

GOVERNMENTAL FINANCE

CHAPTER 221

SENATE BILL NO. 2121

(Political Subdivisions Committee)

(At the request of the North Dakota Municipal Bond Bank)

POLITICAL SUBDIVISION CERTIFICATES OF INDEBTEDNESS

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~~ 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.

Approved March 21, 1997
Filed March 21, 1997

CHAPTER 222

HOUSE BILL NO. 1294

(Representatives Huether, Grumbo, Kempenich)
(Senators Heitkamp, LaFountain, Urlacher)

FEDERAL AID BRIDGE PROJECT BONDING

AN ACT to amend and reenact subsection 3 of section 21-03-07 of the North Dakota Century Code, relating to bonding for federal aid bridge projects.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 21-03-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The governing body of any municipality may issue bonds of the municipality for the purpose of providing funds to meet its share of the cost of any federal-aid highway project undertaken under an agreement entered into by the governing body with the United States government, the director of the department of transportation, the board of county commissioners, or any of them, including; ~~but without limitation,~~ the cost of any construction, improvement, financing, planning, and acquisition of right of way of a bridge eligible for federal matching funds, federal-aid highway routed through the municipality and of any bridges and controlled access facilities thereon and any necessary additional width or capacity of the bridge or roadway thereof greater than that required for federal or state bridge or highway purposes, and of any necessary relaying of utility mains and conduits, curbs and gutters, and the installation of utility service connections and streetlights; ~~provided, that the.~~ The portion of the total cost of ~~such the~~ project to be paid by the municipality under ~~such the~~ agreement, including all items of cost incurred directly by the municipality and all amounts to be paid by it for work done or contracted for by other parties to the agreement, may not exceed a sum equal to thirty percent of the total cost, including engineering and other incidental costs, of all construction and reconstruction work to be done plus fifty percent of the total cost of all right of way to be acquired in connection therewith. The initial resolution authorizing issuance of bonds under this subsection must be published in the official newspaper of the municipality. Within sixty days after publication, an owner of taxable property within the municipality may file with the auditor or chief fiscal officer of the municipality a written protest against adoption of the resolution. A protest must describe the property that is the subject of the protest. If the governing body finds protests have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property in the municipality, as most recently finally equalized, all further proceedings under the initial resolution are barred. Nothing herein may be deemed to prevent any municipality from appropriating funds for or financing out of taxes, special assessments, or utility revenues any work incidental to any such project, in the manner and to the extent otherwise permitted

by law, and the cost of any work so financed may not be included in computing the portion of the project cost payable by the municipality, within the meaning of this subsection, unless ~~such~~ the work is actually called for by the agreement between the municipality and the other governmental agencies involved.

Approved March 23, 1997

Filed March 24, 1997

CHAPTER 223

HOUSE BILL NO. 1380

(Representatives Grosz, Belter, Clark)
(Senators Andrist, Kinnoin, Tomac)

POLITICAL SUBDIVISION BOND LEVIES

AN ACT to amend and reenact sections 21-03-15 and 21-03-42 of the North Dakota Century Code, relating to payment of the principal and interest on bonds issued by political subdivisions and termination of tax levies; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 21-03-15 of the North Dakota Century Code is amended and reenacted as follows:

21-03-15. Direct, annual, irrepealable tax. The governing body of every municipality issuing bonds under the authority of this chapter, before the delivery thereof, shall levy by recorded resolution or ordinance a direct, annual tax which, together with any other moneys provided by, or sources of revenue authorized by, the legislative assembly, shall be sufficient in amount to pay, and for the express purpose of paying, the interest on such bonds as it falls due, and also to pay and discharge the principal thereof at maturity. The municipality shall be and continue without power to repeal such levy or levies or to obstruct the collection of any such tax until such payments have been made or provided for, except that if the governing body in any year makes an irrevocable appropriation to the sinking fund of moneys actually on hand, or if there is on hand in the sinking fund an ~~excess~~ amount that would be sufficient to retire the bonds, the governing body ~~may~~ shall cause its recording officer to certify the fact and amount to the county auditor with the direction that the county auditor should reduce by the amount so certified the amount otherwise to be included in the tax rolls next thereafter prepared. A copy of such resolution or ordinance must be certified to and filed with the county auditor, and after the issuance of such bonds, any such tax on property from year to year must be carried into the tax roll of the municipality and collected as other property taxes are collected. No further annual levy for that purpose is necessary. The governing body may, in its discretion and in anticipation of the sale of bonds, at any time after the issuance of bonds has been authorized by the electors or by resolution of the governing body where no election is required, levy and certify to the county auditor for collection a portion of the tax herein required, which must be credited against the amount otherwise required to be levied after the bonds have been sold. Any other tax or source of revenue authorized by the legislative assembly for such purposes and imposed or pledged by the municipality for those purposes is likewise irrepealable and subject to the same conditions and limitations as any taxes levied on property for the same purposes. Any annual or periodic amounts provided for the municipality issuing such bonds by the legislative assembly out of state funds for paying the interest and principal of such bonds constitute an irrepealable and continuing appropriation until the liability for all interest and principal payments of the bonds have been satisfied. When insufficient funds are available to pay the matured bonds, the county auditor shall notify the governing body of such municipality of such deficiency and the governing body thereupon may levy a direct tax on the taxable property to pay said deficiency and interest thereon. If the governing body of the issuing municipality no longer exists, the county auditor shall

levy a direct tax against the taxable property in the original issuing municipality to pay said deficiency and the interest thereon. The manner of levy, certification, and collection of said tax must be the same as provided by this section for the levy, certification, and collection of taxes by this section. When such bonds are further sustained by revenue of a revenue-producing utility, industry, or enterprise, said resolution or ordinance may provide that the tax to be levied and assessed may be reduced by such amount and under such conditions as must be determined in said resolution or ordinance so long as adequate provision is always made for the payment of such bonds and interest thereon.

