

# MUNICIPAL GOVERNMENT

## CHAPTER 271

S. B. No. 274

(Longmire)

### CHANGE FROM COUNCIL SYSTEM

#### AN ACT

Relating to a change from the council system of government, providing the petition required therefor, the determination of the sufficiency of said petition by the city auditor, the procedure to be followed when said petition is filed, and for a special election and ballot thereon.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

**§ 1. Change from Council System of Government—Petition Required.)** Any city which shall have operated for more than six years since the adoption of the city council system of government or since the last election at which the question of changing from the council system was rejected by the voters, may change its organization thereunder and adopt the city commission form of government. The proceeding to change shall be initiated by a petition asking for such change signed by not less than forty percent of the electors of the city. For the purpose of this section the term "qualified electors of the city" shall mean the total number of electors voting at the preceding general election. The signatures to such petition need not be appended to a single paper, but one of the signers upon each paper shall make oath before an officer competent to administer oaths that each signature appearing upon such paper is the genuine signature of the person whose name it purports to be. Each petition, in addition to the names of the signers, shall contain the name, address and age of each petitioner, and the length of his residence in the city. Any petitioner shall be permitted to withdraw his name from a petition within five days after the petition is filed.

**§ 2. City Auditor to Pass on Sufficiency of Petition.)** Within thirty days after a petition to change from the council system of government is filed, the city auditor shall examine the petition and ascertain from the voters' register whether or not the petition is signed by the required number of qualified signers. He shall attach to the petition his certificate showing the result of his examination, and if he finds the petition to be insufficient his certificate shall show the reason for such

determination. An insufficient petition may be amended within ten days after the auditor's certificate is made. Within thirty days after an amended petition is filed, the auditor shall make an examination thereof, and if his certificate shows such amended petition to be insufficient, the petition shall be returned to the person filing the same without prejudice to the filing of a new petition. If the auditor shall find the petition or the amended petition to be sufficient, he shall place the same with his certificate before the governing body of the municipality.

**§ 3. Procedure When Petition to Change from Council System of Government is Filed—Special Election—Ballot.)** When a petition to change from the council system of government, together with the city auditor's certificate of sufficiency, is filed with the governing body of a municipality, the governing body shall call a special election at which only the question of changing from the council system of government will be submitted. The date of such election shall not be less than thirty days nor more than ninety days after the date of the auditor's certificate has been filed. The election shall be conducted, returns thereof made, and the result thereof declared in all respects as are other city elections. Notice of such election shall be given by the publication of the proposition to be voted upon, the places where the election will be held, and the date of the election, in each newspaper published in the city, not more than twenty days and not less than five days before the date of such election. The ballot to be used at the election provided for in this section shall be in substantially the following form:

Shall the city of.....change from  
its organization under the council system of government  
and become a city under the commission form of govern-  
ment?

Yes ☐

No ☐

Approved March 11, 1961.

## CHAPTER 272

H. B. No. 642

(Stallman, Haugen, Burvee, Tescher,  
(Trom, Dick)

## DAYLIGHT SAVING TIME PROHIBITED

## AN ACT

To prohibit municipalities from adopting seasonal standards of time.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1.) No city, village, or other political subdivision within the state shall adopt daylight saving time or any other seasonal standard of time which varies from the time in effect in such city, village, or political subdivision during the greater portion of the year. All ordinances, resolutions, or other enactments, whether enacted prior to or subsequent to the effective date of this Act, are hereby nullified.

Approved February 25, 1961.

## CHAPTER 273

H. B. No. 793

(Burk, Wheeler, Baldwin)

## CHANGE IN FORM OF GOVERNMENT

## AN ACT

To amend and reenact sections 40-04-08, 40-04-09, and 40-04-10 of the North Dakota Century Code, relating to a change from the commission system of government, providing the petition required therefor, the determination of the sufficiency of said petition by the city auditor, the procedure to be followed when said petition is filed, and for a special election and ballot thereon.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. **Amendment.)** Section 40-04-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**40-04-08. Change from Commission System of Government—Petition Required.)** Any city which shall have operated for more than six years since the adoption of the city commission system of government, or since the last election at which the



question of changing from the commission system was rejected by the voters, may change its organization thereunder and adopt the city council form of government. The proceeding to change shall be initiated by a petition asking for such change signed by not less than forty percent of the electors of the city. For the purpose of this section the term "qualified electors of the city" shall mean the total number of electors voting at the preceding general election. The signatures to such petition need not be appended to a single paper, but one of the signers upon each paper shall make oath before an officer competent to administer oaths that each signature appearing upon such paper is the genuine signature of the person whose name it purports to be. Each petition, in addition to the names of the signers, shall contain the name of the street upon and the number of the house in which each petitioner resides, his age, and the length of his residence in the city. Any petitioner shall be permitted to withdraw his name from a petition within five days after the petition is filed.

