necessary for the proper shelving of its library materials.

### **54-24-03. Powers and duties of state librarian.**

The state librarian shall:

1. Make rules for the operation of the state library.
2. Provide and care for all books and library materials in all collections of the state library and work to focus the collections.
3. Employ qualified library personnel to care for all library procedures.
4. Make library materials available to libraries throughout the state, to individuals connected with departments of state, and to citizens of North Dakota who do not have adequate library facilities, under the rules of the state library.
5. Work to improve library services to citizens by providing assistance to librarians and library trustees and staff and by encouraging the extension of networking and regional and statewide cooperation among libraries.

6. Coordinate the efforts of librarianship throughout the state, advising and assisting the extension of qualified public libraries into centers of county or multicounty libraries.
7. Compile statistics on all North Dakota public libraries and their services and their larger counterparts of county and multicounty libraries, regional library cooperatives, and multitype library authorities. Make a full biennial report to the superintendent of public instruction and the governor of the work done at the state library. The state librarian may not require a private sector library to submit information relating to the provisions of this subsection.
8. Collect, maintain, and make available informational materials that supplement and support the needs of all libraries in the state, either by direct loan or by consultation, and that form a reference source for the officers of the state in performing their duties.
9. Assist libraries in developing local standards and guidelines defining the basic level of service that they will provide.
10. Conduct, or have conducted, research into the conditions of library service in the state and produce written plans for the development and betterment of that service.
11. Promote and assist in the development of regional library cooperatives, including multitype library authorities.
12. Establish levels of certification for libraries of the state that meet the standards recommended by the American library association and the North Dakota library association.
13. Promote and assist libraries in this state in developing and maintaining a computerized, comprehensive, bibliographic statewide database for storing bibliographic records of libraries which allows residents unmediated, seamless, direct access to library catalogs with a common interface and a common set of commands and the ability to search the library collections of the entire state at one time or only the collections of the local library, regional libraries, or select group of libraries.
14. Coordinate interlibrary loan activities throughout this state.

15. Arrange for continuing education and training programs for library personnel.
16. Provide technical assistance and counsel to library personnel.
17. Distribute grants to libraries within the limits of legislative appropriations for the purpose of developing or improving library services or programs.
18. Provide staff services to the North Dakota library coordinating council.

#### **54-24-03.1. Acceptance of federal aid.**

The state library is hereby authorized to accept and to expend in accordance with the terms thereof any grant of federal funds which may become available to the state for library purposes. For the purpose of qualifying to receive such grants, the state library is authorized to make such applications and reports as may be required by the federal government as a condition thereto.

#### **54-24-03.2. State library operating fund.**

The state library's operating fund is a special fund in the state treasury. All moneys received for book replacement, cataloging services, and other miscellaneous library services must be deposited in this fund. Moneys in the fund are to be used pursuant to legislative appropriation for provision of services under this chapter.

#### **54.24-08. Library contracts for library services.**

The state library is hereby authorized and empowered to cooperate with, and to contract with, cities, governmental subdivisions, and agencies of the state of North Dakota and other states of the United States, in the extension of library services.

#### **54-24-09. Distribution of certain state publications for certain libraries required.**

The office of management and budget shall arrange to deposit with the state library eight copies of all publications issued by all executive, legislative, and judicial agencies of state government intended for general public distribution. These publications must

be provided to the state library without charge. If expense and limited supply of state publications, particularly audiovisual items, make compliance with the depository requirement impossible, the state library shall accept as many copies as an agency can afford to provide. However, each agency shall provide no less than two copies to the state library. State publications refer to any informational materials regardless of format, method of reproduction, or source, originating in or produced with the imprint of, by the authority of, or at the total or partial expense of, any state agency. The definition incorporates those publications that may or may not be financed by state funds but are released by private bodies such as research and consultant firms under contract with or supervision of any state agency. In circumstances not directly involving the office of management and budget, a state agency shall comply with the depository requirement by arranging with the necessary parties for the printing and deposit of eight copies of any state publication issued. State publications are specifically defined as public documents but not those administrative or training materials used only within the issuing agency. As the document acquisition and distribution agency, the state library shall retain for its document collection two copies of every state document received and transmit the remaining copies to the depository libraries. These are the libraries of the state historical society, the university of North Dakota, North Dakota state university, library of Congress, and two others to be designated by the state library. The state library shall catalog state publications and arrange for their conversion to a digital format as prescribed by the state records administrator and shall make available for distribution of the same upon request to the designated depository libraries.

# **INTERSTATE LIBRARY COMPACT**

## **CHAPTER 54-24.1- Interstate Library Compact**

### **54-24.1-01. Interstate Library Compact.**

The Interstate Library Compact is hereby enacted into law and entered into by this state with all states legally joining therein in the form substantially as follows:

#### **ARTICLE I – Policy and Purpose**

Because the desire for the services provided by libraries transcends governmental boundaries and can most effectively be satisfied by giving such services to communities and people regardless of jurisdictional lines, it is the policy of the states party to this compact to cooperate and share their responsibilities; to authorize cooperation and sharing with respect to those types of library facilities and services which can be more economically or efficiently developed and maintained on a cooperative basis; and to authorize cooperation and sharing among localities, states, and others in providing joint or cooperative library services in areas where the distribution of population or of existing and potential library resources make the provision of library service on an interstate basis the most effective way of providing adequate and efficient service.

#### **ARTICLE II – Definitions**

As used in this compact:

1. “Library agreement” means a contract establishing an interstate library district pursuant to this compact or providing for the joint or cooperative furnishing of library services.
2. “Private library agency” means any nongovernmental entity which operates or assumes a legal obligation to operate a library.
3. “Public library agency” means any unit or agency of local or state government operating or having power to operate a library.

