

Fargo-Moorhead Metropolitan Council of Governments

Policy Board Bylaws

As amended - April 18, 2024



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SECTION 1 – AUTHORITY AND PURPOSE

1.1 Authority

The authority of these Bylaws is derived from Article V, Section 5.06 of the Fargo-Moorhead Metropolitan Council of Governments (“Metro COG”) Articles of Association (“Articles”) and applies to the jurisdictional appointees and alternates that constitute the Fargo-Moorhead Metropolitan Council of Governments (“Council”), doing business as the Metro COG Policy Board (“Board”). The Board shall be synonymous with the Council.

1.2 Purpose

The purpose of these Bylaws is to provide organizational structure for the affairs of the Board. The Bylaws will govern the way the Board must function and the roles and the responsibilities of the Chair, Vice Chair, and Board Secretary. They also provide a list of voting members, quorum responsibilities, and map out day-to-day details of how the Board will do business, as prescribed by or limited to under the Articles.

SECTION 2 – POLICY BOARD MEMBERSHIP

2.1 Policy Board Representatives

The Board consists of representatives from the member jurisdictions that make up Metro COG. Representatives are designated by their respective jurisdictions. The designation must be made in writing and submitted to the Board Secretary prior to the member’s participation at a Board meeting. Designations are made in writing annually in December of each year and become effective at the January Board meeting or the first scheduled Board meeting of any given year, whichever comes first. Metro COG staff will contact each member jurisdiction in December of each year requesting the letters of appointment.

2.2 Voting Members

Membership requirements are identified in Article III, Section 3.01 of the Articles. The membership of the Metro COG as provided for by the Articles, as amended; and by approval of the Board shall include:

- Seven (7) total representatives from the City of Fargo, of which four (4) must be elected officials;
- Three (3) total representatives from the City of Moorhead, two (2) of which must be elected officials;
- Two (2) representatives for the City of West Fargo, two (2) of which must be elected officials;
- One (1) representative (elected official) from the City of Dilworth;
- One (1) representative (elected official) from the City of Horace;
- One (1) representative (elected official) from Clay County;
- One (1) representative (elected official) from Cass County;
- One (1) representative of metropolitan area public transit providers;

Representatives of local governments may not also serve as the designated representative of public transit providers.

A representative of public transit agencies shall be designated annually by the MATBUS Coordinating Board or successive agency if there are organizational changes to transit in the future.

2.3 Associate Members

Member jurisdictions identified as Associate Members in Article III, Section 3.06 of the Articles will be entitled to one (1) non-voting, ex-officio member to the Board. Associate Members may participate in the activities and processes of the Board, but retain no voting privileges, nor are they included as part of a meeting quorum. Current Associate Members include:

North Dakota Associate Members

- City of Casselton
- City of Harwood
- City of Mapleton
- City of Kindred

Minnesota Associate Members

- City of Barnesville
- City of Glyndon
- City of Hawley

2.4 Ex-officio Members

An ex-officio representative of Hector International Airport shall be designated annually by the Hector International Airport Authority Board.

State representatives shall be ex-officio and shall consist of the North Dakota Department of Transportation Director or their designee, and the Minnesota Department of Transportation District 4 Engineer or their designee.

Ex-officio members may participate in the activities and processes of the Board, but retain no voting privileges, nor are they included as part of the meeting quorum.

2.5 Designation of Alternates

Participating member jurisdictions may designate an alternate(s) as the official representative(s) to the Board as prescribed in the most current version of the Articles. The intent of this provision is to have member jurisdictions designate alternates who can attend Board meetings on a consistent basis, providing continuity in a jurisdiction's participation. The designation must be made in writing and submitted to the Board Secretary prior to the alternate's or alternates' participation at a Board meeting. Staff will contact each member jurisdiction in December of each preceding year requesting the letters of appointment.

2.5.1 A representative who serves as an elected official may designate an alternate who is also an elected official or unelected individual as his or her alternate.

2.5.2 Designation of alternates shall be approved by the elected Board of City or County Commissioners or City Council from each member jurisdiction.

