

FIFTY-FIFTH BIENNIAL REPORT
July 1, 2001 - June 30, 2003



SECRETARY OF STATE
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Acknowledgments

The preparation of this biennial report would not have been possible without the support and assistance of the personnel in the office of Secretary of State. They have been patient and accommodating in providing information for the sixth biennial report prepared under my administration. The names of the agency's personnel are listed in Chapter 5 (B).

In particular, I want to commend and thank my Executive Assistant, Kim Shaw, for her outstanding effort in gathering, proofreading, and preparing the information used in this report.

In addition, the following individuals have provided invaluable assistance as well: Clara Jenkins, Director, Business Information/Registration Division; Mary Feist, Director, Administrative/Licensing Division; Llona Sailing, Director, Central Indexing Division; Lee Ann Oliver, Election Specialist, Elections Division; and Cory Fong, Deputy Secretary of State.

Alvin A. Jaeger
Secretary of State

Affidavit of Secretary of State

STATE OF NORTH DAKOTA)
) SS
COUNTY OF BURLEIGH)

Alvin A. Jaeger, after being first duly sworn and under the pains and penalties of perjury, deposes and says:

1. That he is the duly elected Secretary of State for the State of North Dakota and makes this affidavit in his official capacity.
2. That pursuant to N.D.C.C. § 54-09-02(9), he is required to biennially report to the Governor all moneys received from any source for services performed and accompany such report with a detailed statement under oath of the manner in which the appropriations for his office have been expended during the preceding two fiscal years.
3. That attached hereto and expressly incorporated by reference herein is a Statement of Revenues, Appropriations, and Expenditures which detail the manner in which the appropriations for his office have been expended during the previous two fiscal years.
4. That the attached Statement of Revenues, Appropriations, and Expenditures is derived from the official books and records maintained by the Office of Secretary of State for the previous two fiscal years.
5. That to the best of affiant's knowledge, information, and belief, the attached Statement of Revenues, Appropriations, and Expenditures is a true and accurate statement of the manner in which the appropriations for his office has been expended during the previous two fiscal years as contemplated by N.D.C.C. § 54-09-02(9).

FURTHER AFFIANT SAYETH NOT.

Alvin A. Jaeger
Secretary of State

Subscribed and sworn to before me this
_____ day of _____, 2003.

NOTARY PUBLIC
My commission expires _____

Chapter One

Constitutional, Statutory, and Legislative Authority

The origins of the Secretary of State's office dates back prior to North Dakota's admittance to the union as a state on November 2, 1889. On March 2, 1861, the Congress of the United States adopted The Organic Law, which established the Territory of Dakota. Section three of that law prescribed that there would be a secretary of the territory. The term of office was four years, unless sooner removed by the President of the United States. The duties of the secretary were to record and preserve all the laws and proceedings of the legislative assembly, the acts and proceedings of the Governor, and many other duties, which are very similar to those mandated in present day law to the Secretary of State.

The office, as it is known today, was established in Article V, Section 12, of the Constitution of North Dakota when it was adopted by a vote of the people in 1889. That vote occurred on October 1 when 35,548 people went to the polls. The vote was 27,441 (77%) voters in favor of adopting the Constitution and 8,107 (23%) voters who opposed its adoption.

Currently, the office of Secretary of State is authorized in Article V, Section 2, of the North Dakota Constitution (as amended by the voters June 11, 1996 and as amended by the voters June 13, 2000). The duties of the Secretary of State are defined in various parts of the state's constitution, in numerous state statutes, and in the agency's administrative rules.

In the constitution, the duties of the Secretary of State are found in Article III, related to the initiative and referral powers of the people; Article IV, Section 12, related to choosing a winner by a toss of a coin if two or more legislative candidates have an equal and highest number of votes; Article IV, Section 13, related to the filing of legislative bills; Article V, Section 5, related to term of office; Article V, Section 11, related to succession in the event of a vacancy in the office of Governor and Lieutenant Governor; Article IX, Section 3, related to membership on the Board of University and School Lands; Article X, Section 17, related to the certificates regarding bonds or evidence of indebtedness on the part of the state.

In state law, the general duties of the Secretary of State are established in Chapter 54-09; in Title 16.1 as they relate to elections; in Title 10 as they pertain to various business structures, e.g., corporate and limited liability company farming, cooperative associations, business corporations, development corporations, venture capital corporations, community development corporations, professional organizations, limited liability companies, nonprofit corporations, and real estate investment trusts; in Title 35 as they relate to the filing of various liens; in Title 41 as they relate to the Uniform Commercial Code; in Title 45 as they pertain to general partnerships, limited partnerships, limited liability partnerships and limited liability limited partnerships; and in various other sections of state law related to the state's Great Seal, contractors, lobbying, charitable solicitation, and other miscellaneous duties.

Under both the provisions of the Constitution and the North Dakota Century Code, the Secretary of State serves on the following boards, commissions, and advisory capacities.

Board of University and School Lands (North Dakota Constitution, Article IX, Section 3)

Emergency Commission (also serves as secretary of the commission) (N.D.C.C. § 54-16-01)

State Historical Board (N.D.C.C. § 55-01-01)

State Canvassing Board (N.D.C.C. § 16.1-15-33)

Theodore Roosevelt Rough Rider Award (N.D.C.C. § 54-02-07)

Chapter Two

Term of Office and Listing of Secretaries

When the North Dakota Constitution was adopted in 1889, the term of the office for the Secretary of State was two years in length. Beginning in 1965, along with other statewide elected officials, the term of office for the Secretary of State was expanded to four years. This change was made after voters approved Measure # 5, which appeared on the ballot in the June 30, 1964, primary election. In that election, 115,393 people voted. There were 60,099 (52%) voters in favor of the measure and 55,294 (48%) voters who opposed the change.

The next change in the term of office occurred on June 13, 2000, when the voters approved Measure # 2. This measure moved the election of four constitutional offices, including the Secretary of State, to the non-presidential election year cycle. To establish the cycle, the four “moved” constitutional offices will be elected for a term of two years in the 2004 general election. Then, in the 2006 general election, and every four years thereafter, these four elected positions will again have a term of four years. The vote for Measure # 2 was 49,391 (62%) voters in favor of the change and 30,431 (38%) voters who opposed the change.

North Dakota Secretaries of State

John Flittie.....	1889-1892
Christian M. Dahl	1893-1896
Fred Falley	1897-1900
Edward F. Porter.....	1901-1906
Alfred Blaisdell	1907-1910
Patrick D. Norton.....	1911-1912
Thomas Hall *	1913-1924
Robert Byrne.....	1925-1934
James D. Gronna.....	1935-1940
Herman Thorson	1941-1942
Thomas Hall *	1943-1954
Ben Meier.....	1955-1988
Jim Kusler	1989-1992
Alvin A. Jaeger.....	1993-present

* Served at two different times

Additional information regarding previous Secretaries may be obtained from the 1989, 1995, 1997-1999, 1999-2001, 2001-2003, and 2003-2005 editions of the *North Dakota Blue Book*.

Chapter Three

Duties of Office

The following duties for the Secretary of State are prescribed in Section 54-09 and other sections of the North Dakota Century Code.

1. Custodian of Great Seal of North Dakota and other original state documents;
2. Maintains a register of and attests the official acts of the Governor;
3. Serves as a member of and secretary to the Emergency Commission, member of the Board of University and School Lands, member of the State Historical Board, and member of and secretary to the State Canvassing Board (elections);
4. Must concur on Governor's selection for the Theodore Roosevelt Rough Rider Award;
5. Serves as the State Athletic (Boxing) Commissioner;
6. Distributes the North Dakota Century Code, the North Dakota Administrative Code and supplements, and the North Dakota Session Laws books;
7. Biennially publishes and distributes the *North Dakota Blue Book*;
8. Receives and files original copies of legislative bills and resolutions;
9. Distributes copies of legislative resolutions as prescribed by law and directed by the legislature;
10. Serves as the state's chief election officer;
11. Prescribes the form and content of statewide election ballots;
12. Files campaign finance disclosure reports of statewide candidates, political parties, district political parties, political committees, political action committees (PAC), and measure committees;
13. Certifies names of elected legislative members to each house of the Legislative Assembly;
14. Receives and files petitions for initiated, constitutional, and referred measures;
15. Files oaths of office for legislative, judicial, and executive officials;
16. Issues certificates of registration to lobbyists;
17. Licenses contractors and charitable organizations;
18. Commissions notaries public;
19. Completes service of process as required by law;
20. Files Uniform Commercial Code (UCC) documents, agricultural liens, and other miscellaneous liens;
21. Maintains the Central Indexing System and its network link to the state's fifty-three County Recorders (name changed from Register of Deeds, effective August 1, 2001);
22. Registers trademarks and trade names, partnership fictitious name certificates, real estate investment trusts, limited partnerships, limited liability partnerships, limited liability limited partnerships;
23. Files and records articles of incorporation related to domestic and foreign business corporations, domestic and foreign nonprofit corporations, state banks, credit unions, lodges and fraternal organizations, mutual aid cooperatives, and cooperatives;
24. Files and records articles of organization related to domestic and foreign limited liability companies;
25. Receives annual business reports from various business entities as prescribed by state law;
26. Keep records of organized cities as prescribed by law.

Chapter Four

Office of Secretary of State

Mission Statement

This office will:

Serve the people of the State of North Dakota and its guests.

Execute with integrity the duties required by the North Dakota Constitution and the North Dakota Century Code.

Collect and preserve the records of the State as defined by the law.

Act as an ambassador for the State of North Dakota, its people, and its way of life.

This mission will be dispatched effectively, efficiently, expeditiously, courteously, and with financial responsibility.

(Adopted 1993)

Chapter Five (A)

Organization of Office

As provided for in the North Dakota Constitution, the Secretary of State has the overall responsibility for the duties and functions of the office. To assist the Secretary of State, he or she may appoint a Deputy for whose acts he or she shall be responsible (N.D.C.C. § 44-03-01 and N.D.C.C. § 1-01-11). In addition, the Secretary of State is allowed to hire one principal assistant (N.D.C.C § 54-44.3-20(1)). The positions of Deputy and Executive Assistant are non-classified positions and the appointees serve at the will of the Secretary.

During the biennium, Cory G. Fong, former Director of Elections, served as the Deputy Secretary of State. He was originally appointed to the position on April 1, 2001.

Kim N. Shaw served as Secretary Jaeger's Executive Assistant. She was originally appointed to her position on August 1, 1995.

The organizational structure for the office divides the functional duties of the office into four major divisions of responsibility. During the biennium, the office was authorized twenty-three classified full-time employees and three (including the Secretary of State) non-classified full-time employees. This was an increase of one-half full-time position from that authorized for the 1999-2001 biennium. The divisions are as follows:

Administrative/Licensing Division

Central Indexing Division (UCC/CNS)

Business Information/Registration Division

Elections Division

Chapter Five (B)

Personnel in Office of the Secretary of State

(As of June 30, 2003)

Alvin (Al) A. Jaeger
Secretary of State

Cory G. Fong
Deputy Secretary of State

Kim N. Shaw
Executive Assistant

Administrative/Licensing Division

Mary B. Feist, Director
Administrative Officer II
Mary J. Hilzendeger
Administrative Assistant I
Sheila S. Goehring
Accounting/Budget Specialist I
Charlotte Zander
Account Technician II
Linda L. Gregoryk
Data Processing Information Specialist I
Vicky Miner
Office Assistant III
Tracy Fillbrandt
Office Assistant III

Central Indexing Division (UCC/CNS)

Llona Sailing, Director
Administrative Officer I
Beverley Tang
Office Assistant III
Karen K. Weigel
Office Assistant III
Lori Feldman
Office Assistant III

Business Information/Registration Division

Clara M. Jenkins, Director
Administrative Officer II
Susan J. Rask
Administrative Assistant III
Nancy L. Schlosser
Administrative Assistant II
Ramona Bernard
Administrative Assistant II
Marian Hapip
Administrative Assistant II
Darcy D. Cermak
Administrative Assistant III
Linda Sandeen
Office Assistant III
Lucille Van Dame
Office Assistant III
Susan Gimbel
Office Assistant III
Reyne White
Office Assistant III
Karla Hagel
Data Processing Information Specialist I

Elections Division

Lee Ann Oliver
Administrative Assistant III

Chapter Six (A)

Appropriations

During the 1991-1993 biennium, the budget for the Secretary of State included appropriations for both General Funds and Special Funds. Special Fund appropriations are directly related to the amount of revenue received and expenditures cannot exceed that amount. At that time, the agency's Special Fund was directly related to the operations of the Central Indexing System.