## **ARTICLE III – Interstate Library Districts**

1. Any one or more public library agencies in a party state in cooperation with any public library agency or agencies in one or more other party states may establish and maintain an interstate library district. Subject to the provisions of this compact and any other laws of the party states which pursuant hereto remain applicable, such district may establish, maintain, and operate some or all of the library facilities and services for the area concerned in accordance with the terms of a library agreement therefor. Any private library agency or agencies within an interstate library district may cooperate therewith, assume duties, responsibilities, and obligations thereto, and receive benefits therefrom as provided in any library agreement to which such agency or agencies become party.
2. Within an interstate library district, and as provided by a library agreement, the performance of library functions may be undertaken on a joint or cooperative basis or may be undertaken by means of one or more arrangements between or among public or private library agencies for the extension of library privileges to the use of facilities or services operated or rendered by one or more of the individual library agencies.
3. If a library agreement provides for joint establishment, maintenance, or operation of library facilities or services by an interstate library district, such district shall have power to do any one or more of the following in accordance with such library agreement:
  - a. Undertake, administer, and participate in programs or arrangements for securing, lending, or servicing of books and other publications, any other materials suitable to be kept or made available by libraries, library equipment or for the dissemination of information about libraries, the value and significance of particular items therein, and the use thereof.
  - b. Accept for any of its purposes under this compact any and all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state or the United States or any subdivision or agency

thereof, or interstate agency, or from any institution, person, firm, corporation, or limited liability company, and receive, utilize, and dispose of the same.

- c. Operate mobile library units or equipment for the purpose of rendering bookmobile service within the district.
- d. Employ professional, technical, clerical, and other personnel, and fix terms of employment, compensation, and other appropriate benefits; and, where desirable, provide for the inservice training of such personnel.
- e. Sue and be sued in any court of competent jurisdiction.
- f. Acquire, hold, and dispose of any real or personal property or any interest or interests therein as may be appropriate to the rendering of library service.
- g. Construct, maintain, and operate a library, including any appropriate branches thereof.
- h. Do such other things as may be incidental to or appropriate for the carrying out of any of the foregoing powers.

#### **ARTICLE IV – Interstate Library Districts Governing Board**

1. An interstate library district which establishes, maintains, or operates any facilities or services in its own right shall have a governing board of not more than five members to be selected by the boards of the participating agencies which shall direct the affairs of the district and act for it in all matters relating to its business. Each participating public library agency in the district must be represented on the governing board which must be organized and conduct its business in accordance with provision therefor in the library agreement; but, in no event may a governing board meet less often than twice a year.
2. Any private library agency or agencies party to a library agreement establishing an interstate library district may be represented on or advise with the governing board of the district in such manner as the library agreement may provide.

## **ARTICLE V – State Library Agency Cooperation**

Any two or more state library agencies of two or more of the party states may undertake and conduct joint or cooperative library programs, render joint or cooperative library services, and enter into and perform arrangements for the cooperative or joint acquisition, use, housing, and disposition of items or collections of materials which, by reason of expense, rarity, specialized nature, or infrequency of demand therefor would be appropriate for central collection and shared use. Any such programs, services, or arrangements may include provision for the exercise on a cooperative or joint basis of any power exercisable by an interstate library district and an agreement embodying any such program, service, or arrangement must contain provisions covering the subjects detailed in Article VI of the compact for interstate library agreements.

## **ARTICLE VI – Library Agreements**

1. In order to provide for any joint or cooperative undertaking pursuant to this compact, public and private library agencies may enter into library agreements. Any agreement executed pursuant to the provisions of this compact must, as among the parties to the agreement:
  - a. Detail the specific nature of the services, programs, facilities, arrangements, or properties to which it is applicable.
  - b. Provide for the allocation of costs and other financial responsibilities.
  - c. Specify the respective rights, duties, obligations, and liabilities of the parties.
  - d. Set forth the terms and conditions for duration, renewal, termination, abrogation, disposal of joint or common property, if any, and all other matters which may be appropriate to the proper effectuation and performance of the agreement.
2. No public or private library agency may undertake to exercise itself, or, jointly with any other library agency, by means of a library agreement, any power prohibited to such agency by the constitution or statutes of its state.
3. No library agreement becomes effective until filed with the compact administrator of each state involved, and approved in accordance with Article VII of this compact.

## **ARTICLE VII – Approval of Library Agreements**

1. Every library agreement made pursuant to this compact must, prior to and as a condition precedent to its entry into force, be submitted to the attorney general of each state in which a public library agency party thereto is situated, who shall determine whether the agreement is in proper form and compatible with the laws of that state. The attorneys general shall approve any agreement submitted to them unless they shall find that it does not meet the conditions set forth herein and shall detail in writing addressed to the governing bodies of the public library agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within ninety days of its submission constitutes approval thereof.
2. In the event that a library agreement made pursuant to this compact deals in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement must, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and must be approved or disapproved by the officer or agency as to all matters within the officer's or agency's jurisdiction in the same manner and subject to the same requirements governing the action of the attorneys general pursuant to subsection 1. This requirement of submission and approval is in addition to and not in substitution for the requirement of submission to and approval by the attorneys general.

## **ARTICLE VIII – Other Laws Applicable**

Nothing in this compact or in any library agreement may be construed to supersede, alter, or otherwise impair any obligation imposed on any library by otherwise applicable law, nor to authorize the transfer or disposition of any property held in trust by a library agency in a manner contrary to the terms of such trust.

## **ARTICLE IX – Appropriations and Aid**

1. Any public library agency party to a library agreement may appropriate funds to the interstate library district established thereby in the same manner and to the same extent as to a library wholly maintained by it and, subject to the laws of the state in which such public library agency is situated, may pledge its credit in support of an interstate library district established by the agreement.
2. Subject to the provisions of the library agreement pursuant to which it functions and the laws of the states in which such district is situated, an interstate library district may claim and receive any state and federal aid which may be available to library agencies.

## **ARTICLE X – Compact Administrator**

Each state shall designate a compact administrator with whom copies of all library agreements to which the administrator's state or any public library agency thereof is party must be filed. The administrator shall have such other powers as may be conferred upon the administrator by the laws of the administrator's state and may consult and cooperate with the compact administrators of other party states and take such steps as may effectuate the purposes of this compact. If the laws of a party state so provide, such state may designate one or more deputy compact administrators in addition to its compact administrator.