§ 2. **Amendment.**) Section 40-04-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**40-04-09. City Auditor to Pass on Sufficiency of Petition to Change from Commission System of Government.)** Within thirty days after a petition to change from the commission system of government is filed, the city auditor shall examine the petition and ascertain whether or not the petition is signed by the required number of signers. He shall attach to the petition his certificate showing the result of his examination, and if he finds the petition to be insufficient his certificate shall show the reason for such determination. An insufficient petition may be amended within ten days after the auditor's certificate is made. Within thirty days after an amended petition is filed, the auditor shall make an examination thereof, and if his certificate shows such amended petition to be insufficient it shall be returned to the person filing the same without prejudice to the filing of a new petition. If the auditor shall find the petition or the amended petition to be sufficient, he shall place the same, with his certificate, before the governing body of the municipality.

§ 3. **Amendment.**) Section 40-04-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**40-04-10. Procedure When Petition to Change from Commission System of Government is Filed—Special Election—Ballot.)** When a petition to change from the commission system of government, together with the city auditor's certificate of sufficiency, is filed with the governing body of a municipality,

the governing body shall call a special election at which only the question of changing from the commission system of government will be submitted. The date of such election shall not be less than thirty days nor more than ninety days after the date of the auditor's certificate that a sufficient petition has been filed. The election shall be conducted, returns thereof made, and the result thereof declared in all respects as are other city elections. Notice of such election shall be given by the publication of the proposition to be voted upon, the places where the election will be held, and the date of the election, in each newspaper published in the city, not more than twenty days and not less than five days before the date of such election. The ballot to be used at the election provided for in this section shall be in substantially the following form:

Shall the city of.....change from its organization under the commission system of government and become a city under the council form of government?

Yes      ☐  
No        ☐

Approved March 8, 1961.

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## CHAPTER 274

S. B. No. 287

(Erickstad, Garaas, Longmire, Harris,)

(Fiedler and Wartner)

(By request)

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### CONDEMNATION AND RIGHTS-OF-WAY FOR SPECIAL IMPROVEMENTS

#### AN ACT

To amend and reenact section 40-22-05 of the North Dakota Century Code, relating to the condemnation of land and rights-of-way by municipalities for special improvements and issuance of warrants therefor, and declaring an emergency.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. **Amendment.)** Section 40-22-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**40-22-05. Condemnation of Land and Rights-of-Way for Special Improvements—Taking of Possession—Trial—Appeal—Vacation of Judgment.)** Whenever property required to make



any improvement authorized by this chapter is to be taken by condemnation proceedings, the court, upon request by resolution of the governing body of the municipality making such improvement, shall call a special term of court for the trial of such proceedings and may summon a jury for such trial whenever necessary. Such proceedings shall be instituted and prosecuted in accordance with the provisions of chapter 32-15, except that when the interest sought to be acquired is a right-of-way for the opening, laying out, widening, or enlargement of any street, highway, avenue, boulevard, or alley in the municipality, or for the laying of any main, pipe, ditch, canal, aqueduct or flume for conducting water, storm water, or sewage, whether within or without the municipality, the municipality may make an offer to purchase such right-of-way and may deposit the amount of such offer with the clerk of the district court of the county wherein the right-of-way is located, and may thereupon take possession of such right-of-way forthwith. Such offer shall be made by resolution of the governing body of the municipality, a copy of which shall be attached to the complaint filed with said clerk of court in accordance with section 32-15-18. The clerk shall immediately notify the owner or owners of the land wherein the right-of-way is located of such deposit, by causing a notice to be appended to the summons when served and published in said proceedings as provided in sections 32-15-08 to 32-15-11, stating the amount deposited or agreed in such resolution to be deposited. The owner may thereupon appeal to the court by filing an answer to the complaint in the manner provided in chapter 32-15, and may have a jury trial, unless a jury be waived, to determine the damages. However, upon due proof of the service of said notice and summons and upon deposit of the aggregate sum agreed in said resolution, the court may without further notice make and enter an order determining the municipality to be entitled to take immediate possession of the right-of-way. In the event that under laws of the United States proceedings for the acquisition of any right-of-way are required to be instituted in or removed to a federal court, such proceedings may be taken in such court in the same manner and with the same effect as herein provided; and the clerk of the district court of the county wherein the right-of-way is located shall perform any and all of the duties herein set forth, if and to the extent that he is directed so to do by such federal court. Such proceedings shall be determined as speedily as practicable. An appeal from a judgment in such condemnation proceedings shall be taken within sixty days after the entry of the judgment, and such appeal shall be given preference by the supreme court over all other civil cases except election contests. No final judgment in such condemnation proceedings awarding damages to property used by a

municipality for street, sewer, or other purposes shall be vacated or set aside if the municipality shall pay to the defendant, or shall pay into the court for the defendant, in cash, the amount so awarded. The municipality may levy special assessments to pay all or any part of such judgment and at the time of the next annual tax levy, may levy a general tax for the payment of such part of the judgment as is not to be paid by special assessment. For the purpose of providing funds for the payment of such judgment, or for the deposit of the amount offered for purchase of a right-of-way as hereinabove provided, the municipality may issue warrants on the fund of the improvement district as provided in section 40-24-19, in anticipation of the levy and collection of special assessments and of any taxes or revenues to be appropriated to such fund in accordance with the provisions of this title. Such warrants may be issued upon the commencement of said proceedings or at any time thereafter. Upon the failure of the municipality to make payment in accordance with this section, the judgment in the condemnation proceedings may be vacated.

