

## **CHAPTER 44-08 MISCELLANEOUS PROVISIONS**

### **44-08-01. Preference to North Dakota bidders, sellers, and contractors.**

1. The office of management and budget, any other state entity, and the governing body of any political subdivision of the state in purchasing any goods, merchandise, supplies, or equipment of any kind, or contracting to build or repair any building, structure, road, or other real property, shall give preference to bidders, sellers, or contractors resident in North Dakota. The preference must be equal to the preference given or required by the state of the nonresident bidder, seller, or contractor.
2. A state entity authorized to accept bids shall give preference to a resident North Dakota bidder when accepting bids for the provision of professional services, including research and consulting services. The preference must be equal to the preference given or required by the state of the nonresident bidder.
3. The office of management and budget, any other state entity, and the governing body of any political subdivision of the state in specifying or purchasing any goods, merchandise, supplies, or equipment, may not specify any trademarked or copyrighted brand or name, nor the product of any one manufacturer, nor any patented product, apparatus, device, or equipment, when the same will prevent proper competition, unless bidders also are asked for bids or offers upon other articles of like nature, utility, and merit. When it is advantageous that the purchase be of a particular brand of product or products of a particular manufacturer to the exclusion of competitive brands or manufacturers, the purchasing board or entity must document those circumstances and provide written justification for the proprietary specification or purchase. The purchasing board or entity shall procure the proprietary product through a competitive process unless the needed product is available exclusively from one source of supply or other circumstances exist under which competition can be waived.

### **44-08-01.1. Bids to be sealed - Designation of time and place for opening - Preference for tie bids.**

Notwithstanding any other provisions of the North Dakota Century Code, the governing bodies of the political subdivisions of the state of North Dakota shall accept only sealed bids, whenever by law or administrative decision they are required to call for, advertise, or solicit bids for the purchase of personal property and equipment. Whenever a political subdivision of this state calls for, advertises, or solicits sealed bids, it shall designate a time and place for the opening of such bids. If all of the bids are not rejected, the purchase must be made from the bidder submitting the lowest and best bid meeting or exceeding the specifications set out in the invitation for bids. In the event that two or more bids contain identical pricing or receive identical evaluation scores, preference must be given to bids submitted by North Dakota vendors.

### **44-08-02. Resident North Dakota bidder, seller, and contractor defined.**

The term "a resident North Dakota bidder, seller, or contractor" when used in section 44-08-01, unless the context thereof clearly provides otherwise, means a bidder, seller, or contractor who has maintained a bona fide place of business within this state for at least one year prior to the date on which a contract was awarded.

### **44-08-03. Traveling expenses - What allowed.**

No elective or appointive officer, employee, representative, or agent of this state, or of any of its subdivisions, agencies, bureaus, boards, or commissions, may willfully make claim upon, or willfully receive, any public funds for traveling expenses, while engaged upon public business, in an amount in excess of that allowed by law for such travel. If more than one public officer, employee, representative, or agent travels in the same car while engaged upon official duty, whether belonging to different departments, subdivisions, boards, or commissions or not, no claim may be made for more than one mileage, such claim to be made by the owner or lessee of such car.