In 1993, the Legislative Assembly eliminated the Special Fund appropriation for the 1993-1995 biennium, which resulted in the Secretary of State's office being totally funded by General Fund appropriations. The 1995 and 1997 Legislative Assemblies continued this budgeting method of appropriation.

Then, the 1999 Legislative Assembly approved the creation of a General Services Operating fund beginning with the 1999/2001 biennium. The creation of this fund allowed the Secretary of State's office to retain revenue received from the sale of services and products provided by the Central Indexing and Business Registration/Information Divisions. At the end of each fiscal year, the Secretary of State is required to transfer any un-obligated revenue in excess of \$75,000 from the agency's General Services Operating fund to the state's General Fund.

Legislative Appropriation

The agency's appropriation for the 2001/2003 biennium was contained in House Bill # 1002, Section 1, (2001 Session Laws, Chapter 2) and in Section 37 of House Bill # 1105 (2001 Session Laws, Chapter 361). The gross total appropriated line items in effect on July 1, 2001, were as follows:

	<u>Amount Appropriated</u>
<u>Subdivision 1</u>	
Salaries and Wages.....	\$ 2,115,131
Operating Expenses	2,063,790
Equipment.....	84,000
Petition Review	12,000
Central Indexing System.....	<u>21,000</u>
Subtotal for Subdivision 1	\$ 4,295,921
<u>Subdivision 2</u>	
Public Printing (see Chapter 12).....	<u>508,000</u>
Total Appropriation	\$ 4,803,921
Appropriation by Source – General Fund	\$ 4,412,921
Appropriation by Source – General Services Operating Fund	<u>391,000</u>
Total Funding by Source.....	\$ 4,803,921

Adjustments made to Original Appropriation during Biennium

Adjustment # 1

In October 2001, the agency's salary line was increased by \$5,069 for equity increases as authorized by Section 5 of House Bill # 1015 (2001 Session Laws, Chapter 15).

Adjustment # 2

Because of projected statewide revenue shortfalls, the Governor ordered state agencies to reduce their budgets by 1.05 percent. To comply with the agency's \$46,389 share of that reduction, the equipment line was reduced by \$41,055 and the Public Printing appropriation was reduced by \$5,334.

Adjustment # 3

On November 19, 2002, the Emergency Commission approved a request from the Secretary of State to increase the spending authority for the operating line in the agency's General Services Operating fund by \$50,000 to \$441,000. The increase was due to higher than expected revenue from the sale of services and products provided by the Central Indexing and Business Divisions.

Adjustment # 4

On June 4, 2003, the Emergency Commission approved a request from the Secretary of State to make a line item transfer of \$34,500 from the equipment line to the operating line to allow for the payment of expenses related to the purchase of computer hardware and office equipment that could not be paid from the equipment line according to state accounting guidelines.

Adjustment # 5

In October 2002, the President of the United States signed into law the Help America Vote Act of 2002 (HAVA). As the result of the passage of this federal law, the legislature inserted an emergency provision in the agency's appropriation, Senate Bill # 2002 (2003 Session Laws, Chapter 23), to allow for the receipt and expenditure of \$9,500,000 in federal funds for HAVA. Only \$150,000 of the federal funding spending authority was applied to the 2001/2003 biennium.

Agency Appropriation after Preceding Adjustments

	<u>Amount Appropriated</u>
<u>Subdivision 1</u>	
Salaries and Wages.....	\$ 2,120,200
Operating Expenses	2,148,290
Equipment.....	8,445
Petition Review	12,000
Central Indexing System.....	21,000
Election Reform	<u>150,000</u>
Subtotal for Subdivision 1	\$ 4,459,935
<u>Subdivision 2</u>	
Public Printing (see Chapter 12).....	<u>502,666</u>
Total Appropriation	\$ 4,962,601
Appropriation by Source – General Fund	\$ 3,868,935
Appropriation by Source – General Services Operating Fund	441,000
Appropriation by Source – Federal Funds	<u>150,000</u>
Total Funding by Source	\$ 4,962,601

Chapter Six (B)

Revenue

The office of the Secretary of State generates revenue for the state's General Fund and its General Services Operating fund in a variety of ways. The specific manner by which revenue is generated has been summarized in the several chapters contained within this report relating to the various divisions within the office. For the biennium covered by this report, the revenue was as follows:

General Fund Revenue

Administration.....	\$	787
Business Registration/Information.....		3,345,569
Central Indexing		1,650,205
Elections		1,856
Licensing		870,743
Subtotal	\$	5,869,160

General Services Operating Fund Revenue

Business Registration/Information.....	\$	103,198
Central Indexing		268,260
Elections		0
Licensing		410
Subtotal	\$	371,868

Combined Subtotals		\$ 6,241,028
Public Printing (see Chapter 12)	\$	36,670
Subtotal		<u>36,670</u>
Gross Revenue.....	\$	6,277,698

Chapter Six (C)

Expenditures

	<u>Adjusted</u> <u>Appropriation</u>	<u>Expenditures</u>	<u>Balance</u> <u>Remaining</u>	<u>Unspent</u> <u>Percentage</u> <u>of Subtotal # 1</u>
<u>Subdivision 1</u>				
Salaries.....	\$ 2,120,200	\$ 2,018,802	\$ 101,398	4.78%
Operating Expenses	2,148,290	1,880,540	267,749	12.46%
Equipment	8,445	8,148	297	3.52%
Petition Review.....	12,000	6,127	5,873	48.94%
Central Indexing System	21,000	21,000	0	.00%
Election Reform.....	<u>150,000</u>	<u>26,636</u>	<u>123,364</u>	82.24%
Subtotal	\$4,459,935	\$ 3,961,253	\$ 498,681	11.18%
<u>Subdivision 2</u>				
Public Printing (see Chapter 12) ...	<u>508,000</u>	<u>416,832</u>	<u>85,833</u>	17.08%
Gross Total Expenditures	\$ 4,962,601	\$ 4,378,085	\$ 584,514	11.78%

Funds Returned to State's General Fund

At the end of the biennium, the agency had a remaining gross total of \$381,245 of its general fund appropriated dollars that had not been expended. Of this amount, \$295,411 was related to the agency's general office operations as appropriated in Subdivision 1 and \$85,833 was related to public printing as appropriated in subdivision 2.

However, of the remaining gross total of unspent general fund appropriation, the 2003 Legislative Assembly transferred \$105,000 to the Election Reform line to be used as one-half of the five percent state match required by the Help America Vote Act of 2002 (HAVA). The match was required in order to utilize the second installment of federal HAVA funds expected in late 2003. The other one-half of the state match is to be provided by the state's counties.

In addition, as required by the provisions of N.D.C.C. § 54-09-08, the Secretary of State's office transferred \$10,753 from its General Services Operating Fund to the state's General Fund. This amount was the un-obligated balance, which was in excess of \$75,000, remaining at the end of the biennium in the General Services Operating Fund.

Chapter Six (D)

SUMMARY OF REVENUE, APPROPRIATIONS, AND EXPENDITURES - BIENNIAL HISTORY

	1991-1993	1993-1995	1995-1997	1997-1999	1999/2001	2001/2003
REVENUE – General Fund						
Administration.....	\$ 10,019	\$ 10,163	\$ 18,170	\$ 2,203	\$ 2,287	\$ 787
Business Registration.....	1,552,416	1,904,359	2,240,551	2,770,809	3,213,566	3,345,569
Central Indexing UCC/CNS.....	1,513,881	1,534,580	1,331,659	1,298,898	1,518,001	1,650,205
Licensing	510,425	556,024	749,093	839,164	820,343	870,743
Elections	<u>3,320</u>	<u>2,290</u>	<u>2,816</u>	<u>1,896</u>	<u>1,413</u>	<u>1,856</u>
Subtotal	\$ 3,590,061	\$ 4,007,416	\$ 4,342,289	\$ 4,912,970	\$ 5,555,610	\$ 5,869,160
REVENUE – General Services Operating Fund						
Business Registration/Info.....	0	0	0	0	\$ 89,596	\$ 103,198
Central Indexing	0	0	0	0	242,245	268,260
Licensing	0	0	0	0	1,173	410
Elections	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>22</u>	<u>0</u>
Subtotal	\$ 0	\$ 0	\$ 0	\$ 0	\$ 333,036	\$ 371,868
Central Indexing Surcharge.....	0	0	192,057	0	0	0
Public Printing (General Fund).....	<u>53,462</u>	<u>59,921</u>	<u>64,459</u>	<u>78,162</u>	<u>64,858</u>	<u>36,670</u>
Total Revenue	\$ 3,643,523	\$ 4,067,337	\$ 4,598,805	\$ 4,991,132	\$ 5,953,504	\$ 6,277,698
APPROPRIATIONS						
Salaries.....	\$ 1,252,386	\$ 1,448,489	\$ 1,540,419	\$ 1,692,780	\$ 1,899,778	\$ 2,120,200
Operating Expenses.....	828,607	611,489	1,203,200	1,140,190	1,713,490	2,148,290
Information Services Division..	1,174,668	1,023,938	0	0	0	0
Equipment	47,213	167,000	65,000	39,000	84,000	8,445
Petition Review.....	17,000	17,000	14,000	2,000	12,000	12,000
Limited Liability Implementation	0	5,000	0	0	0	0
Grants.....	643,000	0	0	0	0	0
Contingency.....	53,713	0	0	0	0	0
Central Indexing System	0	0	0	0	0	21,000
Election Reform.....	0	0	0	0	0	150,000
Risk Management Premium.....	<u>0</u>	<u>8,068</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Subtotal.....	\$ 4,016,587	\$ 3,280,984	\$ 2,822,619	\$ 2,873,970	\$ 3,709,268	\$ 4,459,935
Presidential Preference	0	0	275,000	0	0	0
Public Printing.....	<u>366,543</u>	<u>366,500</u>	<u>421,974</u>	<u>442,000</u>	<u>535,200</u>	<u>502,666</u>
Total Appropriations	\$ 4,383,130	\$ 3,647,484	\$ 3,519,593	\$ 3,315,970	\$ 4,244,468	\$ 4,962,601
EXPENDITURES						
Salaries.....	\$ 1,232,023	\$ 1,344,150	\$ 1,535,163	\$ 1,675,050	\$ 1,822,738	\$ 2,018,802
Operating Expenses.....	680,468	455,018	1,117,823	1,124,831	1,642,030	1,880,540
Information Services.....	1,018,224	800,841	0	0	0	0
Equipment	41,266	156,811	63,426	38,514	80,297	8,148
Petition Review.....	6,461	11,505	4,973	949	0	6,127
Grants.....	591,282	0	0	0	0	0
Limited Liability Implementation	0	5,000	0	0	0	0
Contingency.....	53,513	0	0	0	0	0
Central Indexing System	0	0	0	0	0	21,000
Election Reform.....	0	0	0	0	0	26,636
Risk Management	<u>0</u>	<u>8,068</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Subtotal.....	\$ 3,623,297	\$ 2,781,393	\$ 2,721,385	\$ 2,839,344	\$ 3,545,065	\$ 3,961,253
Central Indexing Surcharge.....	0	0	191,927	0	0	0
Presidential Preference	0	0	197,650	0	0	0
Public Printing.....	<u>339,897</u>	<u>351,160</u>	<u>363,972</u>	<u>441,954</u>	<u>346,722</u>	<u>416,832</u>
Total Expenditures.....	\$ 3,963,134	\$ 3,132,553	\$ 3,474,934	\$ 3,281,298	\$ 3,891,787	\$ 4,378,085

Chapter Six (E)