2.5.3 If a representative or their designated alternate cannot attend, the jurisdiction may provide an alternate to participate on matters of business before the Board. The un-designated alternate is required to inform the Board Secretary, or his or her designee, in advance of the meeting of their representation on the Board.

2.6 Attendance

Because regular attendance at Board meetings is important, the Board Secretary, under the direction of the Board Chair, will contact each voting member prior to the meeting to seek availability of members to attend. If a quorum of Board members is not anticipated, the Board Secretary, with concurrence of the Board Chair may reschedule or cancel the meeting.

SECTION 3 – VOTING

3.1 Voting

Each voting representative or their designated alternate is allowed one (1) vote on matters of business before the Board. Non-voting members have no voting privileges, but may participate in meetings.

3.1.1 The affirmative vote of a majority of quorum shall be sufficient for the passage of all motions, except for amendment to these Bylaws or for any other action where a different vote is specifically required by the Articles, these Bylaws, or other approved Metro COG documents.

3.1.2 Any voting member remaining silent on a vote shall be considered to have voted in the affirmative. Representatives shall abstain from voting on any matter in which he or she has a substantial interest, as defined in Section 11 of these Bylaws.

3.1.3 Per North Dakota Century Code § 44-04-21, a roll call of voting members present will be taken at the beginning of the meeting to ascertain attendance and on each subsequent non-procedural vote on matters before the Board. Results of the roll call vote shall be included as part of the official meeting minutes.

3.2 Weighted Voting

No weight will be afforded to any jurisdiction or jurisdiction member's vote on matters of business before the Board. Each voting representative will be allowed those rights as established in Section 2.1 of these Bylaws.

3.3 Proxy Votes

The use of proxy voting is not allowed. Voting members must be present to vote, except as stated under emergency circumstances as identified in Sections 5 and 7 of these Bylaws or use of teleconferencing or video and teleconferencing attendance as identified in Section 6 of these Bylaws.

SECTION 4 – OFFICERS

4.1 Board Chair and Vice Chair

The Board will be administered by a Chair appointed annually based on a rotation schedule approved by majority vote of the Policy Board. The Board will be administered by the Vice Chair in the absence of the Chair.

4.1.1 Appointment of Chair and Vice Chair

Only elected officials may serve as the Policy Board Chair and Vice Chair. The Board Chair and Vice Chair shall rotate among the voting representatives based on a set, approved schedule as identified in Appendix A. The Chair and Vice Chair shall be from different states, Minnesota and North Dakota, whenever possible to reflect the bi-state nature of Metro COG.

4.1.2 Revisions to the Chair and Vice Chair Schedule

The schedule for rotation of the Board Chair and Vice Chair may be amended at any time at the pleasure of the Board by a majority vote of a quorum of voting members present.

4.1.3 Terms of Office

The Chair and Vice Chair shall serve a one (1) year term. The newly appointed Chair and Vice Chair will assume office in January following the completion of the previous term. The Policy Board shall elect a new Chair at a meeting prior to the completion of the one (1) year term. This would normally occur at the December meeting preceding the end of the term.

4.1.4 Chair and Vice Chair Duties

The Chair shall preside at Board meetings and at all public hearings conducted by the Board; appoint subcommittees as needed; sign all letters, agreements and documents on behalf of the Board, as authorized by the Board; and perform such other duties as appropriate. The Vice Chair will assume the duties, roles and responsibilities of the Chair in his or her absence.

4.1.5 Temporary Chair

In the absence of the Chair and Vice Chair, the Board Secretary shall call for a nomination and vote of those voting members present to select a temporary Chair. The temporary Chair will assume the responsibilities of the Chair until the arrival of the Chair or Vice Chair. The temporary Chair will relinquish control of the

meeting to the arriving Chair or Vice Chair on the next order of business pending before the board.

4.2 Council Secretary

The Board shall appoint the Metro COG Executive Director, or his or her designee, to serve as Council Secretary ("Board Secretary"). The Board Secretary will not have Board voting privileges. The Board Secretary shall conduct all business on behalf of the Board and will perform other actions and responsibilities as may be delegated to that position by the Chair or Board.