**§ 2. Emergency.)** This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved February 25, 1961.

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## CHAPTER 275

H. B. No. 811

(Saugstad, Wheeler, Lowe, Stockman)

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### AGREEMENTS WITH HIGHWAY DEPARTMENT

#### AN ACT

To amend and reenact section 40-22-06.1 of the North Dakota Century Code, relating to agreements by cities with a population of over ten thousand with the state highway department or county for certain improvements.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

**§ 1. Amendment.)** Section 40-22-06.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**40-22-06.1. Cities with a Population of Over Ten Thousand May Enter Into Agreement With Highway Department or County for Certain Improvements.)** Any city in this state, with a population of over ten thousand, through its governing



body, may enter into an agreement with the highway department of the state of North Dakota, or with the board of county commissioners of the county in which such city is located, or both, for the improvement of streets, sewers, and water mains, and for this purpose, may create a special improvement district or special improvement districts. Before entering into such an agreement, the governing body shall declare by resolution that it is necessary to make such improvement, setting forth the area to be assessed for the cost of said project, and shall publish such resolution once each week for two consecutive weeks in the official newspaper of the municipality. If within thirty days after the first publication the owners of seventy-five percent of the property liable to be assessed file written protests, the governing body shall not enter into such agreement.

When a city has entered into an agreement pursuant to the provisions of this section, under the terms of which the contract for such work is to be let by the state highway department or by the board of county commissioners, or by both jointly, the portion of the cost of the project to be borne by the owners of the property benefited thereby shall not exceed twenty-five percent of the total costs thereof. The governing body of such city, after taking steps to create the special improvement district or districts, as the case may be, may dispense with the balance of the requirements relating to plans for, bids upon, contracts for the construction of, and any other steps leading up to the construction of an improvement by the special assessment method. Upon the completion of such work, the governing body of the city shall cause to be certified to the special assessment commission that portion of the cost of the project to be borne by the property owners within each special improvement district, and the assessment of such amount to the owners of the property benefited shall be made as in other cases provided for in chapter 40-23.

Approved March 11, 1961.



## CHAPTER 276

H. B. No. 704

(Fraase, Renfrow, Shablow,)  
(Einarson, Christopher)

## ASSESSMENT LIST, NOTICE

## AN ACT

To amend and reenact section 40-23-13 of the North Dakota Century Code, relating to the publication of notice of confirmation of assessment list and meeting for action upon assessments.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

**§ 1. Amendment.)** Section 40-23-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**40-23-13. Publication of Notice of Confirmation of Assessment List and Meeting for Action Upon Assessments.)** The city auditor or village clerk, as the case may be, shall publish at least once in the official newspaper of the municipality a notice stating that the assessment list has been confirmed by the special assessment commission and filed in his office and is open to public inspection. The notice also shall state the time when and the place where the governing body will act upon such assessment list. The assessment list shall be acted upon by the governing body at a regular or special meeting occurring more than fifteen days after the publication of such notice.

Approved March 11, 1961.

## CHAPTER 277

H. B. No. 712

(Stockman, Boe, Fitch, Aamoth)

## SPECIAL IMPROVEMENT DISTRICT FUNDS

## AN ACT

To amend and reenact sections 40-24-18, 40-24-19, 40-24-21, 40-24-22, and 40-24-23 of the North Dakota Century Code, relating to municipal special improvement district funds and the issuance of warrants thereon, providing for the issuance of temporary and definitive warrants on such funds, validating obligations issued and proceedings taken as provided in said sections as so amended, and declaring an emergency.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. **Amendment.**) Section 40-24-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**40-24-18. Special Improvement Moneys To Be Kept Separate—Designation and Numbering of Funds—Diversion of Moneys Prohibited.)** All special assessments and taxes levied and other revenues pledged under the provisions of this title to pay the cost of an improvement shall constitute a fund for the payment of such cost, including all principal of and interest on warrants and other obligations issued by the municipality to finance the improvement, and shall be diverted to no other purpose. The treasurer of the municipality shall hold all moneys received for any such fund as a special fund to be applied to payment for the improvement. Each such fund shall be designated by the name and number of the improvement district in or for which said special assessments, taxes and revenues are collected.

