

**FIRST ENGROSSMENT
with Senate Amendments**Fifty-sixth
Legislative Assembly
of North Dakota**ENGROSSED HOUSE BILL NO. 1382**

Introduced by

Representative Hawken

Senator W. Stenehjem

1 A BILL for an Act to create and enact a new section to chapter 29-08 of the North Dakota
2 Century Code, relating to bail as the defendant's property; to amend and reenact subsections 3
3 and 4 of section 27-05.2-02 of the North Dakota Century Code as created by section 50 of
4 House Bill No. 1275, as approved by the fifty-sixth legislative assembly, relating to options for
5 state funding of clerk of district court services; and to amend and reenact section 29-22-31 of
6 the North Dakota Century Code, relating to refund of bail money.

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

8 **SECTION 1. AMENDMENT.** If House Bill No. 1275 becomes effective, subsections 3
9 and 4 of section 27-05.2-02 of the North Dakota Century Code, as created by section 50 of
10 House Bill No. 1275, as approved by the fifty-sixth legislative assembly, are amended and
11 reenacted as follows:

12 3. In a county in which the supreme court determines that at least ~~two~~ five full-time
13 employees are necessary to provide adequate clerk of district court services, the
14 elected clerk of district court and clerk of court staff designated by the supreme
15 court shall become employees of the state judicial system if the board of county
16 commissioners consents to the transition after consultation with the elected clerk.
17 This subsection applies upon receipt by the supreme court of a resolution adopted
18 by the board of county commissioners indicating its consent. Any equipment,
19 including ~~technology-related~~ technology-related equipment, and furnishings in the
20 control and custody of the clerk of district court on the date the clerk becomes a
21 state employee must remain in the control and custody of the clerk until the state
22 court administrator determines the items are no longer needed. The clerk, upon
23 becoming a state employee, shall receive a salary in an amount not less than the
24 salary received as a county employee and shall remain an employee of the state

1 judicial system until the clerk retires, resigns, or the term for which the clerk was
2 initially elected expires, whichever occurs earlier. Thereafter, the clerk of district
3 court must be appointed in the manner provided by supreme court rule. The bond
4 for the clerk of district court must be set by the supreme court. If the board of
5 county commissioners does not consent to the clerk and designated staff
6 becoming employees of the state judicial system, the county must provide clerk of
7 district court services at its own expense in accordance with subsection 2.

8 4. In a county in which the supreme court determines that one or more, but less than
9 ~~two~~ five, full-time employees are necessary to provide clerk of district court
10 services, the elected clerk of district court and clerk of court staff designated by the
11 supreme court shall become employees of the state judicial system in the manner
12 described in subsection 3. If the board of county commissioners does not consent
13 to the clerk and designated staff becoming employees of the state judicial system,
14 the county may provide clerk of district court services at its own expenses under
15 subsection 2 or the supreme court may provide funding for clerk of district court
16 services in accordance with an agreement under subsection 6.

17 **SECTION 2.** A new section to chapter 29-08 of the North Dakota Century Code is
18 created and enacted as follows:

19 **Bail - Defendant's property.** Except as otherwise provided in this section, moneys
20 deposited as bail are the property of the defendant, whether deposited by the defendant or by a
21 third person on the defendant's behalf. If bail moneys are deposited by a third person, the
22 person must be notified at the time of deposit that the moneys may be paid to the defendant
23 upon final disposition of the case or applied to any fine, cost, or restitution imposed on the
24 defendant. The person may direct, subject to further order of the judge, that the deposited
25 moneys be released to that person upon final disposition of the case. When moneys are
26 accepted by the court as bail, the judge shall order that the moneys received be deposited with
27 the clerk of court. The clerk shall retain the moneys until the final order of the court disposing
28 of the case. Upon release of the moneys held by the clerk, the moneys must be paid to the
29 defendant or pursuant to the defendant's written direction or, unless otherwise ordered by the
30 judge, as directed by a person who deposited moneys on behalf of the defendant. In the case
31 of a conviction, the judge may order the moneys to be applied to any fine, cost, or restitution

1 imposed on the defendant. The balance of the deposit, if any, must be paid to the defendant.
2 Moneys deposited with the court or clerk of court as bail are exempt from garnishment,
3 attachment, or execution.

4 **SECTION 3. AMENDMENT.** Section 29-22-31 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **29-22-31. Verdict of guilty - Procedure.** If a general verdict is rendered against the
7 defendant, or a special verdict is given, ~~he~~ the defendant must be remanded, if in custody, or, if
8 ~~he~~ the defendant is at large on bail, ~~he~~ may be committed to the proper officer of the county to
9 await the judgment of the court upon the verdict. When committed, ~~his~~ the defendant's bail is
10 exonerated, or if money is deposited instead of bail, it must be refunded ~~to the defendant~~ in
11 accordance with section 2 of this Act.