## **ARTICLE XI – Entry Into Force and Withdrawal**

1. This compact enters into force and effect immediately upon its enactment into law by any two states. Thereafter, it enters into force and effect as to any other state upon the enactment thereof by such state.
2. This compact continues in force with respect to a party state and remains binding upon such state until six months after such state has given notice to each other party state of the repeal thereof. Such withdrawal may not be construed to relieve any party to a library agreement entered into pursuant to this compact from any obligation of that agreement prior to the end of its duration as provided therein.

## **ARTICLE XII – Construction and Severability**

This compact must be liberally construed so as to effectuate the purposes thereof. The provisions of this compact are severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and applicability thereof to any government, agency, person, or circumstance is not affected thereby. If this compact is held contrary to the constitution of any state party thereto, the compact must remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

### **54-24.1-02. Must comply with state and local laws.**

No city, township, or county of this state may be party to a library agreement which provides for the construction or maintenance of a library pursuant to subdivision g of subsection 3 of Article III of the compact, nor pledge its credit in support of such a library, or contribute to the capital financing thereof, except after compliance with any laws applicable to such cities, townships, or counties relating to or governing capital outlays and the pledging of credit.

### **54-24.1-03. Definition.**

As used in the compact, “state library agency”, with reference to this state, means the state library.

### **54-24.1-04. Entitled to state aid.**

An interstate library district lying partly within this state may claim and be entitled to receive state aid in support of any of its functions to the same extent and in the same manner as such functions are eligible for support when carried on by entities wholly within this state. For the purposes of computing and apportioning state aid to an interstate library district, this state will consider that portion of the area which lies within this state as an independent entity for the performance of the aided function or functions and compute and apportion the aid accordingly. Subject to any applicable laws of this state, such a district also may apply for and be entitled to receive any federal aid for which it may be eligible.

**54-24.1-05. Interstate library compact director – Appointment – Deputy.**

The governor shall appoint an officer of this state who must be the compact administrator pursuant to Article X of the compact. The governor shall also appoint one or more deputy compact administrators pursuant to said article.

**54-24.1-06. Duties of governor in case of withdrawal.**

In the event of withdrawal from the compact the governor shall send and receive any notices required by subsection 1 of Article XI of the compact.

# **LAWS PERTAINING TO STATE AID TO PUBLIC LIBRARIES**

## **CHAPTER 54-24.2- State Aid to Public Libraries**

### **54-24.2-01. Eligibility.**

Public libraries eligible to receive financial aid under this chapter are limited to those public libraries that:

1. Apply to the state library for such financial aid.
2. Are established and operated in accordance with chapter 40-38.
3. Participate in the North Dakota network for knowledge interlibrary loan and information network.

### **54-24.2-02. Grant formula.**

Grants to eligible public libraries must be in accordance with the following formula:

1. One dollar, or a percentage thereof, for each person residing in the city or county operating or providing financial support for the public library, as determined by the latest official federal census; and
2. Five dollars per square mile [259.00 hectares], or a percentage thereof, of land within the geographical boundaries of each county operating or providing financial support for a public library.

#### **54-24.2-02.1. Other public funds defined.**

“Other public funds”, as used in sections 54-24.2-03 and 54-24.2-05, means moneys appropriated for public library services by the governing body of the political subdivision providing public library services under chapter 40-38 in addition to the mill levy made for public library services.

#### **54-24.2-02.2. Maintenance of local effort.**

Repealed by S.L. 2023, ch. 477, § 7.

**54-24.2-02.3. Calculation of payment - Expenditures.**

The state librarian may recalculate and adjust each eligible public library grant formula based on a successful appeal by a public library determined to be ineligible. Within thirty days after notification from the state librarian of a public library's ineligibility to receive grant funds, the ineligible public library shall submit the appeal. The state librarian shall apply the difference between the initial calculated grant formula and the recalculated grant formula to the next available grant formula payment.

**54-24.2-03. Incentive for local funding.**

To provide for increased local funding, public libraries eligible to receive funds under section 54-24.2-02 shall have the funds allocated to them modified in accordance with the following formula:

Cities levying

8.00 or more mills	150 percent of allocation
6.00 - 7.99 mills	125 percent of allocation
4.00 - 5.99 mills	100 percent of allocation
3.00 - 3.99 mills	75 percent of allocation
2.00 - 2.99 mills	50 percent of allocation
1.00 - 1.99 mills	33 percent of allocation
0.01 - 0.99 mills	25 percent of allocation
0.00 - mills	0 percent of allocation

Counties levying

4.00 or more mills	150 percent of allocation
3.00 - 3.99 mills	125 percent of allocation
2.00 - 2.99 mills	100 percent of allocation
1.50 - 1.99 mills	75 percent of allocation
1.00 - 1.49 mills	50 percent of allocation
0.50 - 0.99 mills	33 percent of allocation
0.01 - 0.49 mills	25 percent of allocation
0.00 - mills	0 percent of allocation

The computation of mills must be based upon:

1. The levy on the taxable valuation as certified by the county auditor to the tax commissioner. By May fifteenth of each year the tax commissioner shall provide the state library the certified taxable valuations;

2. The other public funds received and deposited in the library fund for the operation of the library by the governing body during the preceding fiscal year; and
3. Computation of the mill levy equivalent of other public funds as computed by the state library.

**54-24.2-05. Limitations.**

For public libraries operated by cities, funds granted under this chapter may not exceed thirty-three percent of the total expenditure of mill levy moneys and other public funds during the preceding year. For public libraries operated by counties, funds granted under this chapter may not exceed the following percent of the total expenditure of mill levy moneys and other public funds during the preceding year:

less than \$10,000	100 percent
\$10,000 - \$19,999	75 percent
\$20,000 - \$29,999	67 percent
\$30,000 - \$50,000	50 percent
over \$50,000	33 percent

**54-24.2-06. Use of funds - Reporting.**

Funds appropriated under this chapter may be expended by public libraries for the purchase of library materials, supplies and equipment, salaries of library staff, and services. No funds may be used for land acquisition, construction, or investment.