4.3 Removal of Officers

The Chair and Vice-Chair may be removed from their respective office for good and sufficient cause. The cause of the removal will be documented in the meeting minutes and shall require an affirmative vote of seventy-five percent (75%) of the voting representatives present under a meeting quorum. If reasonably possible, the new Chair or Vice-Chair should be elected from the representative of the jurisdiction designated to fill the position as scheduled in Appendix A. Where not reasonable, see Section 4.4 Officer Vacancies.

4.4 Officer Vacancies

In the event of a vacancy in the office of Chair, the Vice Chair will assume the Chair position and the Board will appoint by majority vote a new Vice-Chair. Notice of such action shall be recorded in the minutes of the proceedings. The tenure of the replacement Chair will continue until such time that the Jurisdiction scheduled to provide the Chair appoints a replacement.

SECTION 5 – MEETINGS

5.1 Regular Meetings

The Board shall determine the time, date, and place of its regular meetings, which will be held in accordance with a schedule of meeting dates approved in the fourth quarter of the preceding calendar year. All meetings will be held in venues that meet requirements of the Americans with Disabilities Act of 1990.

5.1.1 Regular meetings of the Board will be held on the third Thursday of each month and will convene at 4:00pm. Meetings will generally be held at the Metro COG offices, 1 - 2nd Avenue North, Suite 232, Fargo, North Dakota.

5.1.2 Metro COG will in December of each year publish a list of the following year's Board meeting dates in the newspaper of record (The Forum) to give public notice of such meetings.

5.2 Notice of Meetings

Written notice stating the time, date, and place of all regular meetings and an agenda enumerating items of business to be considered shall be distributed to each voting

representative and non-voting member jurisdiction. Notice to the general public of regular meetings will follow procedures prescribed in the most current Metro COG Public Participation Plan.

5.3 Special Meetings

The Chair, Vice Chair, Board Secretary, or a majority of the voting Board members may call special meetings. In calling a special meeting, the requirements for public meetings as stated in the most current Metro COG Public Participation Plan must be considered. Items of business to be considered at special meetings shall be limited to the items listed in the meeting agenda. The Board Secretary shall post public notice and notice to all members of special meetings not less than 24 hours prior to the meeting.

5.4 Executive Sessions

The Chair may recess a regular meeting into executive session to deliberate personnel, financial and legal matters. Metro COG will comply with the procedural requirements as stated in North Dakota Century Code § 44-04-19.2 (Appendix B), as amended from time to time, when an executive session is authorized.

5.5 Meeting Cancellations

The Chair may cancel a regularly scheduled meeting at his or her discretion. The Board Secretary may cancel a regularly scheduled meeting as deemed necessary, with the consent of the Chair.

5.6 Quorum

The presence of a majority, constituted by fifty percent (50%) plus one (1) member, of the total voting membership of the Board shall constitute quorum. No action shall be taken without a quorum of the Board in attendance at that meeting, unless as specifically stated in 5.6.3 and 5.6.4 of these Bylaws. Quorum is not lost when one or more members abstain from voting.

5.6.1 If quorum is present at the scheduled meeting time and the Chair and Vice-Chair are absent, the Board Secretary or his or her representative may call for election of a temporary Chair. Upon the arrival of the Chair or Vice-chair, the temporary Chair shall relinquish the position upon conclusion of the business item immediately before the Board.

5.6.2 If a quorum is not reached within fifteen (15) minutes of the scheduled meeting time, those members present may, by unanimous agreement, elect to continue the meeting as a public information meeting or workshop to discuss items on the agenda that do not require approval or action by the Board. In this event, the names of the members present at such public information meeting or workshop and brief minutes of items discussed shall be recorded.

5.6.3 Approval of monthly bills may be accomplished with lack of a quorum at the discretion of the Chair and with not less than six (6) Board members present.

5.6.4 The Chair may exercise the privilege of polling voting members after a meeting in which a quorum is not present to assure important or emergency business is conducted in the interests of the organization. Votes of those present will be recorded and the Board Secretary will contact absent voting members within seven (7) days of the meeting to garner their vote. The polling will continue until a quorum is obtained. Final action on the item will be based on the quorum vote.