#### **44-08-04. Expense account - Amount allowed - Verification.**

1. Except as provided in section 44-08-04.1, each elective or appointive officer, employee, representative, or agent of this state, or of any of its subdivisions, agencies, bureaus, boards, or commissions, may make claim for meals and lodging while engaged in the discharge of a public duty away from the claimant's normal working and living residence for all or any part of any quarter of a day. Claims may also be made for meals that are included as part of a registration fee for a conference, seminar, or other meeting and for meals attended at the request of and on behalf of the state or any of its subdivisions, agencies, bureaus, boards, or commissions; however, if a meal is included in a registration fee, the applicable quarter allowance cannot be claimed for that meal. Claims for meals specifically included in a registration fee for a conference, seminar, or other meeting must be allowed even if the city at which the conference, seminar, or meeting is held or the meal is provided is the claimant's normal working and living residence. If a higher education athletic team or other organized institution organization group meal is attended at the request of and on behalf of the institution, actual expenses for the entire group, including coaches, trainers, and other employees, may be paid or submitted for payment on a team or group travel expense report; subsection 2 does not apply; and officers and employees are not required to document individual expenses or submit individual travel reimbursement vouchers. Reimbursement is allowed only for overnight travel or other travel, away from the normal place of employment, for four hours or more. Verification of expenses by receipt is required only for lodging expenses.
2. For travel within the state, the following rates for each quarter of any twenty-four-hour period must be used:
  - a. First quarter is from six a.m. to twelve noon and the sum must be seven dollars. First quarter reimbursement may not be made if travel began after seven a.m.
  - b. Second quarter is from twelve noon to six p.m. and the sum must be ten dollars and fifty cents.
  - c. Third quarter is from six p.m. to twelve midnight and the sum must be seventeen dollars and fifty cents.
  - d. Fourth quarter is from twelve midnight to six a.m. and the sum must be the actual lodging expenses not to exceed an amount established by policy by the director of the office of management and budget plus any additional applicable state or local taxes. The director shall establish a policy to set the lodging reimbursement at an amount equal to ninety percent of the rate established by the United States general services administration for lodging reimbursement in this state. A political subdivision may reimburse an elective or appointive officer, employee, representative, or agent for actual lodging expenses.
3. The allowance for out-of-state meals, within the continental United States, is equal to the per diem meals rate in the city for which a claim is made on that day as established by rule for federal employees by the United States general services administration and must be allocated twenty percent to the first quarter, thirty percent to the second quarter, and fifty percent to the third quarter.
4. The allowance for meals in noncontinental United States and overseas nonforeign areas, including Alaska, Hawaii, and Guam, is equal to the per diem meals rate in the city for which a claim is made on that day as established by rule for federal employees established by the United States per diem committee.
5. The allowance for meals outside the United States is equal to the per diem meals rate in the city for which a claim is made on that day as established by rule for federal employees established by the United States department of state.
6. The allowance for lodging outside the state must be the actual lodging expense.
7. A department, institution, or agency of this state may set a rate for travel expenses outside the state less than those set forth in this section. Verification of any other type of expense not prescribed by this section must be as prescribed by the office of the budget except no receipt may be required for taxi or cab fares of ten dollars or less.

The office of management and budget shall disapprove any claim it determines to be in error or unlawful or not within the limits of legislative appropriations.

**44-08-04.1. Per diem allowance for long-term travel.**

With the approval of the office of the budget, any state agency may adopt a per diem allowance in lieu of expenses as allowed by section 44-08-04 for its officials and employees whose official duties require that they remain on travel status away from their normal working and living residence for extended periods of time. No per diem allowed may be in excess of the total allowance for meals and lodging as allowed by section 44-08-04. Travel status of one week or less may not be considered long-term or extended travel. Rental receipts must be used to verify travel status under this section.

**44-08-04.2. Travel advances.**

1. Any state agency shall advance at the request of the agency head for employees of that agency funds to be used for payment of meal and lodging expenses incurred while the official or employee is traveling on official business of this state, provided that such travel must be planned to be in excess of five days per month, whether or not consecutive, and provided that the funds advanced do not exceed eighty percent of estimated expenses for the period. Travel advances must be approved by the chief executive officer or a designee of the agency involved. Funds advanced for meals and lodging under this section must be accounted for as required under section 44-08-04 for travel.
2. As used in this section, and section 44-08-04.1:
  - a. "Official business of this state" includes travel to attend training courses.
  - b. "State agency" means agencies, boards, commissions, bureaus, offices, departments, institutions, and any other state governmental entities, and specifically includes the legislative and judicial branches of state government.

**44-08-04.3. Moving expense - Allowances - Verification.**

The head of any department, institution, or agency may authorize the payment of moving expenses incurred by a permanent employee who has been employed in that department, institution, or agency not less than one year when that employee is transferred from one city in the state to another for the purpose of assuming a new duty assignment of a permanent nature within that department, institution, or agency. Relocation costs payable are:

1. All actual costs of moving personal household goods and furnishings, not to exceed eleven thousand pounds [4989.60 kilograms] net weight.
2. The expenses of transportation to the new residence quarters, limited to one round trip, and actual meal and lodging costs for the employee and spouse, for three days.
3. The expenses of transportation, lodging, and meals incurred by the employee and the immediate family while en route to the new duty station.
4. The expenses for the employee and immediate family while occupying temporary living quarters within the state, not to exceed thirty days.