Each public library receiving funds under the chapter shall submit to the state library an annual report detailing the expenditures of these funds and all other funds expended by the library within the calendar year. Such report is due within ninety days after the close of the calendar year.

# **LAWS PERTAINING TO REGIONAL LIBRARY COOPERATIVES**

## **CHAPTER 54-24.3- Regional Library Cooperatives**

### **54-24.3-01. Definitions.**

In this chapter, unless the context otherwise requires:

1. “Academic library” means a library that is part of a college or university that is publicly or privately funded and whose primary role is to provide resources to enrich and support the school’s curricula and the research needs of students and faculty.
2. “Library resource center” means a central service unit, whose location is to be agreed upon by members of the regional library cooperative and which is responsible for extending special services to support members of the regional library cooperative, while meeting all cooperative standards.
3. “Multitype library authority” means a geographic subdivision within which multitype libraries are organized for the purpose of providing library and information services through cooperation and mutual support.
4. “Participant library” means any library agreeing to join a regional library cooperative.
5. “Public library” means a library that is supported with funds derived from taxation and which maintains a balanced collection of materials to serve the lifelong information, reading, and recreational needs of the general population. For purposes of this chapter, “public library” includes tribal libraries.
6. “Regional library cooperative” means an organization of one or more types of library organized under Article VI of section 54-24.1-01, or a multitype library authority.
7. “School library media center” means a learning center operated as part of a publicly or privately supported school or school district and whose role is to provide instruction, cooperatively design learning strategies, and provide resources that support and enrich the curriculum, following the North Dakota school library media guidelines.

8. "Special library" means a public or private sector library whose collection is specialized and limited in scope and size and whose role is to provide information to a limited clientele.

**54-24.3-03. North Dakota library coordinating council powers and duties.**

In the administration of this chapter, the North Dakota library coordinating council may:

1. Adopt rules for the conduct of business.
2. Provide guidance for the development, implementation, and improvement of regional library cooperatives.
3. Enter contracts necessary for establishing and governing regional library cooperatives.
4. Use the staff of the state library in consultation with the state librarian.
5. Adopt a compensation plan for staff as necessary for establishing and governing regional library cooperatives.
6. Set the terms and conditions of statewide service contracts with libraries.
7. Determine necessary or desirable regional or statewide library programs or services.
8. Propose standards for service.
9. Set reimbursement formulas among regional library cooperatives for reciprocal borrowing and other cooperative plans and set statewide policies for reimbursement formulas for reciprocal borrowing.
10. Conduct periodic performance reviews of all categories of coordinating council grant-funded projects and make service revisions.

#### **54-24.3-04. Regional library cooperatives - Establishment.**

The North Dakota library coordinating council may establish regional library cooperatives. In establishing the cooperatives, the council shall consider:

1. Population;
2. Population density;
3. Number and types of libraries;
4. Library information resources, including existing libraries, staff, and collections;
5. Marketing and transportation patterns;
6. Proximity of municipalities;
7. Geographic size of the authority;
8. Finances; and
9. Any other matter not inconsistent with this section.

#### **54-24.3-05. Regional library cooperative interim planning committee - Establishment.**

The North Dakota library coordinating council shall appoint an interim planning committee for a proposed regional library cooperative. The interim planning committee must consist of two lay representatives residing within the cooperative and five librarians. The librarians, as far as practical, must represent public libraries, academic libraries, school library media centers, and special libraries.

#### **54-24.3-06. Regional library cooperative interim planning committee - Duties.**

In the administration of this chapter, the regional library cooperative interim planning committee may:

1. Elect provisional officers;
2. Identify all librarians eligible to be members of the regional library cooperative;
3. Hold informational meetings;
4. Distribute and receive applications for memberships in the regional library cooperative;

5. Draft interim bylaws for the regional library cooperative;
6. Prepare papers of incorporation;
7. Publicize activities;
8. Prepare a three-year plan for the development of services within the cooperative and present it to the North Dakota library coordinating council for review and approval; and
9. Exercise any other duty that is necessary to carry out this chapter.

#### **54-24.3-07. Regional library cooperative - Membership.**

To join the regional library cooperative, a library must obtain official approval from its board and submit an application to the interim planning committee. A library that agrees to provide to any person residing within the cooperative access to its collection on the premises, reciprocal borrowing privileges, and interlibrary loan service, may apply for membership. To be eligible for membership, a library must have defined service objectives, a fixed location, regular hours of service, an organized collection of information and materials accessible for use by its designated clientele, and a qualified and responsible staff. The library must have an identifiable organizational structure and a legal basis for operation. The library must be willing and able to participate in appropriate services and programs as set forth by the regional library cooperative. The regional library cooperative interim planning committee shall review all applications and approve applicants for membership.

#### **54-24.3-08. Regional library cooperative - Board.**

Each participating library shall designate a representative to sit on the board of the regional library cooperative. At its first meeting, the board shall elect a president, vice president, treasurer, and any other officer it determines to be necessary. The director of the designated library resource center shall serve as an ex officio nonvoting member of the board. The board shall meet at least six times a year and has the power to contract, hire staff and set compensation levels, and adopt bylaws for the conduct of its business. The term of office for all officers of the board is one year, commencing on the January first after election.