5.7 Public Comment Opportunity

Opportunities for public comment shall be provided at the beginning of each meeting through a Public Comment Opportunity Regular Agenda item. Public comments will be restricted to specific items on the published agenda; issues directly pertaining to Metro COG policies, programs or documents; notices of public meetings, activities, or other such announcements; or information or dialog as approved by the Chair.

Comments to the Policy Board will be limited to two (2) minutes per individual. The Chair has the discretion to extend the time afforded to the speaker.

5.8 Record of Proceedings

The Board Secretary or their designee will record a roll of members, minutes of the proceedings and votes, and will maintain those records. The minutes recorded are subject to review and approval by the Board, after which the Board Secretary shall make them available for public review.

SECTION 6 – VIDEO AND TELECONFERENCE ATTENDANCE

Members of the Board may participate in a meeting by means of conference telephone, video conference device, or similar communications equipment by means of which all persons participating in the meeting can hear and understand each other. Participation in a meeting pursuant to this Section shall constitute presence in person at such meeting.

If communication is lost and cannot be restored in a timely fashion, the person participating through electronic devices will be considered to have left the meeting. In that event, the Chair shall ascertain whether quorum continues. The lack of quorum present will be addressed through procedures identified in Section 5.6.

Arrangements for video or teleconference attendance should be made in advance and distributed with the meeting agenda. All Board members must be able to hear one another and all discussion. Any members physically present at the meeting location must be able to hear all discussion of those participating virtually, and at least one member shall be present at the meeting location. All votes shall be conducted by roll call.

SECTION 7 – EXECUTIVE COMMITTEE

7.1 Composition and Purpose

The executive business of the Board shall be managed by an Executive Committee consisting of one (1) Board member from each of the voting member local jurisdictions. Each Jurisdiction will appoint a representative from its pool of voting members to serve on the Executive Committee. The current Chair of the Policy Board will be the Chair the Executive Committee. In the absence of the Chair, procedures identified in Section 4 of these Bylaws will prevail.

7.2 Powers and Authority

The Executive Committee shall have the power to authorize the expenditure of funds, to enter into contracts, or authorize the Executive Director to enter into contracts, and to execute official instruments after being authorized by the Board. Further powers as delegated by the Board include those enumerated in COG's Operations Manual.

- Exercise the duties and powers assigned to it by the Board;
- Have the authority to act on behalf of the Board (between regular meetings of the Board or when a necessary quorum is lacking at a regular meeting of the Board); and
- Supervise the affairs of the Board between regular meetings.

All actions taken by the Executive Committee are subject to prior direction and subsequent ratification by the full Board.

7.3 Meetings

Executive Committee meetings shall be called at the discretion of the Chair, Vice Chair, or Board Secretary.

7.4 Quorum

Quorum for the Executive Committee shall be the presence of four (4) members. The Chair or Vice Chair must constitute one (1) of the four (4) members present for a quorum.

7.2 Voting

Voting will be by roll call vote for non-procedural matters. Matters not having consensus of the Executive Committee will be referred to the full Board for disposition.

SECTION 8 – CONDUCT OF BUSINESS

Board meetings will be held in accordance with the North Dakota Open Meetings Law (N.D.C.C. § 44-04-19 et seq. as amended from time to time). A copy of the open meeting law is included in Appendix C of this document. Robert's Rules of Order (current edition) shall govern the conduct of meetings where not otherwise specifically provided by these Bylaws. The presiding officer shall have authority to limit discussion or

presentation by members and non-members of the Board or to take other appropriate actions necessary to conduct all business in an orderly manner.

8.1 Consent Agenda

The practice of a consent agenda may be followed in conducting business at Metro COG Policy Board meetings at the prerogative of the current presiding Chair.

8.1.1 Time Frame Items for consent shall be clearly designated in the agenda of record, which is available six (6) days prior to Board meetings. Consent agenda items may not be added after the mailing of additional business. Items on the consent agenda are those that have been favorably recommended by the Executive Committee or have been recommended favorably, deemed noncontroversial, or have received no comment from Metro COG advisory committees. Consent agenda items are those other than action on Metro COG planning documents.