Provided, however, that payment of the expenses itemized in subsections 1 through 4 may not exceed five thousand dollars. Verification for expenses under subsection 1 must be a paid receipt from a licensed moving agency, licensed trailer transportation company, trailer rental agent, or other licensed moving company; verification for expenses under subsection 2 must be highway mileage between the location sites and meal and lodging receipts; verification for expenses under subsection 3 must be receipts for meals and lodging plus highway mileage for one motor vehicle between the duty stations; and verification for expenses under subsection 4 must be according to section 44-08-04. An employee, for the purpose of this section, is one who has served at least one year, including a probationary period, and whose retention is approved after such probationary period.

#### **44-08-04.4. Prepayment of travel expenses of state officers and employees.**

Any travel expense, including airline tickets and registration fees, that must be incurred more than five weeks in advance of approved travel to meet necessary deadlines or to obtain low rates, may be purchased by the state or any elected or appointed officer, employee, representative, or agent of this state. No state entity may require an officer, employee, representative, or agent of the state to pay these expenses.

#### **44-08-04.5. Prepayment and direct billing of lodging expenses of state officers and employees.**

1. The office of management and budget shall seek to obtain sales tax exemptions for state employee travel lodging expense from all other states and the District of Columbia. If available from other states, the office of management and budget shall file exemption records, documents, or numbers for use by state agencies. Whenever any state agency, board, bureau, or institution makes out-of-state travel plans involving a lodging expense, the agency may contact the office of management and budget to determine if a sales tax exemption has been obtained from the destination state or states. If an exemption has been obtained, and if travel plans are sufficiently certain, the agency, board, bureau, or institution may obtain the required documentation from the office of management and budget and arrange with the out-of-state lodging provider to have the agency prepay the lodging expense or to have the lodging expense directly billed to the agency and obtain the benefit of the sales tax exemption.
2. If a state agency, board, bureau, or institution makes travel plans involving a lodging expense, the agency, board, bureau, or institution may arrange with the lodging provider or travel agency to have the lodging expense prepaid by the agency or billed directly to the agency.

#### **44-08-05. Civil recovery of public funds.**

Any person who receives public funds for the discharge of a public duty in excess of the amounts allowed by law is, thirty days after a demand for a return of such excess amounts has been made by the attorney general, subject to a civil suit to be brought by the attorney general for the recovery of the amount received in excess of that lawfully allowed.

#### **44-08-05.1. Payments - Purchasing card authority - Penalty.**

1. Any public officer or employee who has the power to approve a payment for travel expenses or any other expenditure of public funds shall determine before approving the payment:
  - a. That the expenditure for travel or other expenditures were for lawful and official purposes.
  - b. If for employee travel reimbursement, the sums claimed for travel expenses are actually due the individual who is seeking reimbursement, allowance, or payment.
  - c. If the payment is for expenditure other than travel expense, that the expenditure is lawful and that the payment contains no false claims.
2. The director of the office of management and budget, the state board of higher education, the governing body of any political subdivision, and the board of any school district may establish and administer a purchasing card system for use by its officers, employees, representatives, or agents. If the director of the office of management and budget establishes a cooperative purchasing contract under section 54-44.4-13, each participating government entity is responsible for its purchasing card system.
3. An employee of the office of management and budget designated by the director of the office of management and budget, on behalf of all state agencies, may review and approve payments made with a purchasing card and make payments. The director of the office of management and budget may designate the state agencies that are required to use the purchasing card system.
4. Any public officer or employee who fraudulently uses a purchasing card or knowingly approves a payment for false or unlawful claims or which does not otherwise meet the

requirements of this section for approval may be subject to criminal prosecution under title 12.1. Any public officer or employee who, without the use of ordinary care and diligence, uses a purchasing card or approves a payment for false or unlawful claims or which does not otherwise meet the requirements of this section for approval is personally liable for any funds improperly expended.