Audit

On April 17, 2003, the Office of the State Auditor transmitted to this office the results of a financial and compliance audit for the two-year period ending June 30, 2002. The State Auditor made the following findings and recommendations (both the questions and answers are quoted direct from the report):

1. Were expenditures made in accordance with legislative appropriations and other state fiscal requirements and restrictions? *Yes*
2. Were revenue accounted for properly? *Yes*
3. Were there adequate financial controls and procedures? *Yes*
4. Was internal control adequate and functioning effectively? *Yes*
5. Do financial records and reports reconcile with state fiscal offices? *Yes*
6. Was there compliance with statutes, laws, rules, and regulations under which the agency was created and is functioning? *Yes*.
7. Was there any indication of fraud or dishonesty? *No*
8. Were there any indications of lack of efficiency in financial and management of the agency? *There were not any indications of lack of efficiency in financial operations and management of the Secretary of State, although in our operational work addressing "implementation of purchase cards" we did note an area where greater efficiency could be obtained. (Agency Response: The Secretary of State applied for and received a purchase card. It was activated on June 30, and used in accordance with OMB Fiscal Policy # 300 as recommended.)*
9. Has action been taken on findings and recommendations included in prior audit reports? *Yes. However, as noted on page 22, the agency did not fully implement the operational improvement recommendation relating to suggested changes to the elections section of the Secretary of State's website. (Agency Response: The Secretary of State agrees with the Auditor's recommended solution that an interactive cross-referenced address/polling location system would be of benefit to the state's citizens. However, the challenges in developing it are numerous and very costly. Therefore, the Secretary of State will only pursue the auditor's recommended solution in a prudent manner as time, staff, and financial resources are available, as advancements are made with technology, and as the state's Geographic Information Systems become more complete. As it is, the agency continually receives positive feedback (both statewide and nationally) in the amount of information it already provides on its elections division website to voters, candidates, and the media. As one example of an added feature, during the 2002 election cycle the website listed each county's various voting precincts, polling locations, and the respective voting devices in each. This type of statewide listing had never before been available from one source and is in the spirit of the recommendations made in the prior audit. Early in the 2003/2005 biennium, the agency will unveil a new and improved election website, which the Secretary of State believes will offer significant enhancements and additions to the information and services already provided. In addition, the agency will actively continue researching and developing features for its election website as allowed by available resources.)*
10. Were all activities of the agency encompassed within appropriations of specific amounts? *Yes, except North Dakota Century Code section 53-01-09 gives the Secretary of State continuing appropriation relating to the regulation of athletic events.*
11. Has the agency or institution implemented the Statewide Accounting and Management Information System (SAMIS), including the cost allocation system? *Yes. The Secretary of State is using the SAMIS system, but is not using the cost allocation system because they do not receive any federal funds.*
12. Has the agency developed budgets of actual anticipated expenditures and revenues on at least a quarterly basis and compared (on at least a quarterly basis) actual expenditures and revenues on the accrual basis to budgeted expenditures and revenues? *Yes*

Chapter Seven

Administrative/Licensing Division

This division has a multitude of responsibilities and duties. They range from filing documents of the legislature to the licensing and regulation of boxing. The division is also responsible for the accounting functions of the agency. Most of the revenue generated by this division is from the collection of fees related to the issuance of contractor and charitable solicitation licenses, registration of lobbyists, and the commissioning of notaries. The details of these functions are as follows:

Athletic Commissioner

Chapter 53-01 of the North Dakota Century Code states the Secretary of State shall act as the state athletic commissioner and to administer matters relating to the regulation of boxing, kickboxing, and sparing. The Secretary of State may appoint an athletic advisory board to assist and advise the athletic commissioner in the performance of the duties of the position.

The first state athletic commission was created by the legislature in 1935 with House Bill 213 (1935 Session Laws, Chapter 91). The commission included the Commissioner of Labor and Agriculture, a practicing physician and a practicing attorney appointed by the Governor. Interestingly, the law was specific in stating that the appointees were to be citizens of the state and of good moral character.

Over the years, the law was changed very little. Then, in 1967, the position of Commissioner of Labor and Agriculture was divided into two separate statewide offices with the Commissioner of Agriculture retaining the duties relating to the athletic commission.

Four years later, in 1971, the Legislative Assembly adopted Senate Bill 2078 and transferred the duties of the athletic commissioner to the Secretary of State and eliminated the three person athletic commission (1971 Session Laws, Chapter 484). However, at the same time, the provisions of the law were such that they did not apply to boxing exhibitions where the net proceeds of the event were devoted to charitable purposes. Consequently, while the law was again modified in 1987 by House Bill 1074 (1987 Session Laws, Chapter 607) and in 1989 by Senate Bill 2184 (1987 Session Laws, Chapter 609), most boxing exhibitions were promoted on behalf of charitable purposes. Therefore, there was no state oversight.

However, that changed in 1991 when major changes were made to the laws governing boxing. In that year, the Fifty-second Legislative Assembly adopted Senate Bill 2411 (1991 Session Laws, Chapter 543), which became effective July 1, 1991. With its passage, the duties of the athletic commissioner became much more defined. The law also allowed for the creation of an athletic advisory board and allowed for a much better response and regulation to the growing boxing activity that was taking place within the state of North Dakota. Since one of the major duties of the athletic commissioner is to ensure the safety of the boxers, the restructured law made those duties easier to administer.

The athletic advisory board has nine members. They are appointed by the Secretary of State and have terms of three years. Each year, three members are newly appointed or re-appointed to the board. This process provides for continuity from year-to-year as the members assist and advise the athletic commissioner.

Revenue from the issuing of licenses is deposited into a special fund as provided for in Section 53-01-09 of the North Dakota Century Code. Licenses are issued to the boxers, referees, judges, cornerpersons, managers, and promoters. During the 2001-2003 biennium, 154 licenses were issued. The fees collected ranged from \$10 for a boxer to \$100 for a promoter. The revenue received during the biennium was \$5,345.48 and the expenditures were \$5,277.22.

The following boxing exhibitions were held during the biennium (date, location, promoter).

1. July 28, 2001, Shooting Star Casino, Mahanomen, MN, Ron Peterson Promotions
2. August 25, 2001, 4-Bears Casino & Lodge, New Town, ND, Midwest Fight Promotions
3. September 7, 2001, Dakota Magic Casino, Hankinson, ND, Sugar Ray Leonard Promotions
4. October 25, 2001, Community Center, Mandan, ND, TDP Promotions
5. January 5, 2002, Shooting Star Casino, Mahanomen, MN, Ron Peterson Promotions
6. August 23, 2002, 4-Bears Casino & Lodge, New Town, ND, 4-Bears Promotions
7. November 17, 2002, Ralph Engelstad Arena, Grand Forks, ND, Cedric Kushner Promotions

Contractors

Section 43-07-02 of the North Dakota Century Code requires any person who engages in the business or is acting in the capacity of a contractor within the state to first obtain a license from the Secretary of State. This law applies to any single contract or subcontract where the cost, value, or price exceeds the sum of \$2,000. Failure to first obtain a contractor's license may result in a referral for criminal prosecution to the State's Attorney in the jurisdiction where the violation was committed.

By law, a contractor is defined as any person who is engaged in the business of construction, repair, alteration, dismantling, or demolition of bridges, highways, road, streets, buildings, airports, dams, drainage or irrigation ditches, sewers, water or gas mains, water filters, tanks, towers, oil, gas or water pipelines, and every other type of structure, project, development, or improvement coming with the definition of real or personal property, including the construction, alteration, or repair of property to be held either for sale or rental, and shall include subcontractor, public contractor, and nonresident contractor.

There are four classes of contractor licenses. A holder of a Class A license is not subject to a limitation as to the value of any single contract project. Class B holders cannot have a single contract on a project having a value in excess of \$250,000. For holders of a Class C license, the limit is \$150,000 and Class D license are limited to \$50,000. New license application fees are Class A \$300; Class B \$200; Class C \$150; Class D \$50. There were 5,587 contractor licenses in effect on June 30, 2003.

Contractor licenses must be renewed annually by the first of March of each year. Penalties are assessed if the license is not renewed by the due date. If the license is not renewed within ninety days of the renewal date, a contractor must apply again for a new license. Annual renewal fees are Class A \$60; Class B \$40; Class C \$30; Class D \$10.

Charitable Solicitation

Section 50-22-02 of the North Dakota Century Code states that no charitable organization (with exceptions) may solicit contributions from persons in this state by any means whatsoever without first having obtained a license from the Secretary of State. Before issuing the license, the Secretary of State is to investigate the financial responsibility, experience, character, and general fitness of the applicant. If such investigation indicates the applicant will conduct solicitations in accordance with the law, a license is issued.

If the solicitation is to be made in whole or in part by a professional fund-raiser or professional solicitor, such solicitation is prohibited until the fund-raiser is first registered with the Secretary of State. A fund-raiser who commences or continues fund-raising after the fund-raiser's application is denied or the license is revoked is guilty of a class C felony. In addition to possible criminal penalties, the Secretary of State may deny the fund-raiser the right to engage in future fund-raising activities. A charitable solicitation application fee is \$25, with an annual renewal fee of \$10. The fee for a professional fund-raiser is \$100.

On or before September 1 of each year, each licensee must file a report listing the gross amount of contributions pledged or collected, the amount given or to be given to the charitable purpose represented, the aggregate amount paid and to be paid for the expenses of such solicitation, and the aggregate amount paid to and to be paid to professional fund-raisers and solicitors.

Duties of the State

The office of the Secretary of State has the following duties relating to state functions:

- The office records and retains all books, records, deeds, parchments, maps, and papers deposited with the Secretary of State as mandated in the law;
- The Secretary of State attests the official signature of the Governor upon all executive orders, appointments, and other public instruments and then affixes the Great Seal of the State of North Dakota;
- The office maintains a registry of the official acts of the Governor including proclamations, appointments, executive orders, extraditions, and writs. During the biennium, there were 502 filings of official acts of the Governor;
- The office maintains a record of all conveyances of property made to the state;
- The office files oaths of office and statements of interest of the appointees of the Governor.

During the biennium, the Secretary of State filed 288 legislative bills, which originated in the House of Representatives, along with 58 House Concurrent Resolutions and 1 House Memorial Resolutions. There were 286 bills filed, originating in the Senate, along with 41 Senate Concurrent Resolutions and 1 Senate Memorial Resolution. Special sessions were convened on November 26, 2001 (redistricting), and May 5, 2003. The regular session convened January 7, 2003, and adjourned April 25, 2003.

Legislative Duties

The office of the Secretary of State has the following legislative duties:

- Retains two sets of the legislative journals of each house, certifies their receipt, and forwards the additional journals as mandated by legislative rule;
- Receives, records, and stores all books, bills, resolutions, documents, and papers of the legislature as provided for in the law;
- Provides members of the Legislative Assembly with all public documents as provided for in the law including the North Dakota Century Code and its supplements, session laws of the last legislative session, journals of the last legislative session, the North Dakota Administrative Code and its supplements, and the *North Dakota Blue Book* when it is published;
- Provides members of the Legislative Assembly and legislative committees with copies of any public documents on file with the Secretary of State;
- Distribute laws, resolutions, or other documents of the Legislative Assembly;
- Retains the acts and resolutions of the Legislative Assembly until such time the law allows, then transfers to the State Historical Society;
- Performs such other duties as may be assigned by the Legislative Assembly.

Lobbyist Registration

According to Section 54-05.1-03 of the North Dakota Century Code, any person who engages in lobbying must first register with the Secretary of State and be given a distinctive lobbyist identification badge. The state's lobbying laws are all inclusive as to who must register as a lobbyist. Any person who, in any manner whatsoever, directly or indirectly, performs any of the following must register as a lobbyist:

- Attempts to secure the passage, amendment, or defeat of any legislation by the Legislative Assembly or the approval or veto of any legislation by the Governor of the state.
- Attempts to influence decisions made by the Legislative Council or by an interim committee of the Legislative Council.

The registration requirement does not apply to the following individuals. All others must register.

- A legislator.
- A private citizen appearing on his or her own behalf.
- An employee, officer, board member, volunteer, or agent of the state or its political subdivisions whether elected or appointed and whether or not compensated, who is acting in that person's official capacity.

