

PUBLIC BUILDINGS

CHAPTER 457

HOUSE BILL NO. 1385
(Representatives Clayburgh, Payne)
(Senator Freborg)

PUBLIC IMPROVEMENT CONTRACTOR DEFINED

AN ACT to create and enact a new section to chapter 48-01 of the North Dakota Century Code, relating to the definition of contractors for public improvements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 48-01 of the North Dakota Century Code is created and enacted as follows:

Definition of contractor. In this chapter, unless the context or subject matter otherwise requires, the term "contractor" means any person or entity that undertakes or enters into a contract with any public office or board authorized to enter into contracts for the erection, repair, or alteration of any public building, or any public improvement, except a municipal improvement made under special assessment statutes.

Approved March 16, 1993
Filed March 16, 1993

CHAPTER 458

SENATE BILL NO. 2201
(Government and Veterans Affairs Committee)
(At the request of the Water Commission)

PUBLIC BUILDING IMPROVEMENT BIDS

AN ACT to amend and reenact section 48-02-03 of the North Dakota Century Code, relating to the maximum cost of alterations or improvements to public buildings which may be done without competitive bidding.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 48-02-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

48-02-03. Method used in securing bids - Emergency waiver. The governing board shall advertise for bids for the doing of the work for which plans, drawings, and specifications are required by section 48-02-02. Such advertisement shall be published for three successive weeks, the first publication thereof to be at least twenty-one days prior to the date of the opening of bids thereunder. Such advertisement shall be published in the official newspaper of such municipality or political subdivision, and also in some trade publication of general circulation among the contractors, building manufacturers, and dealers of this state. Alterations or improvements may be accomplished by a state department or institution on competitive bids or on a time and material basis or by institutional personnel if the total cost of any one project does not exceed the sum of ~~twenty five~~ fifty thousand dollars. In instances where a contractor is performing work on a time and material basis, all materials and all labor supplied by such contractor must be obtained by competitive estimates from qualified suppliers for projects. The requirements of this section may be waived by the governing board if it determines that an emergency situation exists requiring the prompt destruction, demolition, or repair of an existing building, facility, or portion thereof, and a contract may be made for such prompt destruction, demolition, or repair without seeking bids.

Approved April 12, 1993
Filed April 12, 1993

CHAPTER 459

SENATE BILL NO. 2478
(Senators Lindgren, Maxson)
(Representatives Clayburgh, Dorso)

INFRASTRUCTURE DEVELOPMENT AGREEMENTS

AN ACT to provide for infrastructure construction, improvement, rehabilitation, operation, or management by private operators and to provide for development agreements between public authorities and private operators.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context or subject matter otherwise requires:

1. "Build, operate, and transfer facility" means a build, operate, and transfer fee-based facility constructed, improved, or rehabilitated and afterward operated by a private operator who holds title to the facility subject to a development agreement that includes a provision that title will be transferred or revert to the public authority on expiration of an agreed term.
2. "Build, transfer, and operate facility" means a build, transfer, and operate fee-based facility constructed, improved, or rehabilitated by a private operator who:
 - a. Transfers the interest it may have in the facility to the public authority before operation begins; and
 - b. Operates the fee-based facility for an agreed term pursuant to a lease, management, or concession agreement.
3. "Development agreement" means a written agreement by and between a public authority and a private operator which memorializes the parties' agreement with respect to the construction, improvement, rehabilitation, ownership, or operation of a fee-based facility. A development agreement must satisfy the requirements of section 3 of this Act.
4. "Fee-based facility" means a facility that provides a service in which the charge is based on the level of service by users or a rental fee paid by a public authority. The facility may be a library, city hall, and an appurtenant building, a water or sewage treatment plant, or other public improvement; land lying within applicable rights of way; and other appurtenant rights or hereditaments that together comprise a project for which a private operator is authorized to operate or own and impose fees or derive a rent as expressed in the development agreement.
5. "Private operator" means a private person, a corporation or partnership, a cooperative or unincorporated association, a joint venture or consortium that constructs, improves, rehabilitates, owns, leases, operates, or

manages a fee-based facility subject to this Act. The term includes related parties and entities that together perform some or all of these functions for the same facility.