5. Any public officer, employee, or any other individual who has knowledge of an actual or possible violation of this section shall make that information known to the attorney general or the appropriate state's attorney. The attorney general or appropriate state's attorney may investigate any alleged violation. If there is probable cause to believe that a violation has occurred, the attorney general or appropriate state's attorney shall initiate a criminal prosecution under title 12.1 or a civil suit against the public officer or employee for the recovery of the funds as may actually have been improperly paid, or may initiate a prosecution and a civil suit. Any public officer, employee, or any other individual who has provided information to the attorney general or a state's attorney under this subsection shall keep the information confidential until a determination is made as to whether a criminal prosecution is warranted.

#### **44-08-06. Dimensions of seal of court or officer.**

Except as otherwise provided by law relating to notary stamps, upon every seal of a court or officer of this state required or authorized to have a seal, there must be engraved the words "State of North Dakota" and the name of the court or office in which the seal is to be used. All such seals, except the great seal, must be surrounded by a border, and be either one and five-eighths inch [41.28 millimeters] in diameter or if of a rectangular design, may be up to or equal to seven-eighths inch [22.23 millimeters] vertically by two and five-eighths inches [66.68 millimeters] horizontally.

#### **44-08-06.1. Validation - Certificates of acknowledgment.**

All certificates of acknowledgment by notaries public on all documents filed for record with a recorder in the state, notwithstanding any defects or irregularities with the notary seal, are hereby validated, ratified, approved, and confirmed. Notwithstanding section 44-08-06, all seals of a court or officer of this state are binding, legal, and enforceable. The provisions of this section relating to validation of acknowledgments are applicable to all documents filed with any county recorder in the state after July 1, 1987.

#### **44-08-07. When temporary seal may be authorized.**

When any court of record is unprovided with a seal, the judge thereof may authorize the use of any temporary seal, or of any device by way of seal, until a permanent seal is provided.

#### **44-08-08. Per diem oath - Penalty.**

Repealed by S.L. 2003, ch. 388, § 5.

#### **44-08-09. Fees paid in advance or security given.**

The clerk of the supreme court, the clerk of each district court, sheriff, or recorder, in all cases, may require the party for whom any service is to be rendered to pay the fees in advance of service, or to give security for the costs of service, to be approved by the officer.

#### **44-08-10. Provision "Buy North Dakota Products" - Public notices and printing.**

Repealed by S.L. 1973, ch. 364, § 1.

#### **44-08-11. State and other political subdivisions to furnish counsel to defend law enforcement officers.**

The state or any political subdivision of the state must furnish legal counsel to defend any law enforcement officer in any action brought against such officer to recover damages arising out of any act of such officer in good faith and in the performance of the officer's official duties.

#### **44-08-12. Definitions.**

As used in sections 44-08-12 through 44-08-14:

1. "Authorized officer" means any official of this state or any of its departments, agencies, public bodies, or other instrumentalities or any of its political subdivisions whose signature to a lease issued by the board of university and school lands, public security, or instrument of payment is required or permitted.
2. "Facsimile signature" means a reproduction by engraving, imprinting, stamping, or other means of the manual signature of an authorized officer.
3. "Instrument of payment" means a check, draft, warrant, or order for the payment, delivery, or transfer of funds.
4. "Public security" means a bond, note, certificate of indebtedness, or other obligation for the payment of money, issued by this state or by any of its departments, agencies, public bodies, or other instrumentalities or by any of its political subdivisions.

#### **44-08-13. Facsimile signature.**

Any authorized officer, after filing with the secretary of state or, in the case of officers of any city, county, school district, or other political subdivision, with the clerk or business manager of such subdivision, the officer's manual signature certified to under oath, may execute or cause to be executed with a facsimile signature in lieu of a manual signature:

1. Any public security, provided that at least one signature required or permitted to be placed thereon, or the signature of an authenticating agent or agents designated in writing by the issuer of the security or by the person whose signature is required or permitted to be placed thereon, must be manually subscribed, but no such manual subscription may be required as to interest coupons attached to such security.
2. Any instrument of payment.
3. Any lease issued by the board of university and school lands.
4. Any license, permit, or other authorization provided for by the statutes, ordinances, resolutions, or rules of this state, any city, county, school district, or other political subdivision in this state.

Upon compliance with sections 44-08-12 through 44-08-14 by the authorized officer, a facsimile signature has the same legal effect as a manual signature.