- An invited guest of the chairman of the Legislative Council, an interim committee of the Legislative Council, or a standing committee of the Legislative Assembly to appear before the council, interim committee, or standing committee for the purpose of providing information.
- An individual who appears before a legislative committee for the sole purpose of presenting testimony on behalf of a trade or professional organization or a business or industry if the individual is introduced to the committee by the registered lobbyist for the trade or professional organization or the business or industry.

Each individual registered must also file a detailed report of any expenditure in excess of \$25 expended on any single occasion during the legislative session or the interim in carrying out his or her work as a lobbyist. There is no filing fee if the report is filed after July 1 and on or before August 1. After August 1, a \$25 late filing fee is assessed if the report is filed on or before October 1. For reports filed after October 1, the late filing penalty increases to \$50.

When registering as a lobbyist, the registrant must give his or her full name, address, and the name and address of each person or persons, corporations, associations, groups, or organizations on whose behalf they will appear. They must also provide a letter of authorization from those they represent.

There were 269 lobbyists registered for the registration year July 1, 2001, to June 30, 2002. They represented 419 organizations. From July 1, 2002, through June 30, 2003, there were 634 lobbyists registered representing 974 organizations. The number of registrants is always higher in the annual registration cycle that includes a legislative session, as was the situation in the 2002/2003 cycle.

Notaries Public

One of the duties of the Secretary of State (N.D.C.C., Chapter 44-06) is to commission notaries public. The term of office for a notary is six years unless sooner revoked by the Secretary of State. Notaries may administer oaths and perform all other duties required by law anywhere within the state. A notary public must have the qualifications of an elector as to age and residence. There were 11,839 notary commissions in effect on June 30, 2003. During the biennium, there were 3,968 new or renewal commissions issued. To educate and maintain contact, a *Notary Notes* newsletter was mailed to the notaries in October 2002.

Miscellaneous

Absent Persons Mineral or Royalty Interests in Land:

The office maintains a register of the post office address of each person who owns mineral, lease or royalty interests on land in North Dakota.

Apostille:

Most often, an Apostille is issued by the Secretary of State to confirm the commission of notaries public. This is a certificate that is attached to documents intended for use in foreign countries. It certifies the authenticity of the signature and the capacity in which the person signing the document has acted. During the biennium, the Secretary of State completed 805 Apostille requests.

Chemical Applicator - Appointment of Agent:

Section 4-35-11 of the North Dakota Century Code requires all nonresident chemical applicators or dealers to file a written power of attorney designating the Secretary of State as the agent of such nonresident upon whom service of process may be had in the event of any suit against the nonresident. During the biennium, 116 such filings were made with the Secretary of State.

Facsimile Signatures:

Each state official is required to file with the office their signature, certified by that officer under oath, for facsimile purposes in official state business.

International Wills: The office registers and preserves international wills of citizens for later execution and disposition according to law.

Public Meetings: As mandated by Section 44-04-20 of the North Dakota Century Code, the office maintains a file of the notices for public meetings held by state agencies, boards, and departments.

Service of Process: The agency completes service of process or legal papers when the following business organizations fail to appoint or maintain a registered office or registered agent: domestic and foreign corporations, nonprofit corporations, cooperative associations, limited partnerships, limited liability partnerships, limited liability limited partnerships, and real estate investment trusts.

The Secretary of State acts as agent for service of process for out-of-state contractors, workers compensation, out-of-state chemical applicators, out-of-state mineral explorers, carnivals, fairs, circuses, or other outdoor shows in the state, savings and loan associations, building and loan associations, geophysical exploration companies, and the state fair association. The office maintains a record of all processes, demands, or notices.

Fees are charged for these services.

Chapter Eight

Central Indexing Division

The Central Indexing System (CIS)

The 1989 Legislative Assembly first studied the Central Indexing System (CIS) after it adopted House Concurrent Resolution 3057 (1989 Session Laws, Chapter 840). The resolution directed the Legislative Council to study state laws relating to state and local filings of liens, security documents, financing statements, and continuation statements.

The study included representatives from livestock auction yards, bankers, other lenders, grain dealers, the North Dakota Association of Counties, the state Information Services Division (now known as the Information Technology Division), and the office of the Secretary of State. The study resulted in the adoption of Senate Bill 2024 (1991 Session Laws, Chapter 449) by the 1991 Legislative Assembly.

The new law mandated the Secretary of State to develop and implement a computerized system, which would store data in a central location for the various documents filed with the Secretary of State or in the office of the county recorder (formerly known as register of deeds) located in one of the state's fifty-three counties.

The resulting CIS is not a central filing system. Rather, it's a filing system with a centralized computer database, which allows for the filing and the search of records through a central indexing system. It eliminated the need for multiple or duplicate filings having to be made in several counties in order to perfect a lien. The original documents are retained in the office where the filing was made.

In July 1, 1996, state tax liens were also filed in the CIS and are now perfected statewide as well.

The CIS includes six separate databases in which filing information is maintained and searched. They are the Uniform Commercial Code (UCC) Index; the Farm Products Central Notice (CNS) Index; the Federal Lien Index; the Statutory Lien Index; the Statutory Lien Notice Index; and the State Tax Lien Index.

Central Indexing System - Searches

In addition to allowing the filing of various lien documents in any one of the fifty-four filing locations, the CIS is also of benefit to those persons who need to search the database in order to determine if any liens are recorded against a certain individual or business entity. The filing offices, for a fee, provide this service. When the system was first implemented, the requesters of such information had to contact one of the filing offices to request the information they were seeking. Beginning April 1, 1998, a programming change became effective that allowed subscribers direct access through the Internet to conduct their own search of the database.

By paying a one-time registration fee, an annual fee, and a fee for each search, the subscriber is allowed access through the Secretary of State's website at www.state.nd.us/sec 24 hours a day, seven days a week. The subscriber is able to select which filing location receives credit for the search fee.

Central Indexing System - Director Access Filing

Beginning in September 2002, another service was added, which allows subscribers the ability to file Uniform Commercial Code (UCC) documents and Central Notice System (CIS) filing directly into the database through the Internet 24 hours a day, seven days a week. As with searches, subscribers pay a one-time registration fee, an annual fee, and filing fee for each filing submitted. They can also select which one of the fifty-four filing locations receives credit for the filing fee.

Central Indexing System – Document Scanning

During the biennium, all of the paper documents related to the CIS filings that were located in the Secretary of State's office were scanned into an electronic database. The ultimate goal is to have all of the paper filings statewide imaged. This will eliminate the need for paper copies and provide a centralized record, which will increase efficiencies in the filing process and search functions. In the future, these scanned images will be available to subscribers through the Secretary of State's website.

Uniform Commercial Code (UCC)

The agency's Central Indexing System had its beginnings in 1965 with the adoption of the Uniform Commercial Code (UCC) law by the Legislative Assembly. Senate Bill 60 contained 257 pages and, because of its length, it was not published in the 1965 Session Laws book. The law became effective on July 1, 1966.

The adopted law (N.D.C.C., Chapter 41-09) allowed the Secretary of State to review and process UCC filings and related lien documents. These documents are filed to protect the collateral of secured parties. UCC documents are primarily used to provide proof of collateral on a variety of personal property. The filing is effective for a period of five years and may be continued within six months prior to the expiration date for another five years. A filing can be amended, assigned, or have all or parts of the collateral released by filing an associated filing. Documents terminating the security lien are filed when the debt is paid in full. Federal Tax Liens are also filed as UCC documents.

In 1991, the UCC law was substantially revised and updated by the Legislative Assembly with the adoption of Senate Bill 2100 (1991 Session Laws, Chapter 448). The 2001 Legislative Assembly made another major revision to the state's UCC laws when it adopted House Bill 1105 (2001 Session Laws, Chapter 361). This 97-page bill was introduced at the request of the Commission on Uniform State Laws. Similar legislation was introduced and adopted in all 50 states. The new law changed the requirements for financing statements and the responsibility of filing officers in regard to those documents.

Central Notice System (CNS)

The Central Notice System gives notice of perfected liens filed against the farm products of certain debtors.

In 1985, the United States Congress first debated the provisions of the Food Security Act, which was a part of that year's farm bill. The bill included several provisions and language taken from Article 9 of the UCC law. This was a unique subject for the federal government because it was an area of law considered to be in the realm of state responsibility. The "farm products rule" allowed a creditor, with a security interest in a farmer's crops or livestock, to seek payment from the purchaser of those commodities if the farmer did not pay the creditor. The act approved by Congress allowed states the choice of two options. One option was to create a central filing or notice system. This option, the Central Notice System (CNS) was first discussed by the 1983 Legislature Assembly and ultimately adopted by the 1985 session. On December 16, 1985, the Packers and Stockyards Administration of the United States Department of Agriculture approved the North Dakota CNS as meeting the requirements of the federal law. It is believed that North Dakota may have been as early as the third state in the nation in having its program approved.

Since 1985, the Secretary of State's office has provided subscribers with a Central Notice System Farm Products list, which names the individuals who have given a security interest in a crop or livestock to a lender. To begin with, the list was only made available on a paper printout or microfiche. Then, in July 1998, the information was also made available to customers on a compact disc (CD), which was well received by subscribers. The same information, on July 1, 1999, became available online through the agency's Central Indexing System direct access search option available through the Internet.

Agricultural Statutory Liens

In 1987, the Legislative Assembly authorized the use of an agricultural processor's lien/notice, an agricultural supplier's lien/notice, and agricultural agister's lien/notice. Any person entitled to a lien by statute or otherwise is authorized to file a verified statement with the county recorder (formerly known as register of deeds) or the Secretary of State's office, which together represent the state's 54 filing locations.

Within ninety days, any agricultural processor may file a lien on crops or agricultural products processed by threshing, combining, drying, or harvesting.

Agricultural suppliers are allowed to file liens on the crop or product produced with supplied seed, petroleum products, fertilizer, farm chemical, insecticide, feed, hay, pasturage, veterinary services, or in the delivery or applying of such supplies.

Individuals entrusted with the animals by the owner for the purpose of feeding, herding, pasturing, or ranching may file an Agister's Lien upon the animals and are authorized to retain possession of the animals until the amount is paid.

If lien holders intend to impose liability for a lien against a crop or livestock buyer, the lien holder must file a statutory lien notice document in the Central Indexing System. Such liens take precedence over UCC liens (N.D.C.C. § 54-09-10).

As with the CNS, the Secretary of State provides both a microfiche and a compact disc listing of these liens.

Chapter Nine

Business Information/Registration Division

The responsibilities of the Business Division are diversified and involve concentrated workloads at certain periods of the year. Revenue from this division is generated from a variety of fees charged for filings, amendments, reports, lists, and registrations.

Listed below are the forty-four types of entities for which records are filed and maintained by the Business Division. The numbers on file, at the end of the biennium for most of the entities, are listed in the parenthesis following the name of the entity.

1. Airport Authorities
2. Churches (1,419)
3. City Home Rule Charters (90)
4. Cooperatives Domestic Associations (346)
5. Cooperatives Electric Associations (5)
6. Cooperatives Foreign Associations (73)
7. Corporations Certified Nonprofit Development (9)
8. Corporations Domestic Business (12,284)
9. Corporations Domestic Nonprofit (5,601)
10. Corporations Domestic Professional (759)
11. Corporations Farm (665)
12. Corporations Foreign Business (10,789)
13. Corporations Foreign Nonprofit (1145)
14. Corporations Foreign Professional (75)
15. Corporations Mutual Aid (15)
16. Corporations Venture Capital
17. County Home Rule Charters (3)
18. Credit Unions (40)
19. Fictitious Name Certificates (1,543)
20. Fiduciaries
21. General Partnership Statement
22. Grazing Associations (11)
23. Limited Liability Companies Domestic (2,220)
24. Limited Liability Companies Domestic Professional (19)
25. Limited Liability Companies Farm (60)
26. Limited Liability Companies Foreign (1,497)
27. Limited Liability Companies Foreign Professional (4)
28. Limited Liability Partnerships Domestic (1,416)
29. Limited Liability Partnerships Foreign (49)
30. Limited Liability Partnerships Domestic Professional (20)
31. Limited Liability Partnerships Foreign Professional (49)
32. Limited Partnerships Domestic (1,215)
33. Limited Partnerships Foreign (313)
34. Insurance Companies (49)
35. Irrigation Districts
36. Municipal Power Agencies
37. Reserved Names
38. Special Registered Agent Records
39. Soil Conservation Districts
40. State Banks (89)
41. Trademarks (1,454)
42. Trade Names (14,686)
43. Vector Control Districts
44. Water Resource Districts

The following is a partial listing of some of the entities along with a brief description.