8.2 Removing Items from Consent Agenda

Any Board member may remove an item or items from the consent agenda prior to the Board meeting or prior to the vote to approve the consent agenda. Action to approve consent agenda items will precede consideration of items under Regular Agenda business. An item removed from the consent agenda by a Board member will be taken up as an item of business on the Regular Agenda, in a position on the agenda at the discretion of the Chair.

8.3 Chair's Rule of Order

The following rules of order shall be enforced by the current Chair when conducting business at Metro COG Policy Board meetings:

8.3.1 A member of the public or person representing an organization or entity other than Metro COG shall not be allowed to address the Board during meetings unless those interested in the proposition are invited to speak, or unless said person has caused the subject matter to be placed on the agenda. All other public comments will be limited to the Public Comment Agenda Item as identified in Section 5.7 of these Bylaws.

8.3.2 Whenever any such person is invited to speak or asks the privilege of speaking before the Board, his or her name, address and the organization, interest, or person he or she represents shall be announced before he or she shall be allowed to speak.

8.3.3 Whenever any such person has been invited to speak, or has been granted the opportunity of speaking before the Board, the proponent(s) will be limited to a presentation whose total time does not exceed ten (10) minutes and the opponent(s) will be limited to a presentation whose total time does not exceed ten (10) minutes. When more than one person wishes to address the

Board on a given question, the proponents will be given the opportunity of first addressing the Board. The opponents of the question will then be given the opportunity to speak after the proponent's presentation. The proponents will then be given a three (3) minute period for rebuttal of any new material introduced during the opponent's presentation, after which the audience participation will be concluded. Only one speaker will be allowed to speak at one time. Those waiting to speak will remain seated.

8.3.4 At the beginning of the public comment period, the presiding officer shall read Sections 9.3.2 and 9.3.3 to those in attendance.

8.3.5 When any person speaking before the Board is, in the opinion of the presiding officer out of order, the presiding officer may declare said speaker out of order and may direct said speaker to cease and desist addressing the Board on the subject in question. Any Board member may challenge the ruling of the presiding officer and request a roll call vote on the presiding officer's ruling. The vote of five (5) members shall be required to overrule the presiding officer.

8.3.6 No document shall be read before the Board unless the person reading the same shall be willing to submit the same to the Board Secretary to become part of the proceedings.

SECTION 9 – CONTROVERSIAL ISSUES

When an issue which is considered controversial by either the Executive Committee, Policy Board, or a local jurisdiction, and one in which the local jurisdiction has a substantial interest, is submitted to Metro COG for action by an entity other than the local jurisdiction, the Policy Board may request a review, comment and recommendation of the local jurisdiction, prior to taking any action concerning the issue. The delay of consideration by the Policy Board shall not exceed the Executive Order 12372 review period (Appendix D or as amended from time to time).

SECTION 10 – COMMITTEES

10.1 Transportation Technical Committee

The Transportation Technical Committee (TTC) will serve as an advisory committee and technical support for the Board. The Executive Director, or their designee, shall be Chair of the TTC. No Board voting representative or designated alternate shall serve simultaneously on both the Board and the TTC. The TTC reports directly to the Board.

10.2 Other Committees

The Board may designate other committees or subcommittees as necessary to investigate and report on specific subject areas of interest to it. Such committee members may, or may not, be members of the Board, TTC or Metro COG staff.

SECTION 11 – CONFLICT OF INTEREST

No member of the Board shall participate in, discuss, or vote on a matter in which he or she has a substantial interest as defined by Section 4-12-04-4 (Conflict of Interest) of the North Dakota Centennial Code as amended from time to time (Appendix E). Should any member have such a substantial interest on a matter coming before the Board or its committees, they shall declare the substantial interest and recuse themselves in the deliberations and vote. That member will not be considered as part of the quorum. If a quorum is not present during this item, the procedures as stated in Section 5.6 of these Bylaws will be followed.

SECTION 12 – MEMBER IN GOOD STANDING

12.1 Good Standing

A member jurisdiction will be considered in "Good Standing" when all financial responsibilities as defined in the Metro COG Fiscal Agreement are met. Good Standing affords a jurisdiction the opportunity to maintain a vote(s) on the Board, have access to federal transportation funds, have access to Metro COG staff, participation, and voting privileges on the TTC, and other committees and other privileges as defined and approved by the Board.

