

BY-LAWS
OF
THE NORTH DAKOTA NATIONAL GUARD FOUNDATION

ARTICLE I

NAME AND LOCATION

1. **NAME.** The name of the corporation shall be the NORTH DAKOTA NATIONAL GUARD FOUNDATION, referred to in this document as “Foundation.”
2. **ADDRESS.** The mailing address of the Foundation shall be The North Dakota National Guard Foundation, P.O. Box 5511, Bismarck, North Dakota 58506-5511.
3. **LOCATION.** The Foundation’s regular place of business shall be located at Fraine Barracks, Bismarck, North Dakota.

ARTICLE II

PURPOSE AND POLICY

1. **PURPOSE.** The purpose of the Foundation shall be to support the North Dakota National Guard (NDNG) by:
 - a. The promotion of patriotism by providing the general public with information and education about the mission and function of the National Guard and the Armed Forces;
 - b. Supporting military heritage by providing support to military museums, parks and memorials throughout the state;
 - c. Supporting military members and their dependents by providing financial assistance through the Emergency Relief Fund (ERF) for qualifying applicants when in times of hardship; and
 - d. Providing support to the NDNG’s Service Members, Families, Veteran and Survivor (SMFVS) programs, such as military Youth Camps as well as therapeutic and educational events to support SMFVS. As appropriate, the burden of government will be lessened by the activities of the Foundation.
2. **PUBLIC CONTRIBUTIONS.** The Foundation may solicit contributions from the general public and public funds as available to support all activities undertaken to fulfill its purpose.
3. **NON-DISCRIMINATION.** The Foundation shall not adopt policies or conduct activities, which discriminate against any person based on color, race, religion, sex, age or national origin.

4. NON-PROFIT. No part of the net earnings of the Foundation shall go to the benefit of any director or officer.
5. BUSINESS FOR PROFIT. The Foundation may not, other than incidentally, conduct a business for profit by engaging in transactions with the general-public.
6. GENERAL POWERS. The Foundation shall have other general powers as granted by the State of North Dakota.

ARTICLE III

BOARD OF DIRECTORS

1. POWERS. Subject to any limitations in the articles of incorporation, these by-laws and the laws of the State of North Dakota, the affairs of the Foundation shall be managed by the board of directors.
2. NUMBER AND QUALIFICATIONS. The authorized number of directors shall be determined by resolution of the board of directors, but in no event shall be less than four (4). Additional director positions, authorized by resolution of the board of directors, shall be filled at large by appointment.
3. ELECTION AND APPOINTMENT. The initial directors shall be those named in the articles of incorporation. Each director shall hold office for three (3) years and until the director's qualified successor is elected. At the first meeting of the board, additional directors may be elected to board by the initial directors. Directors may be reelected to serve more than one term in office.
4. RESIGNATION. A director may resign at any time by giving written notice to the secretary, who shall advise the board of directors. Such resignation shall take effect at the time specified therein or, if no time is specified, then upon receipt of the resignation by the secretary. Unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective.
5. REMOVAL. Any director may be removed from the board by the action of the majority of the board of directors whenever in their judgment the best interests of the Foundation will be served.
6. VACANCIES. A vacancy or vacancies in the board of directors occurring for any reason, including an increase in authorized number of directors, may be filled by the action of the board of directors. Each director so elected shall hold office for the unexpired portion of the term he or her was elected to fill and until the board member's qualified successor is elected.
7. REGULAR MEETING. Regular meetings of the board of directors shall be held at least two (2) times each year, and may be held at such time and place as the board may designate, or in the absence of designation by the board, as the president shall designate. An annual meeting of the board shall be held during the month of October each year for the election of officers and board members and the transaction of such other business as may properly come before the meeting. In the event of failure, through oversight or otherwise, to hold the annual meeting of directors in any year during the month herein provided therefore, the meeting, upon waiver of notice or upon due notice, may be held at a later date, and any election had of business transacted at such meeting shall be as valid and effectual as if had

or transacted at the annual meeting during the month therein provided. Once a year the board shall invite The Adjutant General, or designee, to attend a regular scheduled meeting in order to receive the current state of the Foundation and for the board to receive information regarding the state of the North Dakota National Guard.