### **54-24.3-09. Regional library cooperative - Powers and duties.**

In the administration of this chapter, each regional library cooperative may:

1. Sue and be sued in the name of the cooperative.
2. Designate for the cooperative a central library resource center with responsibility to extend special services to cooperative members while meeting all cooperative standards.
3. Designate an administrative officer for the regional library cooperative.
4. Establish, manage, maintain, and operate library facilities.
5. Employ necessary personnel to carry out this chapter.
6. Purchase supplies and equipment.
7. Acquire and hold property by purchase, devise, lease, gift, or otherwise and sell, exchange, or otherwise dispose of property.
8. Prepare and adopt a budget.
9. Receive and account for funds from cooperative members.
10. Adopt rules.
11. Make an annual report to each member regarding the budget and expenditures, services rendered, program, development plans, audits, and any other information.
12. Enter into contracts necessary to fulfill this chapter.
13. Establish and collect rates and charges for services rendered.
14. Invest excess funds.
15. Establish special funds.
16. Join and participate in civic and professional organizations.

### **54-24.3-10. Regional library cooperative members - Rights and responsibilities.**

All members of a regional library cooperative are entitled to receive supplementary reference services, delivery service for library materials, interlibrary loan services, and assistance with citation and location of materials, and reciprocal borrowing privileges among the users of member libraries. All members of a regional library cooperative shall share resources with the exception that rare or

restricted materials may be exempt, implementing use standards and protocols; avail themselves of continuing education and training opportunities provided by the cooperative; participate in reference, referral, and interlibrary loan services using communication systems for information exchanged among all types of libraries; maintain total expenditures for library operation, excluding capital improvements, at a level not lower than the preceding fiscal year, or maintain the same or higher mill levy or mill rate equivalency as the preceding fiscal year; and participate in cooperative bibliographic projects.

#### **54-24.3-11. Voting rights of members.**

Each academic, institutional, public, school, and special library has one vote on the board of the regional library cooperative. Each operating public school district has one vote on the board of the cooperative and represents all public school media centers located within the district. Private and parochial school media centers located within each public school district are a single entity and shall elect one voting representative from among themselves.

#### **54-24.3-12. Withdrawal of membership.**

To discontinue participation in a regional library cooperative, a library cooperative member shall give, in advance, a one-year written notice to the board of the cooperative and the North Dakota library coordinating council. No member may withdraw unless it has been a participant in the regional library cooperative for at least two years at the time of termination. The withdrawing member shall return all property of the regional library cooperative.

#### **54-24.3-13. Regional library cooperatives - Operating grants.**

Each regional library cooperative, upon formation, may apply to the North Dakota library coordinating council for grant funds available for disbursement by the council.

#### **54-24.3-14. Fiscal controls and reports.**

The board of a regional library cooperative shall develop appropriate accounting and record management policies and procedures documenting the operations of the cooperative. These policies and procedures must provide that:

1. All records for the regional library cooperative and board, including those of the board treasurer, are to be maintained at the cooperative headquarters.
2. Copies of the regional library cooperative board minutes are sent to each member library, the North Dakota library coordinating council, and the state librarian.
3. The fiscal year runs from July first to June thirtieth and financial records and activities are maintained in accordance with accepted accounting practices. A record of all bills, payments, and receipts must be presented to the regional library cooperative board by the treasurer at regular meetings and at any other meeting as required by the board.
4. An annual report of cooperative operations, including an accounting of all revenues and expenses, must be filed with the North Dakota library coordinating council and the state librarian at the close of each fiscal year.

#### **54-24.3-15. Cooperative services and activities.**

1. Each regional library cooperative shall include as part of its five-year plan for development provisions for:
  - a. Reference services to supplement those provided by each local library, including interlibrary reference and referral services to residents of the cooperative.
  - b. Interlibrary loan services on behalf of residents of the cooperative.
  - c. Delivery services for library materials.
  - d. Citation and location services for library materials.
2. Each cooperative may provide for:
  - a. Consultant services and shared staff expertise;
  - b. Cooperative or coordinated acquisition of library materials or subject specialization programs;
  - c. Reciprocal borrowing between member librarians;
  - d. Staff development and inservice training programs;
  - e. Centralized ordering, cataloging, and processing of the library materials;
  - f. Cooperative storage of library materials and lost-copy protection programs;

- g. Access to computerized literature citation and information databases;
- h. Preservation of library materials programs;
- i. Public relations services; and
- j. Any other services not inconsistent with this section.

**54-24.3-16. Dissolution of the regional library cooperative.**

If the need for a regional library cooperative ceases to exist, the board of the cooperative, by a two-thirds vote of its members, may declare its intent to dissolve the organization and file with the North Dakota library coordinating council a plan for affecting the dissolution. Upon receipt of the dissolution plan, the council shall determine if the area of service can be allocated to other regional library cooperatives, determine whether the assets and liabilities of the regional library cooperative seeking to dissolve can be assumed and absorbed by adjoining regional library cooperatives, and consider any other factors that relate to the operation and functioning of the regional library cooperative seeking to dissolve. If the council determines that the regional library cooperative should be dissolved, the dissolution takes effect when all legal and fiscal obligations of the regional library cooperative have been satisfied.

# **LIBRARY COORDINATING COUNCIL**

## **CHAPTER 54-24.4- Library Coordinating Council**

### **54-24.4-01. North Dakota library coordinating council - Members - Term.**

The North Dakota library coordinating council consists of eleven members. The president of the North Dakota library association, or the president's designee, is an ex officio voting member of the council. The state librarian is an ex officio nonvoting member of the council. The governor shall appoint nine members to the council; one of whom must represent a public or private higher education institution library; two of whom must represent libraries at large; one of whom must represent school libraries; two of whom must represent public libraries; one of whom must represent disabled, economically disadvantaged, and minority populations; and two must be citizens at large. All appointed members, except citizens at large, must be practicing librarians. The governor shall take into account reasonable geographic considerations when appointing members of the council. The term of each member is three years. If at any time during a member's term the member ceases to possess the qualifications required by this section, the member's office is deemed vacant, and the governor shall appoint a qualified representative to complete the term of office. No member may be appointed to serve more than two consecutive three-year terms.

### **54-24.4-02. North Dakota library coordinating council - Compensation and expense reimbursement.**

Each member of the North Dakota library coordinating council is entitled to receive as compensation sixty-two dollars and fifty cents per day, together with expenses as provided in sections 44-08-04 and 54-06-09, while attending meetings or performing duties directed by the council. No compensation may be paid under this section to any council member who receives compensation as a regular state official or employee.