§ 2. **Amendment.**) Section 40-24-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**40-24-19. Warrants—Issuance—When Payable—Amounts—Temporary Warrants—Interest—Interest Coupons—Negotiability—Eligibility as Investments.)** The municipality, at any time after making a contract or otherwise providing in accordance with section 40-22-27 for the construction of any improvement to be financed in whole or in part by assessments, under authority of any chapter of this title, or prior thereto but after the period for filing protests against the making of such improvement has expired and the protests



filed, if any, have been heard and determined to be insufficient, and in anticipation of the levy and collection of such assessments and of any taxes or revenues derived from service charges pledged to pay for such improvement, may issue warrants on the fund created for such improvement. The municipality shall be responsible to the holders of such warrants for the proper advertisement and award of a contract or contracts or provision by other means for the completion of the improvement, for the acquisition of all land, easements, licenses and permits required for such completion, and for the valid and final levy of special assessments upon all properties within the improvement district to be benefited by the improvement, in an aggregate principal amount equal to the total cost of the improvement as finally ascertained, less the portions thereof, if any, determined to be paid from taxes, service charges and any other source; and the issuance of such warrants shall import a representation and covenant binding upon the municipality, that the aggregate benefits to be derived from the making of the improvement by the properties to be assessed therefor, are not less than the aggregate amount of the special assessments so required to be levied. The warrants shall be issued and shall mature in such amounts as in the judgment of the governing body will be provided for, at or before the maturity dates specified, by the taxes and assessments to be levied and spread and the revenues pledged therefor; except that in lieu of issuing definitive warrants on any such fund, the governing body may by resolution authorize the issuance and sale of temporary warrants maturing in not to exceed three years from the date of issue of the first such warrant, to be repaid with interest from the proceeds of definitive warrants maturing as hereinabove required, which the governing body shall issue and sell at or before the maturity date of said temporary warrants, in the amount required, with moneys theretofore received in such fund, to pay the total cost of the improvement and all temporary warrants theretofore issued on the fund, with interest then accrued thereon. Such warrants shall bear interest at a rate or rates not to exceed seven percent per annum payable annually or semiannually. The definitive warrants may bear interest at a rate or rates higher or lower than those borne by the temporary warrants, as determined by the governing body in effecting the sale thereof. In the sale of temporary warrants, the municipality may by resolution of the governing body agree to issue to the holder or holders thereof definitive warrants upon specified terms as to interest, maturity, redemption provisions and all other pertinent details, in the event that the municipality is unable to sell definitive warrants to others upon more favorable terms. Coupons representing the interest for each year or lesser period may be attached to the warrants, whether defini-

tive or temporary. All such warrants shall be negotiable within the meaning of and for all the purposes specified in title 41, and, to the same extent as general obligation bonds of the issuing municipality, shall be valid investments of the funds of any guardian, trustee and other fiduciary of any kind or nature, any insurance company, bank or other financial institution, any charitable, educational or eleemosynary institution, and any public corporation or official, municipality, school district or other political subdivision, including bond sinking funds, special improvement funds, municipal utility funds, and funds of the state of North Dakota and its instrumentalities and agencies.

**§ 3. Amendment.)** Section 40-24-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**40-24-21. Warrants May Be Used as Payment to Contractor or Sold for Cash.)** Special improvement warrants may be used in making payments on contracts for the improvements for which the special improvement fund was created or may be sold for cash at not less than the par value thereof and the proceeds thereof credited to such fund and used for paying for such improvements.

**§ 4. Amendment.)** Section 40-24-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**40-24-22. Payment and Cancellation of Warrants by Municipal Treasurer.)** The municipal treasurer shall pay special improvement warrants and the interest coupons appurtenant thereto as they mature and are presented for payment out of the district funds on which they are drawn respectively and shall cancel the warrants when paid, except that definitive improvement warrants, when refunded pursuant to the provisions of sections 40-27-06 to 40-27-12, inclusive, shall not be canceled but shall be retained by the municipality, in trust for the holders of the refunding improvement warrants or bonds issued thereunder, as therein provided. Definitive warrants shall be issued in lieu of temporary warrants at or before the time when any such warrants are to be so refunded.

**§ 5. Amendment.)** Section 40-24-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**40-24-23. Matured Improvement Warrants or Interest Coupons May Be Used to Pay Special Assessments.)** Any matured special improvement warrant or interest coupon may be used in the payment of special assessments levied for the payment of the improvement for which the warrant or interest coupons were issued. The warrants or coupons so used shall be canceled and retired by the municipal treasurer.



**§ 6. Validation.)** In all cases where any municipality shall, before the effective date of this Act, have issued or commenced proceedings for the issuance of any temporary or definitive special improvement warrants or refunding improvement warrants or bonds, which warrants or bonds and proceedings authorizing the same would be valid under the provisions of sections 40-24-18, 40-24-19, 40-24-21, 40-24-22, and 40-24-23 of the North Dakota Century Code, as herein amended, all such proceedings and warrants and bonds issued pursuant thereto are hereby validated, ratified and confirmed, and all such warrants and bonds, when issued pursuant to any such proceedings heretofore taken and otherwise in accordance with the laws of the state, shall be valid and binding special obligations of such municipalities in accordance with their terms.