Corporation - Domestic

State law legally recognizes a corporation as an entity having its own rights, privileges, and liabilities that are distinct from the shareholders or members of the corporation. The existence of the corporation begins when articles of incorporation are approved for filing with the office of the Secretary of State or at a later date specified in the articles of incorporation. Corporations are required to file with the Secretary of State an annual report, which is due August 1 of each year,

Corporation - Foreign

Corporations that are incorporated in other states or countries are considered foreign corporations. These foreign corporations must first obtain a certificate of authority from the Secretary of State before transacting business in the state of North Dakota, or before obtaining any license or permit prescribed by North Dakota law. To maintain their status, they must file with the Secretary of State an annual report, which is due May 15 of each year.

Limited Liability Company - Domestic and Foreign

Authorized by legislative action in 1993, a limited liability company (LLC) is an entity having its own rights, privileges, and liabilities distinct from the members. Structurally, the limited liability company combines the characteristics of a partnership and a corporation.

The existence of a limited liability company begins when articles of organization have been approved for filing with the Secretary of State or at a later date specified in the articles of organization. As with corporations, limited liability companies must file annual reports with the Secretary of State.

Limited Partnership - Domestic and Foreign

Limited partnerships are created when documents are filed with the Secretary of State. State law legally recognizes a limited partnership as an entity formed by two or more persons having one or more general partners, and one or more limited partners. The general partners have management powers and are responsible for all partnership obligations. The limited partners may not participate in the day-to-day management operations, but do share in the liabilities and profits in proportionate share to their contributions.

Limited partnerships may transact any business in North Dakota except banking and insurance. Farming is only allowable if any corporations that may be partners thereof are in compliance with the provisions of North Dakota farming laws. Foreign limited partnerships, which are organized under the laws of other states or countries, must register with the Secretary of State before transacting business in North Dakota.

Both domestic and foreign limited partnerships must file with the Secretary of State an annual report, which is due April 1 of each year.

Limited Liability Limited Partnership – Domestic and Foreign

The Limited Liability Limited Partnership (LLLLP) is identical to the traditional limited partnership except that all partners, including the general partner, have limited liability.

An LLLP is formed at the time of filing the LLLP registration with the Secretary of State, or at a later date specified in the registration. A LLLP organized under the laws of other states or countries must register with the Secretary of State before transacting business in North Dakota. To maintain their status, they must file with the Secretary of State an annual report, which is due April 1 of each year.

Limited Liability Partnership - Domestic and Foreign

A limited liability partnership (LLP) is an ordinary general partnership that acquires limited liability status upon filing a one-page registration with the Secretary of State. LLP established under another state or country may register with the Secretary of State as foreign limited liability partnerships. Both domestic and foreign LLP must file with the Secretary of State an annual report, which is due April 1 of each year.

Fictitious Partnership Name

A fictitious partnership name is a name used by a partnership that does not include the names of the partners. A partnership identified by a fictitious name must file a fictitious name certificate with the Secretary of State. The certificate must be renewed every five years from the date of the initial filing.

Trademark/Service Mark

A trademark or service mark is a word, symbol, device, or any combination thereof adopted and used by a person or business to distinguish goods or services made or sold from those goods or services made or sold by someone else. The trademark or service mark may be registered with the Secretary of State to establish exclusive right to the mark in North Dakota. The duration of the registration is ten years at which time the registration may be renewed.

Trade Name

According to Section 47-25-01 of the North Dakota Century Code, a trade name is defined by law to be a name assumed to identify the business or activities of an individual or organization and which does not include in the name:

1. The true name of the organization using the name;
2. The first name and surname of each individual using the business name; or
3. The surname of each individual, repeating a surname if more than one owner has the same surname.

Additionally, N.D.C.C. § 47-25-02 states, “A person or organization may not engage in business in this state under a trade name until the trade name is registered with the secretary of state.” A trade name registered with the Secretary of State is protected for five years and can be renewed. The trade name registration affords exclusive right to that name so that no other business may file or use a name that is the same as, or deceptively similar. It also creates a public record from which one can identify the principals of a business. The registration fee is \$25.

Special Registered Agent Record

Corporations, which are created by federal law, are often empowered to operate in every state without filing for authority from a state agency. However, in some cases, federal law requires the corporation to maintain a registered agent in the states in which it operates. A record of such registered agent must be filed with the Secretary of State.

Fiduciary

A bank or trust company organized and doing business under the laws of any state or territory of the United States may be appointed to serve as a trustee in North Dakota. The bank or trust company may be appointed as trustee for a corporate or personal trust, executor, administrator, guardian for a minor or an incompetent person. The appointment may be by will, deed, court order, decree, or otherwise. Before qualifying or serving in North Dakota in a trust or fiduciary capacity, the bank or trust company must file certain documents with the Secretary of State.

Real Estate Investment Trust

Established by legislative action in 1997, a real estate investment trust is an unincorporated entity. This registration is required of real estate investment trusts established in North Dakota and those established in another state and transacting business in North Dakota. A real estate investment trust is a trust or association formed to acquire, hold, manage, administer, control, invest, or dispose property by trustees for the benefit of any person who may become a shareholder. They must renew their registration every five years from the date of the initial filing.

DIVISION ACCOMPLISHMENTS DURING THE BIENNIUM

Entity Annual Reports made available on Secretary of State's Website

From its database, the Secretary of State prepares annual reports for its various registered entities and preprints, prior to mailing, the static information on the form that is pertinent to the specific entity. Several of these annual reports were deployed during the biennium to the Secretary of State's website at www.state.nd.us/sec. The report forms are in a PDF fillable format and linked between the agency's database and the website thereby enabling the printing of the same entity specific information as if the report had been prepared in the Secretary of State's office. The reports that were deployed to the website include the following:

- Domestic Business Corporation Annual Report,
- Foreign Business Corporation Annual Report,
- Domestic and Foreign Nonprofit Corporation Annual Report,
- Domestic Professional Corporation Annual Report,
- Foreign Professional Corporation Annual Report,
- Domestic Limited Liability Company Annual Report, and
- Foreign Limited Liability Company Annual Report.

On the Internet, the annual report for the entity is accessed by one of the following: the first few words of a business name; by any significant word in a business name; or by the system ID number assigned to the record by the Secretary of State's office.

Trademark/Service Mark Program Development

The Fifty-eighth Legislative Assembly passed House Bill 1169, which enabled the registration of service marks with the Secretary of State. For that reason, the trademark database was modified to enable the registration of these service marks.

Enhanced Nonprofit Corporation Database

In 1995, the Legislative Assembly adopted House Bill 1332 (1995 Session Laws, Chapter 105), which required nonprofit corporations, for the first time in the state's history, to file an annual report with the Secretary of State.

The bill was introduced for the following reasons:

- to allow for the legal dissolution of abandoned nonprofit corporations;
- to establish a public and functional registry;
- to free up corporate names for use by other prospective entities;
- to allow corporate articles to be updated to reflect names currently in use and update articles to include registered agents;
- to match nonprofit corporations with benefactors;
- to provide a public record of the names of officers and board members;
- and to purge from the records of the Secretary of State a significant number of “active” files for nonprofit corporations that no longer existed.

Then, in 1997, the Fifty-fifth Legislative Assembly passed Senate Bill 2210 (1997 Session Laws, Chapter 105), which was a comprehensive rewrite of the state’s laws related to nonprofit corporations. The bill was a joint effort of the Secretary of State’s office and a special committee from the State Bar Association of North Dakota.

The resulting law from these two initiatives included a provision whereby the Secretary of State could administratively dissolve nonprofit corporations that failed to file annual reports. The initial major benefit of this provision was that the Secretary of State could administratively dissolve thousands of nonprofit corporations that had filed articles of incorporation with the Secretary of State but no longer existed. Even though they had been abandoned many years ago, these nonprofit corporations were still listed as “active” in the Secretary of State’s database.

Therefore, beginning in 1997, the Secretary of State’s office began the massive task of verifying the existence or nonexistence of all the nonprofit corporations listed in the Secretary of State’s official records.

Finally, through extensive research and contact with cities, county government, and residents, the Secretary of State’s office completed the task in early 2000. Since then, in accordance with Section 10-33-139 of the North Dakota Century Code, the Secretary of State administratively dissolved 6,318 nonprofit corporations that had not filed an annual report because, in fact, they no longer existed. Included in that number were 1,795 nonprofit corporations with church purposes that were also dissolved. The results of these administrative dissolutions are reflected in the statistics found in Chapter 13 (C) (Part 2) of this biennial report.

Chapter Ten

Elections Division

According to the North Dakota Century Code, Section 16.1-01-01(1), the Secretary of State is mandated to be the supervisor of elections. In carrying out these duties, the Secretary of State may employ additional personnel. Each county in the state is also required to have a county administrator of elections. By law (N.D.C.C. § 16.1-01-01(4)), that individual is the County Auditor. The County Auditor is then responsible to the Secretary of State for the proper administration within his or her county of the state laws, rules and regulations related to election procedures.

The general mandate of election law is to maintain the integrity of the election process and to always protect the rights of the people as provided for in the constitution and laws of the state of North Dakota. The relatively small revenues generated by this division are primarily derived from filing fees assessed for reports, registrations, and for copies of the public records.

In his supervisory capacity, the Secretary of State has the power to examine upon his or her request, or the request of any election official, any election ballot or other material, machine, or device used in connection with any election for determining compliance with the law.

The following is a partial list of the duties of the Secretary of State as they apply to the administration of election law:

1. Develop and implement training programs for all election officials in the state.
2. Prepare information for voters on voting procedures.
3. Publish and distribute an election calendar, a manual on election procedures, and a map of all legislative districts.
4. Convene a state election conference of county auditors at the beginning of each election year and whenever deemed necessary by the Secretary of State to discuss uniform implementations of state election policies.
5. Prescribe the form of all ballots and the form and wording of ballots on state referendum questions, issues, and constitutional amendments.
6. Investigate or cause to be investigated the nonperformance of duties or violations of election laws by election officers.
7. Require such reports from county auditors on election matters as deemed necessary.
8. Convene the state canvassing board and certify results of statewide elections.
9. Prepare and publish reports whenever deemed necessary on the conduct and costs of voting in the state, including a tabulation of election returns and such other information and statistics as deemed appropriate.
10. Establish standards for voting precincts and polling locations, numbering precincts, precinct maps, maintaining and updating poll books, and forms and supplies, including but not limited to, ballots, poll books, and reports.
11. Prescribe the order in which each political subdivision will appear on an election ballot.
12. Certify to the county auditors the names of state, district, and county officials to be nominated or elected in the primary, general, or special elections.
13. Receive and file on behalf of candidates for state and congressional positions their nominating petitions, certificates of nomination or certificates of endorsement.
14. Provide certificates of nomination and certificates of election.
15. File oaths of office for state, judicial, and legislative office holders.
16. Examine and determine the sufficiency of voting system or counting machines authorized by law.
17. File campaign finance disclosure reports for state, legislative, and district candidates, political action committees, political parties, and measures committees.
18. File oaths of office and statements of interest for the appointees of the Governor.
19. Provide public access to federal election reports of candidates for President of the United States and for congressional office.

Initiative and Referendums

Article III, Section 1, of the North Dakota Constitution states the legislative power of this state shall be vested in a legislative assembly consisting of a Senate and a House of Representatives. The people, however, reserve the power to propose and enact laws and constitutional changes/amendments by the initiative, to approve or reject legislative acts, or parts thereof, by the referendum, and to recall certain elected officials. Laws may be enacted to facilitate and safeguard, but not to hamper, restrict, or impair these powers.