12.2 Not in Good Standing

A member jurisdiction will be considered "Not in Good Standing" if it is delinquent in its financial responsibilities as defined in an approved Metro COG Fiscal Agreement. A jurisdiction Not in Good Standing will forfeit all benefits and privileges of being in good standing as identified in Section 13.1 of these Bylaws, as stated in the Metro COG Fiscal Agreement.

SECTION 13 – AMENDMENTS TO BYLAWS

These Bylaws may be amended by a two-thirds (2/3) vote of quorum at any regular meeting, provided that the members have been notified in writing of the proposed change at least five (5) calendar days in advance, and the proposed amendment has been placed on the agenda. All amendments to these Bylaws shall be recorded by date and incorporated into these Bylaws. Revised Bylaws shall be delivered to members (both voting and non-voting) at the next regular meeting following the approved Bylaw amendments. Amendments to these Bylaws shall not be part of the Consent Agenda and must be part of the Regular Agenda.

SECTION 14 – SUPERSESION OF PREVIOUS BYLAWS

Adoption of these Bylaws hereby supersedes and renders null and void all previous Bylaws of the Metro COG Policy Board, but does not affect any other existing official actions by Metro COG special purpose agreements or contracts between Metro COG and other general or special purpose units of governments, boards, agencies, commissions or authorities.

SECTION 15 – SEVERABILITY

Should any section, paragraph, sentence, or clause of these Policy Board Bylaws be deemed unlawful by a Court of competent jurisdiction, no other provision hereof shall be affected, and all other provisions of these policies shall continue in full force and effect.

SECTION 16 – STATE STATUTES

These Bylaws of the Board shall comply with the Minnesota Statutes Annotated and North Dakota Century Code. In cases where these Bylaws do not comply or are in conflict with State statutes, these Bylaws are considered subservient to the applicable State statute.

APPENDIX A – Metro COG Chair and Vice Chair Rotation Schedule

Year(s)	Chair Representative	Vice Chair Representative
2022, 2029, 2036, 2043	City of Fargo	City of Moorhead
2023, 2030, 2037, 2044	City of Moorhead	Cass County
2024, 2031, 2038, 2045	Cass County	Clay County
2025, 2032, 2039, 2046	Clay County	City of West Fargo
2026, 2033, 2040, 2047	City of West Fargo	City of Horace
2027, 2034, 2041, 2048	City of Horace	City of Dilworth
2028, 2035, 2042, 2049	City of Dilworth	City of Fargo

APPENDIX B – North Dakota Confidential or Closed Meetings

<https://ndlegis.gov/cencode/t44c04.pdf>

NORTH DAKOTA CENTURY CODE CHAPTER 44-04 DUTIES, RECORDS, AND MEETINGS (Section 44-04-19.2 extract)

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 44-04-19.1
3. The remainder of the 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 a majority vote to the governing body unless the executive session was required to be confidential. Disclosure of the recording by a public servant as provided in this subsection is a violation of section 12.1-13-01. All recordings under this subsection 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.

APPENDIX C – North Dakota Open Meetings Law

<https://ndlegis.gov/cencode/t44c04.pdf>

CHAPTER 44-04 DUTIES, RECORDS, AND MEETINGS (Section 44-04-19 extract)

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 person or persons seeking access.
2. For purposes of this section, 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.
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 that 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 when one or more of the members of the governing body is participating by telephone or video, a speakerphone or monitor must be provided at the location specified in the notice issued under section 44-04-20.

44-04-19.1 Open Records and Open Meetings

Exemptions for attorney work product, attorney consultation, and negotiation preparation.

1. Attorney work product is exempt from section 44-04-18. Attorney work product and copies thereof shall not be open to public inspection, examination, or copying unless specifically made public by the public entity receiving such work product.
2. Attorney consultation is exempt from section 44-04-19. That portion of a meeting of a governing body during which an attorney consultation occurs may be closed by the governing body under section 44-04-19.2.
3. Active investigatory work product is exempt from section 44-04-18.
4. "Adversarial administrative proceedings" include only those administrative proceedings in which the administrative agency or institution of higher education acts as a complainant, respondent, or decision maker in an adverse administrative proceeding. This term does not refer to those instances in which the administrative agency or institution acts in its own rulemaking capacity.