**§ 7. Emergency.)** This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 8, 1961.

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## CHAPTER 278

H. B. No. 711

(Stockman, Baldwin, Boe, Fitch)

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### TAX LEVY FOR PAYMENT OF SPECIAL IMPROVEMENT FUNDS

#### AN ACT

To amend and reenact section 40-26-08 of the North Dakota Century Code, relating to the contingent obligation of municipalities to levy general taxes for the payment of deficiencies in special improvement funds.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

**§ 1. Amendment.)** Section 40-26-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**40-26-08. Municipality Liable Generally for Deficiencies in Special Improvement Fund.)** Whenever all special assessments and all utility revenues and taxes, if any, appropriated and theretofore collected for a special improvement, made under authority of any law authorizing the payment of the cost thereof in whole or in part from special assessments, are insufficient to pay principal or interest then due on the special

improvement warrants issued against such improvement, the governing body shall levy a tax upon all of the taxable property in the municipality for the payment of such deficiency. If at any time a deficiency is likely to occur within one year in such special improvement fund for the payment of principal and interest due on such warrants, the governing body, in its discretion, may levy a general tax upon all the taxable property in the municipality for the payment of such deficiency. In case a balance remains unexpended in such special improvement fund after the payment of all warrants drawn thereon with interest, it shall be paid over or transferred to the general fund of the municipality.

Approved March 7, 1961.

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## CHAPTER 279

S. B. No. 124

(Longmire, Saumur, Baker, Brooks)

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### REVENUE BONDS FOR AIRPORTS

#### AN ACT

To amend and reenact section 40-35-02 of the North Dakota Century Code, to permit the issuance of revenue bonds by municipalities for airports and related facilities, and declaring an emergency.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

**§ 1. Amendment.)** Section 40-35-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**40-35-02. "Undertaking" Defined.)** The term "undertaking", as used in this chapter, unless a different meaning clearly appears from the context, shall mean systems, plants, works, instrumentalities, and properties used in revenue producing undertakings, or any combination of two or more of such undertakings, which are used or useful in connection with:

1. The obtaining of a water supply and the conservation, treatment, and disposal of water for public and private uses;
2. The collection, treatment, and disposal of sewage, waste, and storm water;
3. The generation, production, transmission, and distribution of natural, artificial, or mixed gas, or electric energy, for lighting, heating, and power for public and private uses;



4. The operation of parking lots, trailer courts and facilities for motor vehicles and house trailers;
5. The purchase, acquisition or establishment, maintenance and operation of a public transportation system; and
6. The purchase, acquisition, construction, establishment, maintenance and operation of an airport and the facilities and services in connection therewith;

together with all parts of any such undertaking and all appurtenances thereto, including lands, easements, rights in land, water rights, contract rights, franchises, approaches, dams, reservoirs, generating stations, sewage disposal plants, intercepting sewers, trunk connections, other sewer and water mains, filtration works, pumping stations, and equipment.

§ 2. **Emergency.)** This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 16, 1961.

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## CHAPTER 280

H. B. No. 718

(Johnson, Otos, Winge)

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### CERTIFICATION OF MUNICIPAL TAX LEVIES

#### AN ACT

To amend and reenact section 40-40-10 of the North Dakota Century Code, relating to the time when municipal tax levies must be certified to the county auditor.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. **Amendment.)** Section 40-40-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**40-40-10. Certified Copies of Levy and Final Budget Sent to County Auditor.)** Immediately after the completion of the final budget and the adoption of the annual tax levy by the governing body of a municipality in accordance with the provisions of this chapter, and in no case later than September fifteenth, the auditor or clerk of the municipality shall send to the county auditor two certified copies of the levy as adopted and two certified copies of the final budget.

Approved March 7, 1961.

## CHAPTER 281

S. B. No. 307

(Committee on Delayed Bills)  
(Erickson)

## POLICE PENSIONS

## AN ACT

To amend and reenact sections 40-45-01, 40-45-02, 40-45-08, 40-45-09, 40-45-13, and 40-45-16 of the North Dakota Century Code, relating to police pensions in cities, and declaring an emergency.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

**§ 1. Amendment.)** Section 40-45-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**40-45-01. Tax Levy for Policemen's Pension Fund Authorized—Limitations.)** In addition to any other levies authorized by law for general purposes, any city having a population in excess of five thousand inhabitants according to the last official federal census and having an organized and paid police department may levy an annual tax of not more than one mill for the purpose of creating and maintaining a policemen's pension fund.

**§ 2. Amendment.)** Section 40-45-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**40-45-02. Tax Levy for Pension Fund Where Retirement System Based Upon Actuarial Tables Is Maintained.)** Any city having established by law a police retirement system based upon actuarial tables may levy for the police pension fund, in addition to any other levies authorized by law for general purposes, a total tax of not more than one and one-half mills.

**§ 3. Amendment.)** Section 40-45-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**40-45-08. Membership Fees and Assessments.)** Every member of the police department shall pay to the treasurer of the pension fund a membership fee to be fixed by the board of trustees in an amount not exceeding twenty-five dollars. Each member shall be assessed and required to pay annually an amount not less than three percent or more than five percent per annum as determined by the governing body of the municipi-

pality upon the amount of the annual salary paid to him. Such assessment shall be deducted and retained in equal monthly installments out of such salary. No assessments shall be made of any member after he has been employed for a period of twenty-two years.