#### **54-24.4-03. North Dakota library coordinating council - Meetings.**

The North Dakota library coordinating council shall hold at least one meeting each calendar year for the purpose of awarding grants or contracts. The council shall give notice to the press and the public of any council meeting at least thirty days in advance of the meeting. Awarding of any grant or contract requires approval by two-thirds of the members of the council.

#### **54-24.4-04. North Dakota library coordinating council - Powers.**

The North Dakota library coordinating council may elect from its members an executive committee to assist it in performing its duties. The council, in consultation with the state librarian, may request assistance from the staff of the state library in performing its powers and duties.

#### **54-24.4-05. North Dakota library coordinating council - Duties.**

The North Dakota library coordinating council shall:

1. Assist in planning, coordinating, and evaluating the services and programs of libraries in the state.
2. Approve the distribution of grants to libraries, except for grants distributed under chapter 54-24.2.
3. Facilitate the development of a comprehensive statewide online library catalog, promote statewide resource sharing, and encourage electronic networking among all types of libraries.
4. Strengthen the state library in its role of coordinating and enriching library service in the state.
5. Support and strengthen library cooperative ventures, including consortia, regional associations, and partnerships, in their role of extending and improving library services in the state.
6. Promote equitable access to information resources and library services to persons throughout the state.
7. Promote the services of libraries and librarians.
8. Take action necessary to carry out chapter 54-24.3 and this chapter.

# **LAWS PERTAINING TO TAX LEVIES**

## **CHAPTER 57-15- Tax Levies and Limitations**

(Sections selected pertain to libraries. For the complete citation, please use the North Dakota Century Code)

### **57-15-06.7. Additional levies - Exceptions to tax levy limitations in counties.**

The tax levy limitations specified in section 57-15-06 do not apply to the following mill levies, which are expressed in mills per dollar of taxable valuation of property in the county:

...

6. A county levying a tax to establish and maintain a public library service as provided in section 40-38-02 may levy a tax not exceeding four mills.

...

### **57-15-10. Exceptions to tax levy limitations in cities.**

The tax levy limitations specified in section 57-15-08 do not apply to the following tax levies:

...

4. Taxes, not exceeding four mills, levied for the purpose of establishing and maintaining a library fund for public library services in accordance with section 40-38-02.

...

# **OTHER LAWS PERTAINING TO LIBRARIES**

## **CHAPTER 11-11- Board of County Commissioners**

### **11-11-52. Board may provide room for historical society.**

The board of county commissioners of any county, or the governing body of any municipal corporation, or the board of any public library in the state is hereby authorized and empowered to furnish a room or rooms in the county courthouse, in a municipal building, or in a public library building, as the case may be, for the use of the historical society of such county, and to furnish light and heat therefor.

## **CHAPTER 21-03- Bonds**

### **21-03-06. Purposes and specific limitations of bond issues.**

Municipalities are empowered to borrow money, subject to the general limitations of amounts prescribed by sections 21-03-04 and 21-03-05, and subject, in certain cases, to the further limitations prescribed by the section, and to issue bonds thereof for the purposes enumerated in the section. Such bonds may be issued:

2. By any city:
  - a. For the erection, purchase, construction, enlargement, or repair of municipal or public buildings for the following purposes: city halls, fire protection buildings, waterworks buildings, police stations, city markets, public baths, hospitals, libraries, museums, auditoriums, armories, gymnasiums, and music halls; and to purchase and acquire sites for such buildings, and for the equipment and furnishing thereof.

## **CHAPTER 23-12- Public Health, Miscellaneous Provisions**

### **23-12-09. Smoking in public places and places of employment - Definitions**

In sections 23-12-09 through 23-12-11, unless the context or subject matter otherwise requires:

...

11. "Public place" means an area which the public enters. Some examples of public places are publicly owned buildings, vehicles, or offices;... museums, libraries, galleries, and aquariums;

...

### **23-12-10. Smoking restrictions - Exceptions - Retaliation - Application.**

1. In order to protect the public health and welfare and to recognize the need for individuals to breathe smoke-free air, smoking is prohibited in all enclosed areas of:
  - a. Public places; and
  - b. Places of employment.

## **CHAPTER 25-01.1- Institutional Management**

### **25-01.1-16. Inventory of stocks and supplies.**

The supervising department, annually on June thirtieth of each year, shall require the superintendent of each institution under its charge to make a complete, minute, and accurate inventory of the stock and supplies on hand, and the amount and value thereof. The inventory must be under the following heads:

16. Library property.

A like inventory must be submitted by the proper superintendent of each institution to the supervising department when requested by the supervising department.

## **CHAPTER 26.1-22- State Fire and Tornado Fund**

### **26.1-22-10. Commissioner to provide insurance on buildings and personal property.**

4. All public libraries owned by the state or political subdivisions may, in addition to the coverage provided for in this section, be covered against damage through vandalism. If this coverage cannot be extended to the public libraries situated within this state, the libraries may contract for this coverage with private insurance companies; provided, that this coverage meets the recommendations of the insurance code of the American library association.

## **CHAPTER 40-46- Employees' Pensions In Cities**

### **40-46-09. Who may be retired on pension - Amount paid to retiring employee.**

Any appointed full-time employee, who shall be a member of a city employees' pension fund, including librarians and other employees of a public library, and full-time employees of a city recreation commission, of a city having an employees' pension fund who shall have served two hundred forty months or more, whether or not consecutive, as an employee and shall have reached the age of sixty years, or who, while employed by such city, shall suffer permanent mental or physical disability so that the person is unable to discharge the person's duties, shall be entitled to be retired. Upon retirement, the person shall be paid out of the pension fund of such city a monthly pension of not to exceed sixty percent of one-twelfth of the person's highest three-year average annual earnings as provided for in the plan adopted by the governing body of the city. If any member shall have served two hundred forty months in such city employment but shall not have reached the age of sixty years, the person shall be entitled to retirement, but no pension shall be paid while the person lives until the person reaches the age of sixty years.