5. "Attorney consultation" means any discussion between a governing body and its attorney in instances in which the governing body seeks or receives the attorney's advice regarding and in anticipation of reasonably predictable civil or criminal litigation or adversarial administrative proceedings or concerning pending civil or criminal litigation or pending adversarial administrative proceedings. Mere presence or participation of an attorney at a meeting is not sufficient to constitute attorney consultation.
6. "Attorney work product" means any document or record that:
 - a. Was prepared by an attorney representing a public entity or prepared at such an attorney's express direction;
 - b. Reflects a mental impression, conclusion, litigation strategy, or legal theory of that attorney or the entity; and
 - c. Was prepared exclusively for civil or criminal litigation, for adversarial administrative proceedings, or in anticipation of reasonably predictable civil or criminal litigation or adversarial administrative proceedings.
7. "Investigatory work product" means records obtained, compiled, or prepared by a public entity in an effort to monitor and enforce compliance with the law or an order. Investigatory work product must be considered active as long as it is related to monitoring or enforcement activity conducted with a reasonable, good-faith belief that it will lead to enforcement of the law or an order.
8. Following the final completion of the civil or criminal litigation or the adversarial administrative proceeding, including the exhaustion of all appellate remedies, attorney work product must be made available for public disclosure by the public entity, unless another exception to section 44-04-18 applies or if disclosure would have an adverse fiscal effect on the conduct or settlement of other pending or reasonably predictable civil or criminal litigation or adversarial administrative proceedings, or the attorney work product reflects mental impressions, opinions, conclusions, or legal theories regarding potential liability of a public entity.
9. A governing body may hold an executive session under section 44-04-19.2 to discuss negotiating strategy or provide negotiating instructions to its attorney or other negotiator regarding litigation, adversarial administrative proceeding as, or contracts, which are currently being negotiated or for which negotiation is reasonably likely to occur in the immediate future. An executive session may be held under this subsection only when an open meeting would have an adverse fiscal effect on the bargaining or litigating position of the public entity.
10. Nothing in this section may be construed to waive any attorney-client privilege of a public entity as defined in subdivision c of subsection 13 of section 44-04-17.1 regarding matters that do not pertain to public business.

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 44-04-19.1.
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.

44-04-19.3 Open Meetings Exemption – Legislative Caucuses

A caucus of members of either house of the legislative assembly may meet in an executive session that is not subject to section 44-04-19.2 if the meeting is not held on public property.

APPENDIX D – Executive Order 12372 – Intergovernmental Review of Federal Programs

<https://www.archives.gov/federal-register/codification/executive-order/12372.html>

By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 401 (a) of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231 (a)), Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3334) and Section 301 of Title 3 of the United States Code, and in order to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for the State and local government coordination and review of proposed Federal financial assistance and direct Federal development, it is hereby ordered as follows:

[Preamble amended by Executive Order 12416 of Apr. 8, 1983, 48 FR 15587, 3 CFR, 1983 Comp., p. 186]

Section 1 Federal agencies shall provide opportunities for consultation by elected officials of those State and local governments that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal financial assistance or direct Federal development.

Section 2 To the extent the States, in consultation with local general-purpose governments, and local special purpose governments they consider appropriate, develop their own processes or refine existing processes for State and local elected officials to review and coordinate proposed Federal financial assistance and direct Federal development, the Federal agencies shall, to the extent permitted by law:

- a) Utilize the State process to determine official views of State and local elected officials.
- b) Communicate with State and local elected officials as early in the program planning cycle as is reasonably feasible to explain specific plans and actions.
- c) Make efforts to accommodate State and local elected officials' concerns with proposed Federal financial assistance and direct Federal development that are communicated through the designated State process. For those cases where the concerns cannot be accommodated, Federal officials shall explain the bases for their decision in a timely manner.
- d) Allow the States to simplify and consolidate existing Federally required State plan submissions. Where State planning and budgeting systems are sufficient and, where permitted by law, the substitution of State plans for Federally required State plans shall be encouraged by the agencies.
- e) Seek the coordination of views of affected State and local elected officials in one State with those of another State when proposed Federal financial assistance or direct Federal development has an impact on interstate metropolitan urban centers or other interstate areas. Existing interstate mechanisms that are predesignated as part of the State process may be used for this purpose.
- f) Support State and local governments by discouraging the reauthorization or creation of any planning organization which is Federally-funded, which has a Federally-prescribed membership, which is established for a limited purpose, and which is not adequately representative of, or accountable to, State or local elected officials.