Sections 2 through 6 of Article III provide instructions to the Secretary of State regarding the initiative and referendum process. A pamphlet entitled *Initiating or Referring Law in North Dakota* published by the Secretary of State is available upon request.

Since statehood in 1889 and through the 2002 election cycle, North Dakota's voters have voted on approximately 467 measures placed on the ballot for their consideration. These have included constitutional measures placed by legislative action, initiated constitutional measures, initiated statutory measures, and referred measures.

The most measures (221) appearing on the ballot since statehood were constitutional amendments placed there by legislative action. Through the date of this report, the voters have been in favor of 125 (57%) of the measures and have disapproved of 96 (43%) of them.

The second highest in number (131) have been initiated statutory measures placed on the ballot through the circulation of petitions by a sponsoring committee. As of November 2002, the voters had approved 55 (42%) of the measures and had rejected 76 (58%) of them.

Sponsoring committees have been successful in placing 41 initiated constitutional measures on the ballot. As of November 2002, the voters had approved 23 (56%) of them and denied 18 (44%) of them.

The actions of the Legislative Assembly have been referred to a vote of the people 74 times. As of November 2002, the voters rejected legislative action 47 (63%) times and upheld legislative decisions 27 (37%) times.

As the result of the recommendations of the 1972 Constitutional Convention, a special election was held on April 28, 1972, to consider the adoption of a new state constitution. There was a main "proposition" listed on the ballot to adopt the constitution and four alternative propositions if the proposed constitution was approved. However, it was defeated by a vote of 107,643 (63%) to 64,073 (37%).

The following petition was approved for circulation during the 1999-2001 biennium and voted on during the 2001/2003 biennium.

Proposed Referral of Senate Bill (SB) 2191

Relating to: Disclosure of financial information by financial institutions and notification of privacy policies

Date SB 2191 filed with Secretary of State: April 19, 2001

Petition approved for circulation: May 25, 2001

Submission deadline: July 18, 2001

Outcome: Obtained required number of signatures. Placed on June 11, 2002, ballot as Referred Measure No. 2. The voters rejected the action of the legislation on a vote of 31,805 (27%) to 87,446 (73%).

During the 2001/2003 biennium, the following petitions were approved for circulation.

Initiated Constitutional Measure

Relating to: Authorize state to join multi-state lottery

Petition approved for circulation: July 18, 2002

Submission deadline: July 18, 2003

Outcome: The sponsoring committee submitted petitions to Secretary of State on August 7, 2002. The Secretary of State found that the petitions had sufficient signatures and on September 5, 2002, approved placement of the measure on the November 5, 2002, general election ballot as Measure No. 2. The voters approved the amendment on a vote of 146,852 (63%) to 84,534 (37%).

Initiated Statutory Measure

Relating to: Student loan reimbursements and tax credits

Petition approved for circulation: May 3, 2002

Submission deadline: May 3, 2003

Outcome: The sponsoring committee submitted petitions to Secretary of State on July 30, 2002. The Secretary of State found that the petitions had sufficient signatures and on August 17, 2002, approved placement of the measure on the November 5, 2002, general election ballot as Measure No. 3. It was defeated on a vote of 75,636 (33%) to 154,234 (67%).

Proposed Referral of House Bill 1161

Relating to: Level of alcohol concentration prohibited for motor vehicle operators

Date HB 1161 was filed with Secretary of State: April 7, 2003

Petition approved for circulation: April 30, 2003

Submission deadline: Prior to midnight on July 7, 2003

Outcome: The sponsoring committee submitted petitions to Secretary of State on July 7, 2003. On August 27, 2003, the Secretary of State determined that the petitions contained 65 fewer than the number required to place the measure on the ballot.

Proposed Referral of Senate Bill 2222

Relating to: Ethanol production subsidies

Date SB 2222 was filed with Secretary of State: April 14, 2003

Petition approved for circulation: May 27, 2003

Submission deadline: Prior to midnight on July 13, 2003

Outcome: The sponsoring committee did not submit petitions with adequate signatures to the Secretary of State prior to the submission deadline

Number of Statewide Elections and Voter Turnout

During the biennium, there were two statewide elections. One was held on June 11, 2002, with 663 precincts and a voter turnout of 26.70%. The other was the general election was held on November 5, 2002, with 666 precincts and a voter turnout of 49.28%.

The total cost to the counties for conducting the two statewide elections in 2002 was approximately \$1,488,500.

Statewide Election (June Primary) – June 11, 2002

Although it is the “final” election for city positions, measures, and often school board positions, the election held in June is commonly known as the June Primary. Appearing on the ballot were a number of offices representing various levels of national, congressional, statewide, district, county, and local government. They were:

National

None

Congressional

Representative in Congress

2-year term

State Party Offices

Public Service Commissioner

6-year term

Statewide No Party Offices

Justice of the Supreme Court 10-year term
Judges of the District Courts 6-year term

Legislative Offices

48 seats in the ND House of Representatives (odd numbered districts) 4-year term
2 seats in the ND House of Representatives (even district) 2-year term
24 seats in the ND Senate (odd numbered districts) 4-year term
1 seat in the ND Senate (even district) 2-year term

County and Multi County Districts

County Commissioners 4-year term
Directors, Southwest Water Authorities 4-year term
Directors, Garrison Diversion Conservancy Districts 4-year term

City

Mayor 4-year term
City Councilmen and Commissioners 4-year term

In this election, there were two measures on the ballot. Measure No.1 was placed on the ballot by legislative action approved during the 2001 Legislative Session. The other measure was to refer legislative passage of a bill.

TITLE OF MEASURE	RESULT	YES	NO
<u>Constitutional Measure No. 1 (SCR 4052)</u> This measure pertained to the residency of a candidate for county elective office and to permit the legislative assembly to provide for the election of a county elective officer, other than the sheriff, to serve in more than one count (2001 Session Laws, Chapter 595 and 2003 Session Laws, Chapter 576).	<u>Approved</u>	<u>62,215</u>	<u>51,174</u>
<u>Referred Measure No. 2 (SB 2191)</u> This measure pertained to the disclosure of customer information by financial institutions, including banks and credit unions, and notification of privacy policies by financial institutions (2001 Session Laws, Chapter 97 and 2003 Session Laws, Chapter 575).	<u>Rejected</u>	<u>31,805</u>	<u>87,446</u>

It is a rare occurrence in North Dakota’s history when neither a citizen initiated statutory measure nor a referral measure does not appear on the statewide ballot. The referral measure on the 2002 ballot was the first citizen initiated measure on the ballot in four statewide elections (June and November elections in 1998 and 2000 did not have citizen initiated measures).

Statewide Election (General Election) – November 5, 2002

Appearing on the November General Election ballot were several offices representing various levels of national, federal, statewide, district, county, and local government. They were:

National

None

Federal

Representative in Congress 2-year term

State Party Offices

Public Service Commissioner 6-year term

Statewide No Party Offices

Justice of the Supreme Court 10-year term
Judges of the District Courts 6-year term

Legislative Offices

48 seats in the N.D. House of Representatives (odd districts)	4-year term
2 seats in the N.D. House of Representatives (even district)	2-year term
24 seats in the N.D. Senate (even districts)	4-year term
1 seat in the N.D. Senate (even district)	2-year term

County and Multi County Districts

County Commissioners	4-year term
Supervisor, Soil Conservation District	6-year term
Directors, Garrison Diversion Conservancy Districts	4-year term

North Dakota voters also voted on one ballot measure. Placed on the ballot by legislative action during the 1999 session, the measure and the result of the vote is summarized as follows:

TITLE OF MEASURE	RESULT	YES	NO
<u>Constitutional Measure No. 1 (SCR 4045)</u>	<u>Approved</u>	<u>113,345</u>	<u>106,770</u>
This measure pertained to the elimination of the property tax exemption for land set aside for conservation or wildlife purposes unless otherwise provided by the legislative assembly (2001 Session Laws, Chapter 596 and 2003 Session Laws, Chapter 577).			
<u>Initiated Constitutional Measure No. 2</u>	<u>Approved</u>	<u>146,852</u>	<u>84,534</u>
This measure directed the legislative assembly to authorize the state to join a multi-state lottery for the benefit of the state (2003 Session Laws, Chapter 573).			
<u>Initiated Statutory Measure No. 3</u>	<u>Rejected</u>	<u>75,636</u>	<u>154,234</u>
This measure pertained to the creation of program providing for partial reimbursement of student loan payments for North Dakota residents under the age of 30 and income tax credit for North Dakota residents from 21 years of age through 29 years of age up to five years (2003 Session Laws, Chapter 574).			

Election Results and Reports

Beginning with the 1996 election cycles through the 2002 election cycles, county-by-county election results have been published in the Elections Division section of the Secretary of State’s website at www.state.nd.us/sec. County-by-county precinct election results for the same period are available from the Elections Division of the Secretary of State’s Office. Prior to 1996, precinct election results must be obtained from the County Auditors in the state’s fifty-three counties.

Printed copies of the Secretary of State’s election abstract of votes dating back to the early 1900’s are available at no cost. Copies of the official original abstracts of votes, with the signature of the members of the State Canvassing Board, are available for \$1 for every four pages or fraction thereof.

All of the various records and filings of the Elections Division are considered public information. Copies of these records are available at a cost of \$1 for every four pages or fraction thereof. They may include but are not limited to Oaths of Office; Statements of Interest; Certificates of Endorsement; Petition/Certificates of Nomination; Affidavits of Candidacy; Certificates of Write-in Candidacy; Political Committee Registrations; Campaign Contribution Statements of Candidate, Political Parties, District Political Committees, Measure Committees; and filings and disclosure reports of federal candidates and various committees including Political Action Committees (PAC). Some of the reports are also available on the Secretary of State’s website at www.state.nd.us/sec.

In Chapter 13 (D) of this report, there is a listing of the statewide elections held since 1980 along with the voter turnout, number of precincts, and expenses.

Chapter Eleven

Legislation Adopted by 2003 Legislative Assembly

General Office – Appropriations

Senate Bill 2002 (2003 Session Laws, Chapter 23) Agency appropriation. This is the first time that the agency's budget was involved with federal funds. Therefore, the bill included authorization to receive and expend federal funds related to the administration of the Help America Vote Act of 2002 (HAVA)

Administrative/Licensing Division

House Bill 1067 (2003 Session Laws, Chapter 448) Updated or clarified text related to the regulation of boxing.

House Bill 1167 (2003 Session Laws, Chapter 459) Updated, clarified, or removed unnecessary text related to the filing of biennial reports.

House Bill 1168 (2003 Session Laws, Chapter 387)

- Eliminates the notary seal embosser and requires notary to obtain a notary seal that leaves a reproducible impression.
- Requires each jurat or acknowledgment to contain the state and county where notarial act was performed.
- Added to the prohibited acts section references to an undated jurat or acknowledgment and a notary falsely or fraudulently notarizing a document or impersonating or assuming the identity of another notary.
- Allows a notary to charge a travel fee.

Senate Bill 2072 (2003 Session Laws, Chapter 464) Clarifies the law regarding fees and that they are not charged to other agencies.

Senate Bill 2138 (2003 Session Laws, Chapter 457) Clarifies the law related to the duties of the Secretary of State in providing certificates of election at the beginning of each session of the Legislative Assembly for the purpose of making a roll of the members of the legislature.

Senate Bill 2157 (2003 Session Laws, Chapter 81) Established law related to the regulation of athlete agents.

Senate Bill 2185 (2003 Session Laws, Chapter 380) Repealed obsolete sections of state law pertaining to the filing of bonds for public officers.

Senate Bill 2252 (2003 Session Laws, Chapter 357)

- To obtain a contractor's license, applicant must be at least 18 years of age.
- Clarified and added to section of law pertaining to revocation of contractor's license.

Senate Bill 2341 (2003 Session Laws, Chapter 419) Comprehensive updating, clarifying, or elimination of unnecessary text pertaining to the regulation of charitable solicitation and professional fundraisers. A major amendment was the changing of the terminology and process from licensing to registration.