## **CHAPTER 43-23- State Real Estate Commission**

### **43-23-15. Real estate courses - Studies.**

The commission may assist libraries, real estate brokers and real estate salespersons, and institutes and foundations, with financial aid or otherwise, in providing texts, sponsoring studies, surveys, and programs for the benefit of real estate and the elevation of the real estate business.

## **CHAPTER 53-06.1- Games Of Chance**

### **53-06.1-11.1. Restricted use of money in certain political activities - Eligible uses of net proceeds**

2. A licensed organization or an organization that has a restricted event permit shall disburse net proceeds within the period prescribed by rule and for only these educational, charitable, patriotic, fraternal, religious, or public-spirited uses:
  - c. Uses benefiting an indefinite number of persons by bringing them under the influence of education, cultural programs, or religion which include disbursements to provide:
    - (3) Assistance to libraries and museums.

## **CHAPTER 54-10- State Auditor**

### **54-10-14. Political subdivisions - Audits - Fees - Alternative audits and reports.**

1. The state auditor shall audit the following political subdivisions once every two years, except as provided in this section or otherwise by law:
  - g. Public libraries.

## **CHAPTER 54-35- Legislative Management**

### **54-35-15.2. Information technology committee - Powers and duties.**

The information technology committee has continuing existence and may meet and conduct its business during the legislative session and in the interim between sessions. The committee shall:

11. a. Receive and review information, including a project startup report summarizing the project description, project objectives, business need or problem, cost-benefit analysis, and project risks and a project closeout report summarizing the project objectives achieved, project budget and schedule variances, and lessons learned, from the state board of higher education regarding any major project of the state board of higher education or any institution under the control of the state board of higher education if the project:

...

- (2) Impacts the statewide library system

...

## **CHAPTER 54-59- Information Technology Department**

### **54-59-24. Borrowing authority - E-rate funding - Emergency commission approval.**

Notwithstanding the limitations provided in section 54-59-05 and upon the approval of the emergency commission, the department may borrow from the Bank of North Dakota an amount necessary to pay telecommunications costs for connecting approved schools and libraries in the event e-rate funding is not received by the department from the schools and libraries division of the universal service administrative company. In addition to the principal repayment, the Bank of North Dakota is entitled to receive interest on the loan at a rate equal to other state agency borrowings. If at the end of the biennium a balance exists on any loan obtained pursuant to this section and funds are not anticipated to be available from the schools and libraries division of the universal service administrative company to repay the loan, the department shall request a deficiency appropriation from the legislative assembly to repay the loan.

## **CHAPTER 58-06- Board of Township Supervisors**

### **58-06-01. General powers and duties of board of township supervisors.**

The board of township supervisors has the following powers and duties:

...

3. To recommend to the electors the expenditure of a stated amount for the purpose of purchasing building sites, and for purchasing, erecting, locating, or removing any building, township hall, or library building for the use and benefit of the township.

...

# **NORTH DAKOTA ADMINISTRATIVE CODE**

## **CHAPTER 67-11-04- Library Media Credential**

### **67-11-04-01. Credentials required.**

For purposes of school accreditation, a school may employ as a librarian only a person who holds a library media credential as outlined in this chapter or who has been authorized by the North Dakota education standards and practices board in this specialty at a level the department determines meets or exceeds the requirements of this chapter and is consistent with the North Dakota teacher education program approval standards 2004 with 2006 revisions adopted by the education standards and practices board. An individual holding a library media credential issued under this chapter may serve students in prekindergarten through grade twelve.

### **67-11-04-02. Issuing agency.**

The library media credential is issued by:

Superintendent of Public Instruction  
Department of Public Instruction  
600 East Boulevard Avenue, Dept. 201  
Bismarck, ND 58505-0440

### **67-11-04-03. Approval for library media programs.**

Whenever this chapter refers to “state-approved program”, it refers to the process by which the North Dakota education standards and practices board approves programs at those colleges within the state of North Dakota which provide library media preparation. Preparation from an out-of-state college must be from an approved program for library media in that state and meet or exceed North Dakota standards.

#### **67-11-04-04. Types of credentials.**

1. Beginning on April 1, 2021, the plan of study option to qualify for a library media credential is:
  - a. Issued to an individual licensed to teach or approved to teach by the North Dakota education standards and practices board;
  - b. Issued to an individual who is employed as a librarian in a school and who does not meet the qualifications for an LM01, LM02, or LM03 credential;
  - c. Issued to an individual who is enrolled in a state-approved course of study in school library preparation and has obtained a letter from a supervisor recommending the individual for a school library plan of study credential; and
  - d. Issued to an individual who submits a written plan of study for approval to become a credentialed librarian and who annually submits college transcripts showing a minimum of six semester hours of undergraduate or graduate credits in library media until the licensed teacher qualifies for the required credential.
  
2. Beginning on April 1, 2021, the librarian credential (LM03) is:
  - a. Issued to coincide with the period for which the individual is licensed to teach or approved to teach by the North Dakota education standards and practices board; however, an individual holding a lifetime educator's professional license must renew the credential every five years;
  - b. Issued to an individual who has completed a minimum of fifteen semester hours of undergraduate or graduate credits in library media, of which at least one course must come from a subdivision of each of subsections 1 through 5 of section 67-11-04-05.