#### **44-08-14. Use of facsimile seal.**

When the seal of this state or any of its departments, agencies, public bodies, or other instrumentalities or of any of its political subdivisions is required in the execution of a public security or instrument of payment, the authorized officer may cause the seal to be printed, engraved, stamped, or otherwise placed in facsimile thereon. The facsimile seal has the same legal effect as the impression of the seal.

#### **44-08-15. Violation and penalty.**

Repealed by S.L. 1975, ch. 106, § 673.

#### **44-08-16. Definition of law enforcement officer.**

As used in section 44-08-17, "law enforcement officer" means any sheriff, sheriff's deputy, police chief, policeman, fireman, and any investigator or detective employed by a political subdivision on a salaried basis to perform police duties.

#### **44-08-17. Political subdivisions authorized to purchase insurance on the life of law enforcement officer - Benefits payable to dependent survivor.**

Any political subdivision may purchase insurance on the life of a law enforcement officer employed by that political subdivision. Such insurance policy must be purchased from an insurance company licensed to do business in this state. If the insurance is purchased, the officer insured thereunder may designate that officer's dependent survivor or survivors to whom the death benefit provided under the policy must be paid. The word "dependent" means that the deceased officer provided some financial support within one year before the officer's death to

the survivor and must be liberally construed for the purposes of this section. In the event the officer has not designated a dependent survivor or survivors, the death benefit payable must be paid to the closest survivor in the following order:

1. Spouse.
2. Children.
3. Parent.
4. Brother or sister.

However, if there is more than one qualifying survivor in subsection 2, 3, or 4, the death benefit must be paid in equal shares to the survivors in that category. The death benefit provided by an insurance policy purchased pursuant to this section may not exceed the amount of ten thousand dollars on the life of one law enforcement officer. Any death benefit paid due to purchase of an insurance policy under the provisions of this section must be in addition to any benefits paid due to the death of that officer under any other provisions of law.

**44-08-18. Officials and employees of agencies located in capitol building responsible for keys issued to them - Return upon termination of employment - Agency head responsibility.**

Every elected and appointed state official and all state employees employed by or administering any agency, department, board, commission, or other governmental organization with offices located in the state capitol building are responsible for the safekeeping and return of keys allowing entrance to any of such offices or to the capitol building proper. Each official or employee shall, upon or prior to termination of employment in the state capitol, return any and all keys which may have been issued to the official or employee by the highway patrol or by the legislative council to the person in charge of such keys in the office or department in which the official or employee was employed. The person in charge, or the person's designee, shall see to the return of the keys to the highway patrol in a manner provided by rules and regulations which must be promulgated by the highway patrol. Failure to return a key must be handled as provided in section 54-06-15.

**44-08-19. Political activities by public employees prohibited while on duty - Definition.**

1. No public employee may engage in political activities while on duty or in uniform. Although nothing in this section prevents any such employee from becoming or continuing to be a member or officer of a political club or organization, from attendance at a political meeting, from contributing to or otherwise supporting candidates of the employee's choice, from enjoying entire freedom from all interference in casting a vote or favoring candidates, or from seeking or accepting election or appointment to public office, the governing body of any political subdivision may adopt appropriate ordinances prohibiting public employees from engaging in political activities while such employees are on duty or in uniform.
2. For the purposes of this section, "political activities" means those activities defined by section 39-01-04.

**44-08-20. Additional powers of peace officers.**

Peace officers employed by a law enforcement agency within the state have the power of a peace officer in the following circumstances:

1. To enforce state laws and rules within the jurisdiction of the law enforcement agency by which they are employed.
2. To assist during the necessary absence from office by the requesting officer.
3. When responding to requests from other law enforcement agencies or officers for aid and assistance. For the purposes of this subsection, such a request from a law enforcement agency or officer means only a request for assistance as to a particular and singular violation or suspicion of violation of law, and does not constitute a continuous request for assistance outside the purview of the jurisdiction of the law enforcement agency by which a peace officer is employed.

4. The powers and duties hereby conferred are supplemental to other powers and duties conferred upon peace officers and do not constitute an obligation beyond the regular course of duty of those officers.

#### **44-08-20.1. Law enforcement officer job application.**

Every applicant for a position as a law enforcement officer for any state or political subdivision agency must be asked in any written application for that position whether that applicant has ever pled or been found guilty of a felony including a felony charge that was later dismissed under a deferred imposition of sentence.