6. "Public authority" means the state subject to legislative authority, a county, township, or city when ownership of or jurisdiction over a fee-based facility has been tendered to and accepted by said authority.

SECTION 2. Private operators. Notwithstanding any other provision of law, private operators may construct, improve, rehabilitate, own, lease, manage, and operate fee-based facilities subject to the terms of this Act. Private operators may mortgage, grant security interests in, and pledge their interests in, for a period not to exceed the length of the development agreement:

1. Fee-based facilities and their components;
2. Development, leases and concessions, and other related agreements; and
3. Income, profits, and proceeds of the fee-based facility.

SECTION 3. Public authority may enter into development agreement. A public authority may solicit or accept proposals from private operators for the constructing, improving, rehabilitating, operating, managing, and owning of a fee-based facility that will be situated in an area subject to the public authority's jurisdiction. After a hearing, the public authority may accept a proposal that it determines to be in the public interest. A public authority may negotiate and enter into a development agreement with any private operator.

SECTION 4. Contents of development agreements. A development agreement for a fee-based facility entered into pursuant to this Act may provide for private ownership of the facility without reversion of title; for operating the facility under lease or management contract; for build, operate, and transfer facilities or build, transfer, and operate facilities; or any other form of ownership or operation considered advisable by the public authority. A development agreement may permit the private operator to:

1. Assemble funds from any available source, including federal, state, and local grants, bond revenues, contributions, and pledges; and
2. Incorporate related improvements into the fee-based facility, subject to requirements of state and federal law.

A development agreement may also include grants of title, easements, rights of way, and leasehold estates that are necessary to the fee-based facility. In addition, a development agreement may authorize the private operator to charge variable-rate fees based on time of day, characteristics of services, or other factors and measurement methods considered significant by the public authority for the particular facility.

SECTION 5. Right-of-way acquisition. Private operators may acquire right of way and property by donation, lease, or purchase. When necessary for the construction, alteration, addition, extension, or improvement of any project under this Act, a public authority may acquire any real or personal property by the law of eminent domain of this state and may lease the property or right of way to a private operator.

SECTION 6. Lease term. A lease for public facilities must be for terms of no more than fifty years and must be reviewed and may be revised every five years.

SECTION 7. Application of other law. This Act does not excuse private operators of fee-based facilities from the necessity of obtaining environmental, navigational, design, or safety approvals that would be required if the facility were constructed or operated by a public body.

SECTION 8. Public authority may facilitate projects.

1. A public authority may exercise any power possessed by it with respect to the development and construction of infrastructure projects to facilitate the development and construction of infrastructure projects under this Act.
2. A public authority may provide services for which it is reimbursed with respect to preliminary planning, planning, environmental certification, and preliminary design of infrastructure projects.

SECTION 9. Development agreements - Mandatory provisions.

A development agreement must require:

1. That the plans and specifications for the fee-based facility satisfy the public authority's standards of construction for infrastructure of the same functional classification;
2. For fee-based facilities to be incorporated into the existing infrastructure, that any applicable department or authority review and approve the facility to the same extent as it would for a similar publicly constructed facility;
3. That, after public notice, the private operator manage and operate a fee-based facility in cooperation with the applicable public authority and subject to any bylaws that the public authority and the private operator may from time to time mutually agree upon;
4. That the fee-based facility be subject to regular safety inspections by the applicable public authority;
5. That the anticipated fees, rental income, and revenues from the operation of the facility, or other sources of funding, or any combination thereof, be sufficient to pay the maintenance and operation costs for the facility, and principal of and interest on any evidence of indebtedness to finance the facility; and
6. Any other provisions negotiated by the parties.

SECTION 10. Cost recovery. Development agreements entered into under this Act may authorize private operators of fee-based facilities to impose a fee-based charge for the use of the facility and must require that the fee revenues be applied:

1. To repayment of indebtedness incurred for the fee-based facility;
2. To lease or fee-based concessions payments, if any;

3. To costs associated with the operation, administration, and maintenance of the facility; and
4. To reasonable reserves for future capital outlays, if any.