8. SPECIAL MEETINGS. Special meetings of the board for any purpose or purposes shall be held whenever called by the president, or if the president is absent, unable or refuses to act, by any vice-president, or by any two (2) directors.

9. PLACE OF MEETINGS. Meetings of the board shall be held at any place within or outside of North Dakota.

10. NOTICES. Notice of any meeting of the board specifying the place, date and hour of the meeting shall be given to each director either personally, electronic mail or by mail at least five (5) days prior to the date of the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, with postage prepaid, and addressed to the director at their address as it appears on the records of the Foundation.

11. WAIVER OF NOTICE. The transactions of any meeting of the board however called and noticed or wherever held, shall be valid as if it were duly held after regular call and notice if a quorum is present and if, either before or after the meeting, a written waiver of notice of the meeting, containing the same information as would have been required to be included in a proper notice of the meeting, is signed by (a) each director not present at the meeting, and (b) each director present at the meeting who objected there to the transaction of any business because the meeting was not lawfully called or convened. All such waivers shall be filed with and made part of the minutes of the meeting.

12. ACTION WITHOUT MEETING. Any action that may be taken at a meeting of the board may be taken without a meeting if all the directors shall consent in writing, or electronic communication, to such action. Such action by written or electronic consent shall have the same force and effect as a majority vote of the directors.

13. QUORUM. A majority of the directors in office shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be the act or decision of the board of directors.

ARTICLE IV

MEMBERSHIP

1. OFFICERS. The Foundation shall have a president, vice-president, secretary, treasurer, and such other officers as the directors may appoint. Any two or more of said offices may be held by the same person, except that the offices of president and secretary and the offices of president and vice-president may not be held by the same person.

2. ELECTION. The officers of the Foundation shall be chosen annually in the October meeting by the board of directors and each shall hold office until a qualified successor has been duly elected.
3. RESIGNATION. Any officer may resign at any time by giving written notice to the board of directors or the secretary of the Foundation. Such resignation shall take effect at the time specified therein or, if no time is specified, then upon receipt of the resignation by the secretary or the board of directors. Unless otherwise specified, acceptance of such resignation shall not be necessary to make it effective.
4. REMOVAL. Any officer may be removed from office by the action of the majority of the board of directors, whenever in their judgment the best interests of the Foundation will be served by such action.
5. VACANCIES. A vacancy occurring in any office, for any reason, may be filled for the unexpired portion of the term of said office by the board of directors.

ARTICLE V

OFFICERS

1. PRESIDENT. The president shall serve as the chairman of the board of directors and shall have such responsibilities and powers as may be delegated by the board of directors or these bylaws and shall at all times be subject to the policies, control and direction of the board of directors. The President may sign and execute, in the name of the Foundation, any instrument authorized by the board of directors, except when the signing and execution thereof shall have been expressly delegated by the board of directors or by these bylaws to some other officer or agent of the Foundation. Whenever in the President's opinion it is necessary, the President shall prescribe the duties of other officers and employees of the Foundation in a manner not inconsistent with these bylaws and the directions of the board of directors. The President shall be responsible for directing the affairs of the Foundation between board meetings and shall be responsible for making an annual report to the board of directors.
2. VICE-PRESIDENT. In the absence, disability or death of the president, the vice-president shall perform all the duties of the president, and when so acting, will have all the powers of and be subject to all the restrictions upon the president. The vice-president shall have such other powers and perform such other duties as may be prescribed by the board of directors, president or these bylaws. The vice-president shall also be a member of the board of directors.
3. SECRETARY. The secretary shall:
 - a. Certify and keep at the principal office of the Foundation the original or a copy of its articles of incorporation and bylaws, as amended or otherwise altered to date;
 - b. Keep at the principal office of the Foundation or such other place as the board of directors may direct, a book of minutes of all meetings of the board of directors and committees thereof with the time and place of holding, whether regular or special and, if special, how authorized, the notice thereof given, and the names of those present at the meetings;