Central Indexing Division

House Bill 1185 (2003 Session Laws, Chapter 354) Relating to financing statements and terminations under the Uniform Commercial Code. Clarified the redaction of social security and tax identification numbers on documents filed in the Central Indexing System.

House Bill 1360 (2003 Session Laws, Chapter 355) Relating to the duration of filed financing statements that are also recorded in Real Estate.

House Bill 1492 (2003 Session Laws, Chapter 520) Relating to bidders at annual sales of land acquired by tax deeds and tax delinquency that are to be filed in the Central Indexing System.

Business Registration/Information Division

House Bill 1169 (2003 Session Laws, Chapter 394, effective March 13, 2003)

- Introduces the concept of service mark registration with the Secretary of State in the same manner as a trademark registration.
- Allows a registrant of a trademark or service mark to change its principal address by notifying the Secretary of State. Notification need not be written.
- Establishes the classes of services under which a service mark is registered and changes the class numbers under which a trademark is registered.
- Retroactively applies to any service marks filed with the Secretary of State under class 50 of the trademark provisions prior to the adoption of this bill.

House Bill 1180 (2003 Session Laws, Chapter 495, effective date August 1, 2003, except sections 3, 5, and 6 which are effective July 1, 2004)

- Relates to the purchasing policy of state government, purchasing by the office of management and budget, solicitation criteria, exempt records, limited competitive and noncompetitive purchases, multi-step sealed bids, and vendor registration.
- Requires most businesses bidding to provide goods or services to state agencies to be a registered vendor with State Purchasing Division with the Office of Management and Budget, and to have the business registered with the Secretary of State.

House Bill 1362 (2003 Session Laws, Chapter 85, effective July 1, 2003)

- Introduces the concept of electronic filing of corporation, limited partnership, limited liability partnership and limited liability limited partnership documents with the Secretary of State.
- Introduces electronic communications to and from the entity.
- Introduces participation of owners or board members in meetings by electronic communication.
- Enables inter-organizational mergers.
- Privatizes any social security or federal tax identification numbers contained in any document filed with the Secretary of State.

House Bill 1498 (2003 Session Laws, Chapter 390, effective August 1, 2003)

- Introduces the concept of electronic filing of trade name registrations with the Secretary of State.
- Provides that a trade name may not contain the word “company”, “corporation”, “incorporated”, “limited”, “limited liability company”, “limited partnership”, “limited liability partnership”, “limited liability limited partnership”, or any abbreviation of any of these words unless the owner of the trade name is a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership as indicated by the words in the name.
- Authorizes the renewal of a registered trade name within ninety days prior to the expiration.
- Privatizes any social security number or federal tax identification number contained in any document filed with the Secretary of State.

Senate Bill 2073 (2003 Session Laws, Chapter 389, effective March 26, 2003)

- Expands the definition of a foreign limited partnership to include a foreign limited partnership organized under laws outside the United States.

Senate Bill 2348 (2003 Session Laws, Chapter 86, effective July 1, 2003)

- Relates to transactions by a nonprofit corporation operating or controlling a hospital or nursing home, the notification required to the attorney general, and the attorney general’s powers and duties in response.
- Relates to the public hearings regarding transactions by a nonprofit corporation operating or controlling a hospital or nursing home.
- When the attorney general prevails in an action brought against a nonprofit corporation operating or controlling a hospital or nursing home, provides awards of attorney’s fees, investigation fees, costs, and expenses of any investigation.

Senate Bill 2422 (2003 Session Laws, Special Supplement, Chapter 670, effective August 1, 2003)

- Along with many provisions unrelated to corporations, reverses the changes to N.D.C.C., Section 19-19.1-63 enacted in HB 1362.

Senate Concurrent Resolution 4013 (2003 Session Laws, Chapter 578, effective if adopted by the voters of North Dakota at the 2004 primary election)

- Would provide the same flexibility to a business corporation in the election of their directors that is now only available to cooperative associations. In other words, a business corporation would have the same cumulative voting rights for directors unless they chose to do otherwise in their governance structure.

Elections Division

House Bill 1059 (2003 Session Laws, Chapter 50) Establishes minimum distance from polling location whereby a service of process can be served on Election Day.

House Bill 1410 (2003 Session Laws, Chapter 173) Changed the process in which political parties inform the Secretary of State of the names and addresses of district chairman.

Senate Bill 2056 (2003 Session Laws, Chapter 93) Clarified term of office for appointed members of board of county park commissioners.

Senate Bill 2063 (2003 Session Laws, Chapter 177) Makes it clear as to when an individual becomes a candidate for the purpose of reporting campaign contributions and broadens the definition of what is a reportable contribution.

Senate Bill 2288 (2003 Session Laws, Chapter 174) Made permanent the conducting of presidential preference caucuses, established timelines and procedures, and clarified the procedures related to the filing of certificates of nomination for the office of President of the United States.

Senate Bill 2324 (2003 Session Laws, Chapter 392) Related to the placement of names on the ballot for official county newspaper.

Senate Bill 2394 (2003 Session Laws, Chapter 172)

- Clarified and expanded laws pertaining to the qualifications of electors.
- Authorized the creation of a central voter file.
- Clarified and expanded laws pertaining to challenging the right of a person to vote, having poll clerks check voter identification to verify eligibility, and correcting or updating information in poll books.

Senate Bill 2405 (2003 Session Laws, Chapter 178) Amended laws pertaining to the nomination and filling of a vacancy in a legislative office.

Senate Bill 2409 (2003 Session Laws, Chapter 171) Related to changes required to state election law as required by the Help America Vote Act of 2002, established an election fund, established a grievance procedure, certifying and decertifying electronic voting systems, casting of ballots after poll closing, and various provisions regarding voting systems.

Senate Bill 2248 (2003 Session Laws, Chapter 175) Clarified and amended laws pertaining to voting by absentee ballot, military and overseas voting, and allowing counties to establish an early voting precinct.

Senate Bill 2403 (2003 Session Laws, Chapter 176) Comprehensive revision of the laws pertaining to the reporting of campaign finance contributions.

House Concurrent Resolution 3069 (2003 Session Laws, Chapter 579) Proposed constitutional amendment to allow a procedure to determine the fiscal impact of initiative measures.

Chapter Twelve

Public Printing

Public printing is for the publishing of the hardbound copies of the North Dakota Century Code (N.D.C.C.) and the state's constitution; N.D.C.C. replacement volumes; N.D.C.C. supplements; the laws of North Dakota as passed by each legislative assembly (commonly known as session laws); the North Dakota Administrative Code and its monthly supplements; the bound copies of the House and Senate journals; binding one set of the enrolled copies of the bills passed by each Legislative Assembly, and a limited number of other publications.

Early in the state's history, the Secretary of State had a very active role as it related to these publications. However, since the establishment in 1945 of the predecessor to today's Legislative Council, the role of the Secretary of State has evolved to that of a distributor of these publications. Now, according to various provisions of Chapter 46-03 of the North Dakota Century Code, the Legislative Council establishes the editorial content, specifications, and contractual arrangements for most of these publications. Nevertheless, even with the Secretary of State's minimal involvement with the contractual process, the legislature appropriates the funding for Public Printing expenditures to the Secretary of State's budget from which they are paid.

In fulfilling the distribution duties provided in state law, the Secretary of State distributes, without cost, the various Public Printing publications to the state's constitutional officers, justices of the supreme court, judges of district courts, state departments, state boards, state agencies, officers of the legislative assembly, county officers, libraries, and schools as directed. Some of the publications are sold to federally funded agencies and direct to the public. Still other copies of the publications are used primarily for archival purposes.

Historically, the appropriation for Public Printing was included in a separate subdivision of the Secretary of State's budget having its own identity. However, beginning with the 1991-1993 biennium, the Legislative Assembly included Public Printing in the Secretary of State's general fund appropriation that was also used for the agency's general office operations. Unfortunately, the inclusion proved to be very misleading in any analysis of the Secretary of State's budget because it intertwined those portions of the appropriation over which the Secretary of State had direct control for the operations of the agency and those portions of the budget (public printing) where the Secretary of State had limited control in how the funds were spent.

Fortunately, the 1995 Legislative Assembly acknowledged and recognized the problem. Therefore, beginning again with the 1995-1997 biennium, the Legislative Assembly once again provided Public Printing with its own distinct subdivision within the Secretary of State's budget. Accordingly, the appropriation for Public Printing in this biennial report (Chapter 6 (A)) is separated from those line items that relate directly to the agency's office operations, which are under the direct control of the Secretary of State.

Due to the fact that the Legislative Assembly meets in the last quarter of the biennium and because of the resulting publishing deadlines, a sizeable portion of the funds appropriated for Public Printing are expended during the first quarter of the biennium immediately following the one in which the laws were originated.

Chapter Thirteen (A) (Part 1)

Administration/Licensing Division

Biennial Statistics

ADMINISTRATIVE

Legislative Bills and Resolutions Filed during Biennium	
House Bills	288
House Concurrent Resolutions	58
House Bills Filed with Line Veto	1
House Memorial Resolutions	1
Senate Bills	286
Senate Concurrent Resolutions	27
Senate Memorial Resolutions	1
Senate Bills Filed with Line Veto	2

LICENSING

Contractor licenses	
Class A new licenses issued	484
Class B new licenses issued	196
Class C new licenses issued	202
Class D new licenses issued	1069
Total Licenses (effective on June 30, 2003)	5,587
Class A Renewals	3,860
Class B Renewals	1,273
Class C Renewals	1,236
Class D Renewals	4,304
Class A Penalty	343
Class B Penalty	137
Class C Penalty	135
Class D Penalty	584
Lobbyists	
Registered 2001/2003	269
Registered 2002/2003	634
Athletic Commission Licenses (issued)	
Timekeepers	6
Professional Boxers	71
Referees	8
Judges	13
Corner Persons	49
Promoter	4
Managers	3
Charitable Solicitation	
Organizations (licensed)	914
Professional Fund-raisers (licensed)	232
Notary Commissions (issued)	3,968
Total Commissions (effective on June 30, 2003)	11,839
Notary Name Changes	158
Notary Certifications Issued	668
Apostille (issued)	805
Chemical Applicators (registered)	116
Governor's Official Acts (filed)	502

Chapter Thirteen (A) (Part 2)

Administrative/Licensing Division

Six Biennial Histories

	1993	1995	1997	1999	2001	2003
<u>ADMINISTRATIVE</u>						
Legislative Actions						
House Bills.....	300	284	282	278	297	288
House Concurrent Resolutions	53	29	39	58	51	58
House Resolutions	0	0	0	0	2	0
House Memorial Resolutions .	1	1	0	1	1	1
Senate Bills.....	348	322	252	284	297	286
Senate Concurrent Resolutions	66	59	54	50	41	27
Senate Resolutions	0	0	0	0	0	0
Senate Memorial Resolutions	1	1	0	1	1	1
<u>LICENSING</u>						
Contractors *						
Class A	310	338	475	551	432	484
Class B	146	148	272	270	216	196
Class C	130	156	242	246	232	202
Class D	425	666	1,009	884	807	1,069
* These totals only represent the number of new contractor licenses issued during the biennium.						
Licenses (in effective June 30)	5,003	4,701	5,238	5,420	5,327	5,587
Lobbyists (for biennium).....	544	783	856	840	873	903
Athletic Commission	98	317	161	262	193	154
Charitable Solicitations	763	559	557	936	772	914
Professional Fund-raisers	80	81	102	157	197	232
Notary Commissions.....	3,664	3,823	3,831	4,082	3,954	3,968
Total.....	10,424	10,419	11,136	11,541	11,211	11,839
Name Changes	91	98	106	118	123	158
Notary Certificates.....	118	107	180	236	414	668
Apostille (registered).....	93	70	172	243	589	805
Chemical Applicators (registered).	42	66	96	135	105	116
Governor's Official Acts (filed)	817	653	573	540	512	502

Chapter Thirteen (B) (Part 1)
Central Indexing System Division

Biennial Statistics

Uniform Commercial Code and Central Notice System

<u>CENTRAL INDEXING SYSTEM (CIS)</u>	
Original Filings.....	67,093
Associated Filings	30,042
Terminated Filings.....	51,619
Direct Filings.....	719
Searches (Total).....	47,802
Direct Access Searches	27,364
 Total Filings in CIS as of June 30, 2003.....	 277,364
 Net Transactions with Secretary of State	
Original Filings.....	22,921
Associated Filings	9,179
Terminations.....	20,863
Direct Filings.....	147
Searches (Total).....	11,844
Direct Access Searches	862
 Net Transaction with County Recorders	
Original Filings.....	44,172
Associated Filings	20,863
Terminations.....	41,181
Direct Filings.....	646
Searches (Total).....	36,632
Direct Access Searches	24,807
 <u>FARM PRODUCT SUBSCRIBERS</u>	
Microfiche Lists.....	96
Compact Discs	212
Total Subscribers	308

STATISTICAL ANALYSIS BY TYPES OF FILINGS

<u>CENTRAL INDEXING SYSTEM</u>	
Uniform Commercial Code (UCC).....	72,845
Central Notice System (CNS).....	940
Combined UCC/CNS.....	14,522
Statutory Lien/Notices	4,431
Federal Liens.....	1,497
State Tax Liens	3,693
Total Filings	97,928
 Net Filings with Secretary of State	
Uniform Commercial Code (UCC).....	29,332
Central Notice System (CNS).....	649
Combine UCC/CNS.....	1,787
Statutory Lien/Notices	1,271
Federal Liens.....	167
Total Filings	33,206
 Net Filings with County Recorders	
Uniform Commercial Code (UCC).....	43,513
Central Notice System (CNS).....	291
Combined UCC/CNS.....	12,735
Statutory Lien/Notices	3,160
Federal Liens.....	1,330
Total Filings	61,029

Chapter Thirteen (B) (Part 2)

Central Indexing System

Six Biennial Histories

Uniform Commercial Code and Central Notice System

(Biennial history represents only the documents filed with the Secretary of State.)