3. Beginning on April 1, 2021, the library media specialist credential (LM02) is:
  - a. Issued to coincide with the period for which the individual is licensed to teach or approved to teach by the North Dakota education standards and practices board; however, an individual holding a lifetime educator's professional license must renew the credential every five years; and
  - b. Issued to an individual who has completed a minimum of twenty-four semester hours of undergraduate or graduate credits in library media, of which at least one course must come from a subdivision of each of subsections 1 through 5 of section 67-11-04-05.
4. Beginning on April 1, 2021, the library media director credential (LM01) is:
  - a. Issued to coincide with the period for which the individual is licensed to teach or approved to teach by the North Dakota education standards and practices board; however, an individual holding a lifetime educator's professional license must renew the credential every five years;
  - b. Issued to an individual who:
    1. Holds a master's degree in library media and information science; or
    2. Holds a master's degree certifiable by the North Dakota education standards and practices board and meet all requirements of subsection 3 of this section.
5. If a credential issued under this chapter will expire within twelve months of issuance because the educator's professional license will expire within twelve months of the issuance of the credential, the credential will be issued for a period coinciding with the period of licensure of the succeeding educator's professional license.

### **67-11-04-05. Credential standards.**

Coursework required for all library media credentials and the plan of study option identified in section 67-11-04-04 must be taken from a state-approved library media program. The standards for library media credentials are:

1. The learner and learning, which includes:
  - a. Learner development;
  - b. Learner diversity;
  - c. Learning differences; and
  - d. Learning environments.
2. Planning for instruction, which includes:
  - a. Instructional strategies;
  - b. Integrating ethical use of information into instructional practice; and
  - c. Assessment.
3. Knowledge of application and content, which includes:
  - a. Reading engagement;
  - b. Information literacy; and
  - c. Technology-enabled learning.
4. Organization and access, which includes:
  - a. Access;
  - b. Information resources; and
  - c. Evidence-based decisionmaking.
5. Leadership, advocacy, and professional responsibility, which includes:
  - a. Professional learning;
  - b. Leadership and collaboration;
  - c. Advocacy; and
  - d. Ethical practice.

### **67-11-04-06. Application process.**

An applicant must submit the following:

1. A completed online application; and
2. A copy of college transcripts showing coursework for the desired credential.

### **67-11-04-07. Renewal requirements.**

All library media credentials are renewed by submitting the following:

1. A completed online application; and
2. A copy of college transcripts showing completion of two semester hours of graduate-level continuing education credit in library media and information science, computer science, cybersecurity, or other related content.

### **67-11-04-08. Reconsideration.**

If issuance or renewal of any credential under this chapter is denied, the denial must be in writing and must state all reasons for denial and the applicant must be notified of the opportunity for reconsideration. If an application for issuance or renewal of any credential under this chapter is denied, the applicant may request a reconsideration of the decision. A request for reconsideration must be in writing and must be received by the superintendent of public instruction within three weeks of mailing of the denial. Late requests will not be considered. The reconsideration request must state the following:

1. The facts, law, or rule the applicant believes was erroneously interpreted or applied; and
2. The applicant's arguments on how the facts, law, or rule should have been applied, giving specific reasons and thorough analysis.

The superintendent of public instruction shall issue a final written response on the reconsideration request within three weeks after receiving a reconsideration request.

## **CHAPTER 99-01.3-01- Organization Licenses and Permits**

### **99-01.3-01-01. Ineligible organizations.**

An organization or a closely related organization may be ineligible for a license or permit if either organization has failed to resolve an imbalance involving its gaming or trust account according to section 99-01.3-03-05, has deals or games with state gaming stamps that are not accounted for, is delinquent in paying any tax, interest, penalty, or monetary fine due, has failed to comply with the terms and conditions of an administrative order, or was convicted of violating this article or North Dakota Century Code chapter 12.1-28 or 53-06.1. An auxiliary that is not a closely related organization is eligible for a permit. An organization that is licensed shall either have its principal executive office in North Dakota or be a foreign corporation authorized to conduct a raffle under chapter 20.1-04 or 20.1-08. A county, city, state, political subdivision, or federal entity is not eligible for a license or permit. A nonprofit social, hobby, trade, business, professional, similar club or association, or organization whose primary purpose mainly provides a direct benefit to its officers or members, is not a public-spirited organization eligible for a license.

## **CHAPTER 99-01.3-14- Eligible Uses**

### **99-01.3-14-02. Eligible uses.**

4. In applying subdivision c of subsection 2 of North Dakota Century Code section 53-06.1-11.1, eligible uses include:
  - c. Assistance to a library for maintenance of buildings, remodeling, fixed assets, administrative and operating expenses, supplies, program services, special events, promotions, educational material, books, computer systems, information services, exhibits, story hours, film showings, and discussion groups. A disbursement to a museum may be for maintaining buildings, remodeling, fixed assets, administrative and operating expenses, and assembly of exhibits for preservation, collection, education, and interpretation;

# **NORTH DAKOTA RESOURCES**

## **The North Dakota Attorney General’s Office**

### **Open Records and Meetings**

For information about the Open Records and Meetings regulations, please consult this section of the Attorney General Office website.

<https://attorneygeneral.nd.gov/open-records-meetings/manuals-and-guides/>

### **Attorney General Opinions**

The Attorney General office issues opinions on law interpretations. You can use a keyword search or a Cumulative Index to find library or library board related opinions.

<https://attorneygeneral.nd.gov/opinions-search/>

## **North Dakota Legislative Council**

### **North Dakota Administrative Code**

The Administrative Code is the codification of most of the rules of state administrative agencies, as that term is defined by North Dakota Century Code Section 28-32-02.

<https://www.ndlegis.gov/prod/agency-rules/north-dakota-administrative-code/>

### **North Dakota Century Code**

This is an online version of the Century Code. You can also consult a print version found at the North Dakota State Library, the North Dakota Supreme Court Library, or in many libraries throughout the state. The print version of the North Dakota Century Code contains case annotations and legislative histories and offers a more complete version of the law.

<https://ndlegis.gov/general-information/north-dakota-century-code>

DISCLAIMER: For a full citation of the laws, including legislative histories, please consult <https://www.ndlegis.gov>.

# NOTES

# NOTES

# NOTES



Mary J. Soucie  
State Librarian

North Dakota State Library, a division of the  
ND Department of Public Instruction  
Kirsten Baesler, State Superintendent

The North Dakota State Library does not discriminate on the  
basis of race, color, national origin, sex, age, or disability in  
employment or the provision of services.

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