- c. Provide all notices as required by these bylaws or as required by law;
- d. Be custodian of the records of the Foundation;
- e. Ensure that the books, reports, statements and all other documents and records required by law are properly kept and filed;
- f. Schedule meetings and notify board members of meetings no later than five (5) days prior to the scheduled meeting with the last meeting minute notes and an agenda for the future meeting.
- g. Perform all duties incident the office and such other duties as assigned by the board of directors, the president or these bylaws; and
- h. Serve as a member of the board of directors.

4. ASSISTANT SECRETARY. The assistant secretary shall:

- a. Assist the secretary in all assigned duties;
- b. Act as the secretary when the secretary is unable to act.

5. TREASURER. The treasurer shall:

- a. Have charge and custody of and be responsible for all funds and securities of the Foundation, and deposit all such funds in the name of the Foundation in such banks or other depositories as shall be selected by the board of directors;
- b. Keep and maintain adequate and correct account of the Foundation's properties and business transactions, including account of its assets, liabilities, receipts, disbursements, gains, losses, capital and surplus;
- c. Exhibit at all reasonable times the books of and records to any director during business hours at the discretion of the Foundation where such books and records are kept;
- d. Render a statement of the condition of the finances of the Foundation at all meetings of the board of directors and a full financial report at the annual meeting of the board of directors.
- e. Receive and give receipt for monies due and payable to the Foundation from any source whatsoever;
- f. Perform all the duties incident to the office and such other duties as may be assigned by the board of directors, the president or these bylaws; and
- g. Serve as a member of the board of directors.

6. ASSISTANT TREASURER. The assistant treasurer shall:

- a. Assist the treasurer in all assigned duties;
- b. Act as the treasurer when the treasurer is unable to act.

7. APPOINTED OFFICERS. The president may appoint an attorney to serve as general counsel and an accountant to serve as comptroller for the purpose of, advising the Foundation, the board of directors, officers and committees thereof. Officers appointed pursuant to this section shall not be deemed as voting members of the board of directors.

8. A National Guard liaison shall be appointed by The Adjutant General to advise the Board regarding Department of Defense and National Guard matters of interest, as well as to educate and inform the Board regarding the military and National Guard.

ARTICLE VI

ADVISORY BOARD

1. BOARD OF GOVERNORS. The board of directors may establish a board of governors to serve as advisors and as a resource of expertise to the board of directors. Members of the board of governors will have no voting privileges, no operational responsibility or authority in managing the affairs of the Foundation, nor be deemed as members of the board of directors.

2. NUMBER AND QUALIFICATIONS. The number of governors shall be determined by resolution of the board of directors, but in no event shall be less than five. Public officials, persons affiliated with veterans' affairs organizations, educators and other leaders in the community knowledgeable in military affairs will be deemed qualified to serve as a member of the board of governors.

3. APPOINTMENT AND TERM. The board of directors by resolution shall appoint the members of the board of governors. Each governor shall serve for a term of three (3) years and until his or her qualified successor is appointed. Vacancies in the board of governors shall be filled by the board of directors.

4. RESIGNATION. A governor may resign at any time by giving written notice to the secretary, who shall advise the board of directors. Such resignation shall take effect at the time specified therein, or if no time is specified, then upon receipt of the resignation by the secretary. Unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective.

5. REMOVAL. A governor may be removed from the board by the action of the majority of the board of directors whenever in their judgment the best interests of the Foundation will be served.

6. REGULAR MEETING. The board of governors shall meet as the board of directors deems necessary. The time and place of board of governor meetings shall be determined by the board of directors.

