

**Fifty-fifth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Monday, the sixth day of January,
one thousand nine hundred and ninety-seven**

SENATE BILL NO. 2121
(Political Subdivisions Committee)
(At the request of the North Dakota Municipal Bond Bank)

AN ACT to create and enact two new sections to chapter 21-02 of the North Dakota Century Code, relating to the validity and exemption from taxation of certificates of indebtedness; to amend and reenact sections 21-02-01, 21-02-02, 21-02-03, 21-02-05, 21-02-06, 21-02-07, 21-02-08, and 21-02-11 of the North Dakota Century Code, relating to certificates of indebtedness; to repeal sections 21-02-04, 21-02-09, 21-02-10, 21-02-12, and 21-02-13 of the North Dakota Century Code, relating to certificates of indebtedness; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 21-02-01 of the North Dakota Century Code is amended and reenacted as follows:

21-02-01. ~~Uncollected taxes~~ Definition Definitions. ~~The term "uncollected taxes" when used in this chapter, unless the context thereof clearly requires otherwise, means taxes from which revenue has not come into the public treasury either by payment or by tax sale. In this chapter unless the context or subject matter otherwise requires:~~

1. "Political subdivision" means a local governmental unit created by statute or by the Constitution of North Dakota for local governmental or other public purposes.
2. "Revenues" means any of the following:
 - a. Uncollected taxes.
 - b. Amounts to be received from a distribution of federal moneys, including currently existing bureau of Indian affairs contracts.
 - c. Amounts to be received from a distribution of moneys pursuant to a state appropriation or a state statutory or constitutional provision.
3. "Uncollected taxes" means taxes for the year during which a certificate of indebtedness is issued and the preceding four years that have been levied but from which moneys have not come into the public treasury either by payment or by tax sale, exclusive of tax levies dedicated to the payment of principal of and interest on outstanding evidences of indebtedness.

SECTION 2. AMENDMENT. Section 21-02-02 of the North Dakota Century Code is amended and reenacted as follows:

21-02-02. Certificates of indebtedness - By whom issued - Term - Interest - Tax when deemed levied General obligation. ~~Counties, cities, townships, school districts, park districts, irrigation districts, water resource districts, Garrison Diversion Conservancy District, county park districts, or joint park districts shall have power to borrow in anticipation of revenues to be derived from proceeds to be received under currently existing contracts with the bureau of Indian affairs and from taxes already levied. The aggregate amount of such borrowings at any time may not exceed the amount of uncollected taxes which have been levied during the year in which the borrowing is made, plus uncollected taxes remaining upon the tax lists of the four preceding years, exclusive of levies for the purpose of retiring bond issues and the interest thereon, plus funds to be received under currently existing bureau of Indian affairs contracts. For the purpose of borrowing, all such taxing districts may issue certificates of indebtedness. Political subdivisions may borrow against revenues through the~~

issuance of certificates of indebtedness. A certificate of indebtedness consists of an agreement on the part of ~~the taxing district~~ a political subdivision to pay a stated sum ~~on a specified date, or on or before a specified date not more than twenty-four months in the future,~~ together with interest thereon at a rate or rates resulting in an average annual net interest cost not exceeding twelve percent per annum ~~if they are if the certificate is sold privately, which may be made payable semiannually.~~ There is no interest rate ceiling on a certificate sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. The certificate must be signed on behalf of the ~~district~~ political subdivision by its president or chairman, or equivalent officer, and also by its auditor, business manager or secretary, or equivalent officer, and must be payable ~~out of funds derived from uncollected taxes levied for the current tax year and four previous years which have not been set aside for the payment of other certificates of indebtedness pursuant to sections 21-02-07, 21-02-08, and 21-02-09 and from funds received under bureau of Indian affairs contracts currently existing from revenues.~~ However, a A certificate of indebtedness ~~must be the~~ issued wholly or in part against revenues that consist of levied and uncollected taxes is a general obligation of the issuing ~~taxing district~~ political subdivision to the extent of the levied and uncollected taxes.