§ 4. **Amendment.)** Section 40-45-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**40-45-09. Who May Be Retired on Pension—Amount Paid to Retiring Member—Retiring Member Not Paid.)** Any member of the police department, including officers and police matrons, who shall have served twenty-two years or more in the department and shall have reached the age of sixty years, or who, while a member of such department, shall suffer permanent mental or physical disability so that he is unable to discharge his duties, shall be entitled to be retired. Upon retirement, he may be paid out of the pension fund of the department a monthly pension equal to sixty percent of the average monthly salary received during the highest paid consecutive thirty-six month period of his employment in the department. If any member shall have served twenty-two years in the department but shall not have reached the age of sixty years, he shall be entitled to retirement, but no pension shall be paid while he lives until he reaches the age of sixty years.

§ 5. **Amendment.)** Section 40-45-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**40-45-13. Payments to Widow, Children, and Surviving Parents Upon Death of Active or Retired Member.)** Upon the death of any active or retired member of the police department of a city maintaining a policemen's pension fund under this chapter, leaving a widow or minor children or dependent father or mother surviving him, there shall be paid out of the fund subject to the restrictions contained in section 40-45-14, as follows:

1. To the surviving widow, as long as she remains unmarried and of good moral character, a sum not less than fifty dollars per month and not more than one hundred and fifty dollars per month;
2. If there is no surviving widow, or upon the death or remarriage of the widow, then to his dependent father or mother, if both survive, or to either dependent parent if one survives, the sum of forty dollars per month;



3. To the guardian of each surviving child under eighteen years of age, a sum not less than twenty-five dollars per month and not more than fifty dollars per month.

The aggregate of all such payments shall not exceed sixty percent of the average monthly salary received during the highest paid consecutive thirty-six month period of his employment prior to the time of his death or retirement.

§ 6. **Amendment.)** Section 40-45-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**40-45-16. Increase of Assessments by City Having Police Retirement System Based Upon Actuarial Tables.)** If the one and one-half mill levy provided for in section 40-45-02, together with contributions from beneficiaries and funds received from other sources as provided in this chapter, shall be inadequate or insufficient to establish a retirement system based upon actuarial tables, the governing body, in order to establish such system upon an actuarial basis, may:

1. Increase the amount of the contributions from beneficiaries;

§ 7. **Emergency.)** This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 16, 1961.

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## CHAPTER 282

H. B. No. 847  
(Boe, Baldwin)

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### TRUSTEES OF POLICEMEN'S PENSION FUNDS

#### AN ACT

To amend and reenact section 40-45-03 of the North Dakota Century Code, relating to the membership of the board of trustees of policemen's pension funds.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. **Amendment.)** Section 40-45-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**40-45-03. Board of Trustees—Officers—Bond of Treasurer—Compensation.)** The board of trustees for management of the policemen's pension fund shall consist of the chief of police,

the city treasurer, the city attorney ex officio, and two persons elected by and from the members of the police department who are currently being assessed. No member shall be eligible for election until he or she has eight years service. The election shall be held on the second Tuesday in June of each year. Each elected member shall serve for a term of two years, except that at the first election one trustee shall be elected for a term of one year and the other for a term of two years. The terms of elected members shall commence on July first of each year. The chief of police shall be the president and the city treasurer shall be the treasurer of the board. The faithful performance of the duties of the treasurer shall be secured by his official bond as the city treasurer. Such trustees shall receive no compensation for their services as members of the board.

Approved March 11, 1961.

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## CHAPTER 283

S. B. No. 269

(Longmire)

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### ALDERMAN

#### AN ACT

To create and enact section 40-52-08 of the North Dakota Century Code, relating to status of duly elected alderman residing within the city but no longer residing within the ward from which elected because of a change in ward boundaries.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1.) Section 40-52-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

**40-52-08. Alderman Changing Wards Can Continue in Office.)** An alderman who was duly elected, but because of the change in boundaries of the ward no longer resides within the ward from which he was elected, but is still residing within the city limits, can continue in office for the term for which he was elected and until a successor is duly elected and qualified for such ward.

Approved March 4, 1961.



## CHAPTER 284

S. B. No. 272

(Hernett, Redlin)

## MUNICIPAL INDUSTRIAL DEVELOPMENT

## AN ACT

To create and enact sections 40-57-19 and 40-57-20, to amend and reenact sections 40-57-02, 40-57-03, 40-57-10, and 40-57-14 of the North Dakota Century Code, relating to the issuance of revenue producing bonds by municipalities for municipal industrial development and to authorize state chartered banks to purchase a certain percentage of these bonds, and authorizing the municipality to issue general obligation bonds and levy taxes to pay the interest and principal thereof in certain industrial development cases, if approved by the municipality.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. **Amendment.)** Section 40-57-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**40-57-02. "Projects" Defined.)** The term "project", as used in this chapter, unless a different meaning clearly appears from the context, shall mean any real property, buildings and improvements on real property or the buildings thereon, used or useful, in connection with revenue producing enterprises, or any combination of two or more such enterprises, engaged, or to be engaged, in:

1. Assembling, fabricating, manufacturing, mixing, or processing of any agricultural, mineral, or manufactured products, or any combination thereof;
2. Storing, warehousing, distributing, or selling any products of agriculture, mining, or manufacture.