ARTICLE VII

COMMITTEES

1. STANDING COMMITTEES. The Foundation shall have the following standing committees: executive committee and finance committee. Such standing committees shall be formulated and operated pursuant to this article as needed.

a. Executive Committee. The executive committee shall consist of the officers and two other persons appointed from the board by the president with the approval of the board. The executive committee will always have at least five members. It shall be in charge of the affairs and programs of the Foundation and the board between their regular meetings. The executive committee may in case of necessity or emergency act on behalf of the board, submitting its actions for board approval or ratification. Three members of the executive committee shall comprise a quorum. Sections 10, 11, and 12 of article III shall also apply to the actions and meetings of the executive committee.

b. Finance Committee. The finance committee shall consist of the treasurer and four other members appointed by the president with the approval of the board. The committee will supervise the finances of the Foundation, including without limitation, fund raising, budgeting, accounting and reporting functions.

2. OTHER COMMITTEES. The board of directors may by appropriate resolution designate one or more other committees, each of which shall consist of two or more directors appointed by the president with the approval of the board. These committees shall operate pursuant to the resolution and may exercise when the board is not in session the particular function for which it was created. The board may elect one or more directors as alternate members of any such committee, who may take the place of any absent committee member or members at any meeting of such committee. The designation of such committee or committees and the delegation thereto of authority shall not operate to relieve the board of directors or any individual director of any responsibility imposed upon it or him by law.

ARTICLE VIII

INDEMNIFICATION

1. THIRD PARTY AND DERIVATIVE ACTIONS. The Foundation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including an action by or on behalf of the Foundation), by reason of the fact that he is or was a director, officer, employee or agent of the Foundation, or is or was serving at the request of the Foundation as a director, officer, employee or agent of another Foundation, partnership, joint venture, trust or other enterprise, against expenses, including attorney's fees, judgments, fines and amounts paid or necessarily incurred, in settlement or otherwise, by him in connection with such action, suit or proceeding. Indemnification shall be had except in relation to matters as to which any director, officer, agent, employee, person serving at the Foundation's request, or former director, officer, agent, employee or person serving at the Foundation's request, shall be adjudged in such action, suit or proceeding to be liable for willful misconduct in the performance of duty. Even if liability for willful misconduct is found, indemnity shall be had if the

court in which such action or suit was brought shall determine, that despite the adjudication of liability and in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for those expenses which such court shall deem proper. Indemnification shall not be deemed exclusive of any other rights to which the director, officer, agent, employee or other person serving at the Foundation's request is entitled to under any agreement or otherwise.

2. DETERMINATION. Any indemnification under section 1, other than that order by court, shall be made by the Foundation only as authorized in the specific case upon a determination that indemnification is proper in the circumstances because that applicable standard of conduct set forth in section 1 of this article has been met. Such determination shall be made (a) by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding; or (b) if such a quorum is not obtainable, or even if obtainable, if a quorum of the disinterested directors so directs, by independent legal counsel in a written opinion. If a director, officer, employee or agent of the Foundation, or person serving at the Foundation's request has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in section 1 or in defense of any claim, issue or matter therein, he shall automatically be indemnified for expenses, including attorney's fees exclusively and necessarily incurred by him in connection therewith without the necessity of any such determination that he has met the applicable standard of conduct set forth in section 1 of this article.

3. PAYMENT IN ADVANCE. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Foundation in advance of the final disposition of such action, suite or proceeding as authorized by the board of directors pursuant to section 2 of this article upon receipt of an undertaking by or on behalf of the director, officer, employee, agent or person serving at the Foundation's request to repay such amount if and when it should ultimately be determined that he is entitled to be indemnified by the Foundation as authorized in this article.