SECTION 3. AMENDMENT. Section 21-02-03 of the North Dakota Century Code is amended and reenacted as follows:

21-02-03. Certificate of county auditor —~~Certificate of indebtedness~~ —~~When incontestable.~~ A tax ~~must be~~ is deemed to have been levied when it has been voted by the tax levying board and certified to the county auditor. Each certificate of indebtedness issued wholly or in part against revenues that consist of levied and uncollected taxes must bear the certificate of the county auditor to the effect that it, together with all other outstanding certificates issued wholly or in part against revenues that consist of levied and uncollected taxes, is within the amount of uncollected taxes ~~which that~~ that have been levied lawfully in the then present year, plus uncollected taxes of the four preceding years, plus amounts to be received under ~~currently existing bureau of Indian affairs contracts.~~ Such certificate of indebtedness possesses no validity unless it bears such certificate of the county auditor. The county auditor shall make such certificate according to the facts. ~~When so executed with the prescribed certificate signed by the county auditor, a certificate of indebtedness is fully negotiable and is incontestable, except upon the ground of fraud on the part of the holder or original payee or connivance between the holder or the original payee and an officer or officers of the taxing district concerned. In the hands of a holder in due course, the execution of a certificate of indebtedness by the proper officials is conclusive evidence that the issuance thereof was duly authorized by the governing board of the taxing district. A county auditor who willfully signs a false certificate upon a certificate of indebtedness is guilty of a class A misdemeanor.~~

SECTION 4. AMENDMENT. Section 21-02-05 of the North Dakota Century Code is amended and reenacted as follows:

21-02-05. Recording Record of certificates of indebtedness issued against levied and uncollected taxes. The county auditor, ~~at the time of attaching the certification to any certificate of indebtedness, shall record such certificate of indebtedness in record space set aside for the recording thereof. Such record must contain~~ shall keep a record in which must be entered, as to each certificate of indebtedness issued by a political subdivision and certified to by the county auditor as provided in section 21-02-03, the same information as required for the recording of bonds in section 21-03-23. Upon presentment and payment in full by a political subdivision of a certificate of indebtedness which has been recorded by the county auditor pursuant to this section, the political subdivision must provide the county auditor with a certificate of redemption for the certificate, which must be recorded by the county auditor.

SECTION 5. AMENDMENT. Section 21-02-06 of the North Dakota Century Code is amended and reenacted as follows:

21-02-06. Certifying amount of uncollected taxes and ~~moneys under bureau of Indian affairs contracts.~~ The county auditor ~~at any time, upon request of the officers of any taxing district a political subdivision, shall certify to them the amount of uncollected taxes remaining upon the tax lists to the credit of such district and the amount still owed to the county under currently existing bureau of Indian affairs contracts~~ the political subdivision on the last day of the preceding month, and annually

shall certify such information to the clerk of each township on February fifteenth, to the auditor of each city on September tenth, and to the business manager of each school district on June tenth. The county auditor also shall certify to the clerk, auditor, business manager, or secretary, or equivalent officer, of each such taxing district monthly political subdivision, at the time of making the monthly apportionment of funds, the amount of cash collections apportioned for that month to ~~such taxing district~~ the political subdivision and the amount derived from levies of each tax year.

SECTION 6. AMENDMENT. Section 21-02-07 of the North Dakota Century Code is amended and reenacted as follows:

21-02-07. ~~Taxes, revenues, and bureau of Indian affairs contract moneys constitute special fund to pay certificates~~ Authorizing resolution - Sinking fund. When any taxing district has issued certificates of indebtedness pursuant to the terms of this chapter, the taxing district shall cause the county auditor to set aside all money from bureau of Indian affairs contracts, a distribution of revenue pursuant to a state appropriation or statutory or constitutional provision, or taxes collected from levies for the respective years against which such certificates have been issued, except those for sinking and interest funds thereafter accruing to the credit of the district. The money must be held by the county treasurer in a special fund to be used only for the purpose of retiring the certificates of indebtedness and paying interest thereon until sufficient funds have been accumulated from the bureau of Indian affairs contract moneys, a distribution of revenue pursuant to a state appropriation or statutory or constitutional provision, or collection of levies of any year or years against which certificates of indebtedness have been issued to retire the certificates of that year. When a political subdivision issues a certificate of indebtedness under this chapter, the political subdivision, by resolution authorizing the issuance of the certificate of indebtedness, shall establish a sinking fund for the retirement of the certificate of indebtedness, including interest, on its due date. The resolution must also provide for the regular accumulation of money in the sinking fund from the revenues pledged to the payment of the certificate of indebtedness. Upon the accumulation of sufficient money in the sinking fund to pay the principal and interest which will be due and owing on the maturity date of the certificate of indebtedness, no additional revenues may be credited to the sinking fund.

SECTION 7. AMENDMENT. Section 21-02-08 of the North Dakota Century Code is amended and reenacted as follows:

21-02-08. Percentage of current taxes used to pay delinquent certificates of indebtedness. If sufficient funds are not collected under ~~currently existing bureau of Indian affairs contracts, a distribution of revenue pursuant to a state appropriation or statutory or constitutional provision, or from levies against which certificates of indebtedness are issued to retire such certificates, both principal and interest, to retire outstanding certificates of indebtedness issued wholly or in part against revenues that consist of uncollected taxes within two months after their due date, there must be set aside monthly from current tax collections, exclusive of tax levies dedicated to the payment of principal of and interest on outstanding evidences of indebtedness, not less than ten percent of the amount of such the collections until such the past due certificates have been paid. Within one month after the due date of a certificate of indebtedness, the governing board of the issuing taxing district shall transmit to the county auditor its duly authenticated resolution directing the percentage of tax collections which must be retained by the county treasurer to retire such certificate within the foregoing limitations. If such resolution is not received within two months after the due date of such certificate, the county auditor shall retain thirty percent of such collections.~~

SECTION 8. AMENDMENT. Section 21-02-11 of the North Dakota Century Code is amended and reenacted as follows:

21-02-11. Advertising for bids - When required - Procedure similar to bond sales. If the governing board of ~~any taxing district~~ a political subdivision determines to borrow upon certificates of indebtedness, it shall follow the procedure and is subject to the penalties prescribed in the provisions relating to the sale of bonds in chapter 21-03. Certificates of indebtedness need not be advertised for bids:

1. If they are sold to the state board of university and school lands, the Bank of North Dakota, the North Dakota municipal bond bank, or in case other trust funds administered by public officials are invested in them; or

2. If they do not exceed the total sum of one hundred thousand dollars.

SECTION 9. Two new sections to chapter 21-02 of the North Dakota Century Code are created and enacted as follows:

Presumption of validity. After issuance by a political subdivision, a certificate of indebtedness that recites that it is issued under this chapter is conclusively presumed to be fully authorized and issued under the laws of the state, and any person or governmental unit is estopped from questioning its authorization, sale, execution, issuance, or delivery by the political subdivision.

Certificate of indebtedness exempt from state taxation - Review for exemption from federal taxation. Payments of the principal of and interest on a certificate of indebtedness issued under this chapter are exempt from all taxes, except inheritance, estate, and transfer taxes, imposed by this state, any county or city, or any other political subdivision. However, a political subdivision shall review, or cause to be reviewed, federal tax laws and regulations to determine the federal tax exempt status of interest payments on a certificate of indebtedness prior to the issuance and sale of the certificate on a purported federally tax exempt basis.

SECTION 10. REPEAL. Sections 21-02-04, 21-02-09, and 21-02-12 of the North Dakota Century Code and sections 21-02-10 and 21-02-13 of the 1995 Supplement to the North Dakota Century Code are repealed.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-fifth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2121.

Senate Vote: Yeas 44 Nays 0 Absent 5

House Vote: Yeas 93 Nays 0 Absent 4

Secretary of the Senate

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,

at _____ o'clock _____ M.

Secretary of State