In no event, however, shall the term "project" include those undertakings defined in chapter 40-35.

§ 2. **Amendment.)** Section 40-57-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**40-57-03. Powers of Municipality.)** Any municipality, in addition to the powers prescribed elsewhere by the laws of this state, shall have the power to:

1. Acquire whether by purchase, lease, or gift, from any source whatsoever, any real property, buildings, improvements on real property or buildings, including but

- not limited to easements, profits, rights in land and water rights deemed necessary in connection therewith, and to construct, reconstruct, improve, better, or extend to real property, buildings, and improvements on real property and buildings of any project which shall be located within this state, whether wholly within or wholly without the municipality, or partially within and partially without the municipality;
2. Issue revenue bonds, in anticipation of the collection of revenues of such project, to finance, in whole or in part, the cost of the acquisition, construction, reconstruction, improvement, betterment or extension of any project, whether then in existence or not;
  3. Lease projects to any industrial or commercial enterprise in such manner that rents to be charged for the use of such projects shall be fixed, and revised from time to time as necessary, so as to produce income and revenue sufficient to provide for the prompt payment of interest upon all bonds issued hereunder, to create a sinking fund to pay the principal of such bonds when due, and to provide for the operation, maintenance, insurance on, and depreciation of such projects, and any taxes thereon;
  4. Pledge to the punctual payment of said bonds and the interest thereof, all or any part of the revenues of such project, including the revenues of projects which shall be acquired or constructed subsequent to the issuance of such bonds, as well as revenues of projects existing when such bonds were issued;
  5. Mortgage or otherwise encumber said projects in favor of the holder, or holders, of said revenue bonds, or a trustee therefor, provided that in creating any such mortgages or encumbrances, a municipality shall not have the power to obligate itself except with respect to the project, except as otherwise provided by section 40-57-19;
  6. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of the powers herein granted, or in the performance of its covenants or duties, or in order to secure the payments of its bonds;
  7. Enter into and perform such contracts and agreements with other municipalities, political subdivisions, and state agencies, authorities and institutions as the respective governing bodies of the same may deem proper and feasible for or concerning the planning, construction,



- lease, or other acquisition, and the financing of such facilities, and the maintenance thereof. Any such municipalities so contracting with each other may also provide in their contract or agreement for a board, commission, or such other body as their governing bodies may deem proper for the supervision and general management of the facilities of the project;
8. Accept from any authorized agency of the federal government loans or grants for the planning, construction, acquisition, leasing or other provision of any project, and to enter into agreements with such agency respecting such loans or grants;
  9. Sell and convey all properties acquired in connection with such projects, including without limitation the sale and conveyance thereof subject to such mortgage as herein provided, for such price, and at such time as the governing body of the municipality may determine, provided, however, that no sale or conveyance of such properties shall ever be made in such manner as to impair the rights or interests of the holder, or holders, of any bonds issued under the authority of this chapter; and
  10. Issue said revenue bonds to refund, in whole or in part bonds previously issued by such municipality under authority of this chapter.
  11. In any instance where the project consists of the construction, reconstruction, improvement, betterment of real property, buildings and improvement on real property and buildings, the provisions of chapter 48-02 of the North Dakota Century Code and other applicable statutes shall apply.

No municipality shall have the power to operate any project referred to in this chapter as a business or in any manner whatsoever, except as the lessor thereof. No debt on the general credit of the municipality shall be incurred in any manner for any purpose under the provisions of this chapter, except as otherwise provided by section 40-57-19. No municipality may pay out of its general fund, or otherwise contribute to the cost of a project, nor can it use any land already owned by or in which the municipality has an interest, for the construction thereof of a project, except as otherwise provided by section 40-57-19.

**§ 3. Amendment.)** Section 40-57-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**40-57-10. Sale of Revenue Bonds—When Private Sale Authorized—Public Sale and Notice Thereof.)** Revenue bonds shall be sold at not less than par plus any accrued interest. Such bonds may be sold at private sale to the United States of America, or any agency, instrumentality, or corporation thereof, or to the state of North Dakota, or agency or instrumentality thereof. Unless the bonds are sold to the United States of America, to an agency, instrumentality, or corporation thereof, to the state of North Dakota, or to an agency or instrumentality thereof, such bonds shall be sold at public sale after notice of such sale has been published once at least five days prior to such sale in a newspaper circulating in the municipality, and in at least two financial newspapers published in Chicago, Illinois, in New York, New York, in Minneapolis, Minnesota, or in San Francisco, California. Banks chartered in this state may purchase the revenue bonds issued under the provisions of this chapter in an amount not to exceed five percent of their capital.