Residual fee revenues belong to the private operator, except for any royalties that may be payable to a public authority under the development agreement or a related fee-based concession agreement. After the expiration of any lease for a build, transfer, and operate facility, or after title has reverted for a build, operate, and transfer facility, the public authority may continue to charge a fee for the use of the facility.

SECTION 11. Joint authority. When a fee-based facility is or will be situated in the jurisdiction of more than one public authority, or is or will be an interstate or international facility, the applicable authorities concerned may enter into a compact to delegate to one or more of the authorities or a board appointed by the various authorities the authority to exercise all of the powers, duties, and functions of the other authorities regarding the fee-based facility, including the authority to negotiate and administer the development agreement and any related lease and fee-based concession agreement. In addition, if all public authorities having jurisdiction over a fee-based facility concur, title to or authority over the facility may be tendered to the agreed upon authority of choice, which may at its option accept the title of authority to administer pursuant to the development agreement and this section.

SECTION 12. Property tax exemptions - Exemptions from bidding requirements.

1. If approved by the governing body of the city, for property within city limits, or by the governing body of the county, for property outside city limits, new fee-based facilities are exempt from all ad valorem taxes.
2. For portions of the project that do not involve contractor ownership, the construction, improvement, rehabilitation, operation, and management of fee-based facilities by private operators under this Act are subject to all competitive bidding and procurement requirements otherwise applicable under state and local laws, rules, and ordinances, if so determined by resolution of the governing body of the public authority.

SECTION 13. Relation to other law. The rights, powers, and authority conferred by this Act are in addition to other rights, powers, or authority private operators and public authorities may have under other law. This Act does not supersede or repeal, expressly or by implication, any other law permitting the construction, improvement, rehabilitation, ownership, and operation of fee-based facilities by private operators.

Approved March 26, 1993
Filed March 26, 1993

CHAPTER 460

HOUSE BILL NO. 1358
(Representatives St. Aubyn, Dorso, Bodine)
(Senators Dotzenrod, W. Stenehjem, Yockim)

GUARANTEED ENERGY SAVINGS CONTRACT DURATION

AN ACT to amend and reenact section 48-05-11 of the North Dakota Century Code, relating to guaranteed energy savings contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 48-05-11 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

48-05-11. Guaranteed energy savings contracts. The governmental unit shall provide public notice of the meeting at which it proposes to award a guaranteed energy savings contract, the names of the parties to the proposed contract, and the purpose of the contract. After reviewing the report under section 48-05-10, a governmental unit may enter into a guaranteed energy savings contract with a qualified provider if it finds that the amount it would spend on the energy conservation measures recommended in the report is not likely to exceed the amount to be saved in energy and operation costs over a period not exceeding ten years from the date of installation if the recommendations in the report are followed. The contract must include a written guarantee of the qualified provider that the energy and operating cost savings will meet or exceed the costs of the system. A qualified provider to whom the contract is awarded shall give a sufficient bond to the governmental unit for the faithful performance of the contract. The guaranteed energy savings contract may provide for payments over a period not exceeding ~~five~~ ten years.

Approved March 15, 1993
Filed March 16, 1993

CHAPTER 461

HOUSE BILL NO. 1307
(Representatives J. Berg, Allmaras, Hagle, Jacobs)
(Senators Nalewaja, Scherber)

COUNTY BUILDING LEASES

AN ACT to amend and reenact section 48-08-07 of the North Dakota Century Code, relating to the length of time a county may enter a lease of a public building.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 48-08-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

48-08-07. Lease of public buildings - Terms. No lease of any public building or part of any public building under the provisions of section 48-08-06 shall be for a longer term than two years, except as may be otherwise provided by city ordinance or by resolution of the board of county commissioners. Such lease shall be to a responsible party offering the highest return to the municipality political subdivision and the use or occupation of the building shall not interfere with the use of such building for public purposes. The governing body may reserve the right to reject any and all bids.

Approved April 1, 1993
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