	1993	1995	1997	1999	2001	2003
Uniform Commercial Code Filings (UCC).....	25,666	21,204	21,320	20,920	21,833	29,332
Central Notice System Filings (CNS).....	5,982	2,635	1,911	916	1,355	649
Combined UCC/CNS Filings.....	1,718	1,823	2,069	2,148	1,736	1,787
Statutory Lien/Notices	1,178	912	1,357	1,622	941	1,271
Federal Liens		276	250	198	154	167
State Tax Liens.....			5,878	3,328	3,265	3,693

Chapter Thirteen (C) (Part 1)

Business Registration/Information Division

Biennial Statistics

(Totals in effect on June 30, 2003)

Domestic Corporations

Profit Corporations.....	12,284
Cooperatives (reporting).....	376
Nonprofit Corporations	5,610
Churches	1,419
Banks.....	89
Credit Unions.....	40
Professional Corporations	756
Farm Corporations.....	665

Foreign Corporations

Profit Corporations.....	10,764
Cooperatives	73
Nonprofit.....	1,145

Limited Liability Companies

Domestic.....	2,220
Domestic Professional.....	19
Domestic Farm	60
Foreign	1497
Foreign Professional.....	4

Limited Liability Partnerships

Domestic.....	1,416
Domestic Professional.....	20
Foreign	49
Foreign Professional.....	9

Limited Partnerships (domestic & foreign) 1,528

Limited Liability Limited Partnerships
(Domestic and Foreign)..... 309

Fictitious Partnership Names 1,543

Trademarks 1,454

Trade Names 14,686

Chapter Thirteen (C) (Part 2)

Business Registration/Information Division

Six Biennial Histories

	1993	1995	1997	1999	2001	2003
Domestic (in-state)						
Chartered Corporations						
For Profit Corporations	9,647	10,734	10,871	11,623	11,675	12,284
Cooperatives.....	453	434	419	409	387	376
Nonprofit Corporations	8,336	8,735	8,989	9,418	* 5,180	5,610
Churches	2,892	2,950	3,025	3,150	* 1,370	1,419
State Banks	111	106	99	96	92	89
Credit Unions	51	48	47	46	42	40
Professional.....	506	552	569	646	698	756
Farm	403	499	557	602	623	665
Foreign (out-of-state)						
Chartered Corporations						
For Profit Corporations	5,566	7,307	8,222	8,594	10,575	10,764
Cooperatives.....	37	45	48	61	67	73
Nonprofit Corporations	435	562	667	887	872	1,145
Limited Liability Companies						
Domestic.....		366	577	1,074	1,542	2,220
Domestic Professional.....		1	3	5	11	19
Domestic Farm		12	19	33	49	60
Foreign.....		62	144	519	939	1,497
Foreign Professional.....		0	0	0	1	4
Limited Liability Partnerships						
Domestic.....		8	434	762	1,063	1,416
Domestic Professional.....		4	15	15	15	20
Foreign.....		1	7	24	29	49
Foreign Professional.....		0	4	6	8	9
Limited Partnerships	626	864	1,099	1,491	1,566	1,528
Limited Liability Limited Partnerships					175	309
Fictitious Names.....	1,233	1,362	1,863	1,928	1,799	1,543
Trademarks	1,230	1,286	1,322	1,324	1,497	1,454
Trade Names	2,929	3,565	6,735	10,165	12,669	14,686

* The explanation for the drop in numbers in the nonprofit corporations and churches columns for 2001 is provided on the last page of Chapter 9 of this report.

Chapter Thirteen (D)

Elections Division

1980-2001 Histories

YEAR	TYPE	NUMBER OF PRECINCTS	VOTES CAST	POPULATION OF STATE *	ELIGIBLE VOTERS	ABSENTEE VOTERS	PERCENT TURNOUT	ELECTION EXPENSES	COST PER VOTE
1980	P	0	139,594	652,717	462,760	NA	30	596,547	4.27
1980	G	0	314,525	652,717	462,760	NA	68	752,387	2.39
1982	P	1,229	103,875	670,000	461,700	NA	22	612,419	5.90
1982	G	1,232	272,876	675,000	461,700	NA	64	598,335	2.19
1984	P	1,191	99,230	675,000	470,500	2,684	21	612,329	6.17
1984	G	1,193	324,179	675,000	470,500	19,840	69	667,936	2.06
1986	P	1,166	133,465	684,900	464,100	3,353	29	642,904	4.82
1986	G	1,158	295,277	684,900	464,100	6,371	64	631,640	2.14
1987	S	1,121	123,539	684,900	484,100	1,440	26	359,159	2.91
1988	P	1,096	111,263	667,093	483,000	2,934	23	645,948	5.81
1988	G	1,090	309,100	667,093	483,000	23,508	64	676,336	2.19
1989	S	1,034	257,171	667,093	483,000	10,975	53	517,696	2.01
1990	P	975	133,911	638,800	463,415	NA	29	640,128	4.78
1990	G	991	240,301	638,800	463,415	NA	52	678,340	2.82
1992	P	804	146,867	636,800	463,415	6,810	32	717,090	4.88
1992	G	782	315,199	636,800	463,415	24,369	68	752,128	2.39
1992	S	782	164,165	636,800	461,500	12,986	35	393,988	2.40
1994	P	740	139,961	635,000	463,000	6,771	30	675,862	4.83
1994	G	739	241,255	635,000	463,000	14,857	52	633,877	2.63
1996	PP	53	72,530	641,000	473,000	NA	15	202,716	2.79
1996	P	705	123,131	641,000	473,000	5,926	26	951,580	7.73
1996	G	717	271,861	641,000	473,000	17,970	57	685,452	2.52
1998	P	700	99,1576	641,000	474,896	4,315	21	696,188	7.02
1998	G	702	217,584	640,883	475,860	18,263	46	658,785	3.03
2000	P	693	94,306	633,666	473,574	5,102	20	851,473	9.02
2000	G	696	292,249	633,666	473,574	37,632	62	731,220	2.50
2002	P	663	128,519	642,200	481,351	8,194	27	774,285	8.87
2002	G	666	237,224	642,200	481,351	34,816	49	714,212	5.06

* Population estimates calculated by the North Dakota Census Data Center

Key to Type: G = General Election P = Primary Election PP = Presidential Primary Election S = Special Election

Chapter Fourteen

Publications, Books and Pamphlets

The following publications are available from the office of the Secretary of State.

Administrative/Licensing Division

- Charitable Solicitation and Professional Fund-raiser Laws
- Contractor Licensing Laws
- Lobbyist Laws
- Notary Public Laws

- 1987 Session Laws of North Dakota (\$35)
- 1989 Session Laws of North Dakota (\$38)
- 1991 Session Laws of North Dakota and Supplement (\$39)
- 1993 Session Laws of North Dakota (\$35)
- 1995 Session Laws of North Dakota (\$38)
- 1997 Session Laws of North Dakota (\$40)
- 1999 Session Laws of North Dakota (\$55)
- 2001 Session Laws of North Dakota (\$54)
- 2003 Session Laws of North Dakota (\$54)
- Administrative Code - complete set and Supplement (\$690)
- Administrative Code - Supplement (\$250)

Business Division Pamphlets

- Limited Liability Company Articles of Organization
- Consolidated Registration for New Businesses
- How to Begin and Maintain a Nonprofit Corporation in the State of North Dakota
- Corporation Act – Nonprofit

Copies of the Law (fees vary depending on number of pages)

- Cooperative Association Act
- Corporation Act - Business

- Farming – Corporate or Limited Liability Company
- Fictitious Partnership Name
- Limited Liability Company Act
- Limited Partnership Act
- Limited Liability Partnership
- Limited Liability Limited Partnership
- Professional Associations Act
- Real Estate Investment Trust
- Trademark
- Trade Name

Central Indexing Division

North Dakota Uniform Commercial Code
Central Indexing System User's Guide (\$15)

Elections Division

- Election Calendar
- *Running for Public Office in North Dakota*
- *Campaign Finance and Disclosure Requirements*
- *Helpful Campaign Practices*
- *Initiating or Referring Law in North Dakota*
- *Recalling an Elected Official of the State or Political Subdivision*
- *North Dakota - The Only State Without Voter Registration*
- *Poll Challengers and Poll Checkers*
- *Election Officials Manual*
- North Dakota Election Law Book (\$7)
- Election Abstracts (1914 to 2002 Elections limited supply)

North Dakota Blue Book (prices vary)

- *2003-2005 North Dakota Blue Book*
- *2001-2003 North Dakota Blue Book*
- *1999-2001 North Dakota Blue Book*
- *1997-1999 North Dakota Blue Book*
- *1995-1997 North Dakota Blue Book*
- *1889-1989 North Dakota Centennial Blue Book*

Chapter Fifteen

How To Obtain Information or Assistance

Information or answers to questions regarding the office of the Secretary of State and its numerous functions is available by one of the following methods. All inquires and comments are welcomed.

MAILING ADDRESS

SECRETARY OF STATE
STATE OF NORTH DAKOTA
600 E BOULEVARD AVE DEPT 108
BISMARCK ND 58505-0500

TELEPHONE AND E-MAIL

GENERAL OFFICE

Telephone Number (701) 328-2900
Toll Free (800) 352-0867
Fax (701) 328-2992
Fax-on-Demand (701) 328-0120
E-Mail – sos@state.nd.us

ADMINISTRATIVE/LICENSING DIVISION

Telephone (701) 328-3665
Toll Free (800) 352-0867, ext. 8-2900
Fax (701) 328-1610
E-Mail – sosadlic@state.nd.us

CENTRAL INDEXING DIVISION

Telephone (701) 328-3662
Toll Free (800) 352-0867, ext. 8-3662
Fax (701) 328-4214
E-Mail – sosci@state.nd.us

BUSINESS INFORMATION/REGISTRATION DIVISION

Telephone (701) 328-4284
Toll Free (800) 352-0867, ext. 8-4284
Fax (701) 328-2992
E-Mail – sosbir@state.nd.us

ELECTIONS DIVISION

Telephone (701) 328-4146
Toll Free (800) 352-0867, ext. 8-4146
Fax (701) 328-2992
E-Mail – soselect@state.nd.us

INTERNET WEBSITE

www.state.nd.us/sec

NOTE

Although information filed in the office of Secretary of State is public information, the law does prescribe fees for some copies and services (N.D.C.C. § 54-09-04).