#### **44-08-21. Recall of elected officials of political subdivisions.**

1. An elected official of a political subdivision, except a township officer or an official subject to recall under section 10 of article III of the Constitution of North Dakota, is subject to recall by petition of electors equal in number to twenty-five percent of the voters who voted in the most recent election that the official sought to be recalled was on the ballot, not including other recall elections. An official who was appointed to fill a vacancy is subject to recall by petition of electors equal in number to twenty-five percent of the voters who voted in the most recent election that the office of the official sought to be recalled was on the ballot, not including other recall elections. The provisions of section 16.1-01-09.1, as they relate to signing and circulating recall petitions, apply to petitions under this section.
2. A recall petition must include a stated reason for the recall and be approved as to form before circulation by the secretary of state. The secretary of state shall complete the review of the form of a recall petition in not less than five, nor more than seven, business days, excluding Saturdays. To be effective, a recall petition must be submitted to the appropriate filing officer within ninety days after the date the recall petition is approved for circulation by the secretary of state.
3. Once circulated, the recall petition must be filed with the filing officer with whom a petition for nomination to the office in question is filed unless that filing officer is the individual subject to recall, in which case the petition must be filed with the secretary of state. The filing officer with whom the petition is filed shall pass on the sufficiency of a petition pursuant to section 16.1-01-09.1. Except as otherwise provided in this section, the filing officer shall call a special election to be held not sooner than ninety-five days nor later than one hundred five days following the date the filing officer certifies the petition valid and sufficient. No special election may be called if that date would be within ninety-five days of the next scheduled election. An elector's name may not be removed from a recall petition that has been submitted to and received by the appropriate filing officer.
4. The name of the official to be recalled must be placed on the ballot unless the official resigns within ten days after the filing officer certifies the petition is valid and sufficient. Other candidates for the office may be nominated in a manner provided by law and shall file nominating papers with the appropriate filing officer by the sixty-fourth day before the scheduled recall election. If the official resigns, the appropriate political subdivision governing body may call a special election or appoint an individual to complete the unexpired term of the office. When the election results have been officially declared, the candidate receiving the highest number of votes is elected for the remainder of the term. No official is subject to recall twice during the term for which the official was elected. An official whose office is on the ballot at a regularly scheduled election occurring within one year is not subject to recall if the recall special election would occur within one year of the next regularly scheduled election in which the official could be re-elected.

#### **44-08-22. Purchase of flags of the United States.**

A state entity or any political subdivision of this state may not purchase a flag of the United States of America unless the flag was manufactured in the United States of America. This



section does not apply to the purchase of an item that is not a flag but which portrays a likeness of a flag of the United States of America, such as food, clothing, a lapel pin, a paper product, or other non-flag item.

**44-08-23. Removal of political subdivision officer.**

Notwithstanding any other provision of law, the governing body of a political subdivision may remove from office any individual the governing body has appointed to any office, board, or commission, for misconduct, malfeasance, crime in office, or neglect of duty or for habitual drunkenness or gross incompetence, after notice and opportunity for a hearing.

**44-08-24. Interagency cooperation.**

1. Any appointive or elective agency or office of peace officers, as defined in section 12-63-01, may establish policies and enter agreements with other agencies and offices and a state or local criminal justice agency of this state may establish policies and procedures or enter agreements with other criminal justice agencies of this state to:
  - a. Assist other state and local criminal justice agencies; and
  - b. Exchange the criminal justice agency's peace officers with peace officers of another criminal justice agency on a temporary basis.
2. A criminal justice agency may establish policies for assisting probation and parole officers who are supervising probationers or parolees in the criminal justice agency's jurisdiction.
3.
  - a. When a peace officer provides assistance to another peace officer within the scope of the policies of the peace officer's employing criminal justice agency, the assistance must be within the line of duty and course of employment of the peace officer rendering the assistance.
  - b. When a peace officer acts on behalf of another agency or office within the scope of an exchange agreement entered under subsection 1, the peace officer's actions are within the peace officer's line of duty and course of employment to the same extent as if the peace officer had acted on behalf of the peace officer's employing agency.
4. This section does not extend or enlarge the duties or authority of any peace officer or any other law enforcement agent except as provided in this section.