Section 3 (a) The State process referred to in Section 2 shall include those where States delegate, in specific instances, to local elected officials the review, coordination, and communication with Federal agencies.

(b) At the discretion of the State and local elected officials, the State process may exclude certain Federal programs from review and comment.

Section 4 The Office of Management and Budget (OMB) shall maintain a list of official State entities designated by the States to review and coordinate proposed Federal financial assistance and direct Federal development. The Office of Management and Budget shall disseminate such lists to the Federal agencies.

Section 5 (a) Agencies shall propose rules and regulations governing the formulation, evaluation, and review of proposed Federal financial assistance and direct Federal development pursuant to this Order, to be submitted to the Office of Management and Budget for approval.

(b) The rules and regulations which result from the process indicated in Section 5(a) above shall replace any current rules and regulations and become effective September 30, 1983.

[Sec. 5 amended by Executive Order 12416 of Apr. 8, 1983, 48 FR 15587, 3 CFR, 1983 Comp., p. 186]

Section 6 The Director of the Office of Management and Budget is authorized to prescribe such rules and regulations, if any, as he deems appropriate for the effective implementation and administration of this Order and the Intergovernmental Cooperation Act of 1968. The Director is also authorized to exercise the authority vested in the President by Section 401(a) of that Act (42 U.S.C. 4231(a)), in a manner consistent with this Order.

Section 7 The Memorandum of November 8, 1968, is terminated (33 Fed. Reg. 16487, November 13, 1968). The Director of the Office of Management and Budget shall revoke OMB Circular A-95, which was issued pursuant to that Memorandum. However, Federal agencies shall continue to comply with the rules and regulations issued pursuant to that Memorandum, including those issued by the Office of Management and Budget, until new rules and regulations have been issued in accord with this Order.

Section 8 The Director of the Office of Management and Budget shall report to the President by September 30, 1984 on Federal agency compliance with this Order. The views of State and local elected officials on their experiences with these policies, along with any suggestions for improvement, will be included in the Director's report.

[Sec. 8 amended by Executive Order 12416 of Apr. 8, 1983, 48 FR 15587, 3 CFR, 1983 Comp., p. 186]

Source: The provisions of Executive Order 12372 of July 14, 1982, appear at 47 FR 30959, 3 CFR, 1982 Comp., p. 197, unless otherwise noted.

APPENDIX E – ND Centennial Code Section 04-12-04-04 Conflict of Interest

<https://ndlegis.gov/information/acdata/pdf/4-12-04.pdf>

CHAPTER 4-12-04

ETHICS IN PUBLIC PROCUREMENT (4-12-04-04 Conflict of Interest extract)

4-12-04-04 Conflict of interest

1. Each state employee or official directly or indirectly involved in procurement activities for the state will exercise caution in professional and personal activities to prevent a conflict of interest, or the appearance of conflict, regarding any vendor or contractor.
2. An employee or official shall not participate directly or indirectly in a procurement when the employee or official knows that:
 - a) The employee or any member of the employee's immediate family, including a parent, spouse, child, sibling, grandparent, step- (parent, child, siblings), or in-laws (parent, child, and sibling), has a financial interest pertaining to the procurement;
 - b) A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
 - c) Any other person, business, or organization with which the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment involved in the procurement.
3. Upon discovery of an actual or potential conflict of interest, an employee or official shall promptly file a written statement of disqualification and withdraw from further participation in the transaction involved. The head of the state agency or institution, in consultation with the attorney general, shall make a written determination as to what further participation, if any, the employee may have in the procurement.