**§ 4. Amendment.)** Section 40-57-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**40-57-14. Covenants That May Be Inserted in Ordinance or Resolution Authorizing Bonds.)** Any ordinance or resolution authorizing the issuance of bonds under this chapter to finance, in whole or in part, the acquisition, construction, reconstruction, improvement, betterment, or extension of any project may contain covenants, notwithstanding that such covenants may limit the exercise of powers conferred by this chapter, as to:

1. The rents to be charged for the use of properties acquired, constructed, reconstructed, improved, bettered, or extended under the authority of this chapter;
2. The use and disposition of the revenues of said projects;
3. The creation and maintenance of sinking funds and the regulation, use, and disposition thereof;
4. The creation and maintenance of funds to provide for maintaining the project and replacement of those properties which are subject to depreciation;
5. The purpose, or purposes, to which the proceeds of this sale of said bonds may be applied and the use and disposition of said proceeds;
6. The nature of mortgages or other encumbrances on the project made in favor of the holder or holders of such bonds, or a trustee therefor;



7. The events of default and the rights and liabilities arising thereon and the terms and conditions upon which the holders of bonds issued under this chapter may bring any suit or action on said bonds or on any coupons thereof;
8. The issuance of other or additional bonds or instruments payable from or constituting a charge against the revenue of said project;
9. The insurance to be carried upon the project and the use and disposition of insurance moneys;
10. The keeping of books of account and the inspection and audit thereof;
11. The terms and conditions upon which any or all of the bonds shall become or may be declared due before maturity and the terms and conditions upon which such declaration and its consequences may be waived;
12. The rights, liabilities, powers, and duties arising upon the breach by the municipality of any covenants, conditions, or obligations;
13. The vesting in a trustee or trustees of the rights to enforce any covenants made to secure, to pay, or in relation, to the bonds; the powers and duties of such trustee or trustees, and the limitation of liabilities thereof;
14. The terms and conditions upon which the holder or holders of the bonds, or the holders of any proportion or percentage of them, may enforce any covenants made under this chapter or any duties imposed thereby;
15. A procedure by which the terms of any ordinance or resolution authorizing bonds or of any other contract with bondholders, including, but not limited to, an indenture of trust or similar instrument, may be amended or abrogated, and the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;
16. The subordination of the security of any bonds issued hereunder and the payment of principal and interest thereof, to the extent deemed feasible and desirable by the governing body, to other bonds or obligations of the municipality issued to finance the project or that may be outstanding when the bonds thus subordinated are issued and delivered.

Nothing in this section, or in this chapter, except as provided in section 40-57-19, shall authorize any municipality to do anything or for any purpose which would result in the creation

or incurring of a debt or indebtedness or the issuance of any instrument which would constitute a bond or debt within the meaning of any provisions, limitation, or restriction of the constitution relating to the creation or incurring of a debt or indebtedness or the issuance of an instrument constituting a bond or debt.

§ 5.) Section 40-57-19 of the North Dakota Century Code is hereby created and enacted to read as follows:

**40-57-19. General Obligation Bonds — Issuance — Levy.)** Municipalities may issue general obligation bonds to aid, construct, reconstruct, improve, better or extend any project undertaken under the provisions of this chapter for which revenue producing bonds have been issued or to finance entirely new projects as provided in this chapter. However, before such general obligation bonds can be issued and the levy made to pay off the interest and principal of such bonds the governing body of such municipality shall hold an election for the purpose of determining whether such bonds should be issued and the tax levies made. If at such election two-thirds of the electors in the municipality vote in favor of issuing general obligation bonds, the governing body of the municipality may issue such bonds and make a levy sufficient to pay the interest and principal when due, provided the issuance of such bonds does not exceed, together with other outstanding indebtedness of the municipality, five percent of the assessed valuation of the taxable property therein. If at an election called for that purpose the governing body of the municipality determines that an increase in such indebtedness of three percent over and above such five percent limit is necessary and the proposed issue of general obligation bonds, together with other outstanding indebtedness of the municipality, does not exceed eight percent of the assessed valuation of the taxable property within the municipality, it may issue such bonds and make the tax levies to pay the interest and principal thereof, if two-thirds or more of the electors within the municipality vote in favor of such increase. The provisions of this section shall only be used when the real property, buildings, and improvements thereon of the project for which the general obligation bonds are to be issued represent an investment to the city of fifty thousand dollars or more and when the net worth of the industrial or commercial enterprise desiring to lease such project is at least five times the amount that the municipality will invest in the real property, buildings, and improvements thereon of the project. All general obligation bonds issued under the provisions of this section shall be in accordance and comply with the provisions of chapter 21-03 and those portions of title 21 that provide for the issuance of general obligation bonds. Bonds issued under

the provisions of this section shall not in any manner alter or affect revenue producing bonds issued under the provisions of this chapter.

§ 6.) Section 40-57-20 of the North Dakota Century Code is hereby created and enacted to read as follows:

**40-57-20. Declaration and Finding of Public Purpose.)** The legislative assembly of the state of North Dakota hereby declares and finds that it is and has been the purpose of chapter 40-57 of the North Dakota Century Code to sanction, authorize and encourage activities in the public interest and for the welfare of the state of North Dakota, its municipal subdivisions and people by assisting establishment of additional industrial plants and activities within the state, and increasing production of wealth and adding to the volume of employment, particularly during those seasons when employment in farming and ranching is slack, thus alleviating unemployment among the people of the state.

Approved March 16, 1961.