4. INSURANCE. The board of directors may exercise the Foundation's power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Foundation, or is or was serving at the request of the Foundation as a director, officer, employee, or agent of another Foundation against any liability asserted against him and incurred by him in any such capacity, or arising out of his or her status as such, whether or not the Foundation would have the power to indemnify him or her against such liability hereunder or otherwise.

5. OTHER COVERAGE. The indemnification provided by this article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the articles of incorporation, these bylaws, agreement, vote-of disinterested directors or the law of North Dakota, both as to action in their official capacity and as to action in another capacity while holding such office. This coverage continues as to a person who has ceased to be a director, officer, employee, agent or one serving at the Foundation's request and shall inure to the benefit of the heirs and personal representatives of such person.

ARTICLE IX

TRANSACTION AND GIFTS

1. EXECUTION OF INSTRUMENTS. Except as provided by these bylaws, the board of directors may authorize any officer(s) or agent(s) to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Foundation, and such authorization may be general or confined to specific instances. Except as authorized, or provided herein, no officer, agent, or employee shall have any power or authority to bond the Foundation by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount.
2. BANK ACCOUNTS. The board of directors may authorize the opening and keeping of general and/or special bank accounts with such banks, trust companies or other depositories as may be selected by the board or by any officer or officers, agent or agents of the Foundation to whom such power may be delegated by the board. The board may make such rules with respect to said bank account, not inconsistent with the provisions of these bylaws, as the board may deem necessary.
3. CHECKS AND DRAFTS. All checks, drafts or other orders for the payment of money, notes, acceptances or other evidences of indebtedness issued in the name of the Foundation, shall be signed by such officer(s) or agent(s) or the Foundation, and in such manner, as shall be determined by resolution of the board. Endorsements for deposit to the credit of the Foundation in any of its duly authorized depositories may be made without countersignature, by the president, vice-president, treasurer or by any other officer or agent of the Foundation to whom the board, by resolution, shall have delegated such power, or by hand-stamped impression in the name of the Foundation.
4. LOANS. No loan shall be contracted on behalf of the Foundation and no evidence of indebtedness shall be issue in its name unless authorized by or under the authority of a resolution of the board of directors. Such authority may be general or confined to specific instances. No loans may be made to any officer, director or employee of the Foundation, indirectly or directly.
5. GIFTS. The board of directors may accept on behalf of the Foundation any contribution, gift, bequest or device for the general purposes or for any special purposes of the Foundation.

ARTICLE X

MISCELLANEOUS

1. FISCAL YEAR. The fiscal year of the Foundation shall end on December 31.
2. CORPORATE SEAL. The Foundation shall have no seal.
3. RULES OF ORDER. "Robert's Rule of Order" shall govern meetings of this Foundation in all cases to which they are applicable and in which they are not inconsistent with these bylaws.
4. AMENDMENT. All or any portion of these bylaws may be amended or repealed by a resolution approved by a majority of the board of directors.

ARTICLE XI

DISSOLUTION

In the event of dissolution or liquidation of this Foundation or in the event it shall cease to carry out the objectives and purposes herein set forth, all business property and assets of the Foundation, after the payment of, or subject to, all outstanding indebtedness, shall go and be distributed to one or more nonprofit Foundations, governmental entities or combinations thereof, as may be selected by the board of directors to be used for, and devoted to, the objectives and purposes herein set forth and as specified in Section 501(c) of the Internal Revenue Code of 1954 as now in effect or hereinafter amended. If there is no such nonprofit corporation, governmental entities, or combination thereof, willing to accept the property and assets as above provided, then such property and assets, after the payment of all outstanding indebtedness, shall go and be distributed to one or more governmental entities as may be selected by the board of directors, to be used for and devoted to the general welfare of the State of North Dakota. If there be no such governmental entity, then the assets and property shall be distributed in such manner as the applicable statutes may provide.

ARTICLE XII

Adopted:

Mark P. Fischer
, Secretary

Approved:

Jackie A. Huber
, President

2/25/2020

Date