SECTION 2. AMENDMENT. Section 21-03-42 of the North Dakota Century Code is amended and reenacted as follows:

21-03-42. Sinking fund - Sources and uses. The sinking fund must be disbursed by the county treasurer or treasurer of the municipality, as the case may be, upon the directions therefor by resolution of the governing body of the municipality issuing such bonds. As such bonds mature, the county treasurer, upon warrant drawn upon ~~him~~ the county treasurer by the county auditor, shall apply such sinking fund in retirement thereof, and also in payment of the interest thereon as it becomes payable. The county auditor shall draw such warrants so as to pay the interest and retire the bonds at as early a date as possible. If the bonds are retired or if the balance in the sinking fund is sufficient to retire the bonds, the county auditor shall notify the governing body of the municipality of its obligation under section 21-03-15 to terminate the levy for payment of principal and interest on the bonds. The county treasurer or treasurer of the municipality may not disburse any of such fund contrary to the provisions of this chapter, even though so directed by such governing body. The county treasurer or treasurer of the municipality may disburse such fund for the purpose of paying the principal and interest, or either, of the bonds for which such fund was created without any authorization therefor by the governing body. The sinking fund of each bond issue must be kept separate and must be designated by a name indicative of the issue of bonds on account of which it was created. The sources of such fund must be:

1. All moneys accruing to the borrowed money fund prescribed by section 21-03-38 which at any stage are not needed for the purpose for which the money was borrowed, and any moneys becoming applicable to the sinking fund must be transmitted by the treasurer of the municipality to the county treasurer, in case such municipality has a population of four thousand or less, upon direction therefor by the governing body of the municipality.
2. All moneys raised by taxation and received from other sources pursuant to section 21-03-15 for the purpose of paying said bond.
3. Moneys derived from licenses or other sources, the expenditure of which is not otherwise provided for by law, as the governing body may elect to place in the sinking fund, and which must be paid over to the county treasurer for deposit in such sinking fund by the treasurer of the municipality, in case such municipality has a population of four thousand or less, upon a resolution directing such payment by the governing body.
4. The premium, if any, for which the bonds have been sold over and above the par value and accrued interest.

SECTION 3. EFFECTIVE DATE. This Act is effective for bond issues outstanding after July 31, 1997.

Approved March 23, 1997

Filed March 24, 1997

CHAPTER 224

SENATE BILL NO. 2157

(Senator Tomac)

PUBLIC DEPOSIT SECURITY PLEDGES

AN ACT to amend and reenact section 21-04-09 of the North Dakota Century Code, relating to pledges to secure public deposits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 21-04-09 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

21-04-09. Pledge of security in place of depository bond. The board of any public corporation may accept from any financial institution, as security for repayment of deposits, a pledge of securities in lieu of a personal or surety bond. When securities are so pledged to the board of any public corporation, ~~such~~ the board shall require security in the amount of one hundred ten dollars for every one hundred dollars of public deposits. Securities ~~which~~ that are eligible for ~~such~~ the pledge are bills, notes, or bonds issued by the United States government, its agencies or instrumentalities, all bonds and notes guaranteed by the United States government, irrevocable standby letters of credit issued by federal home loan banks of a rating of AA or better by Moody's Investors Service, Inc. or Standard & Poor's Corporation, federal land bank bonds, bonds, notes, warrants, certificates of indebtedness, insured certificates of deposit, shares of investment companies registered under the Investment Companies Act of 1940, letters of credit issued by the Bank of North Dakota, and all other forms of securities issued by the state of North Dakota, its boards, agencies, or instrumentalities, or by any county, city, township, school district, park district, or other political subdivision of the state of North Dakota, whether payable from special revenues or supported by the full faith and credit of the issuing body, and bonds issued by any other state of the United States or such other securities approved by the banking board. ~~Such~~ The securities and securities sold under agreements to repurchase as described in section 21-06-07 must be delivered to and held for safekeeping by any financial institution, other than the depository, which the depository and the public corporation may agree upon. Whenever any ~~such~~ securities are so deposited for safekeeping with any custodian, ~~such~~ the custodian shall issue a receipt therefor jointly to the depository and the public corporation.

Any financial institution pledging ~~such~~ securities, at any time it deems it advisable or desirable, and without the consent of the board of the public corporation, may substitute other eligible securities for all or any part of the securities ~~so~~ pledged. The securities ~~so~~ substituted must, at the time of ~~such~~ the substitution, have a market value at least equal to the market value of the securities released and delivered to the depository.

In the event of ~~such~~ the substitution the holder or custodian of the pledged securities shall, on the same day, forward by registered ~~or certified~~ mail to the public corporation and the depository financial institution a receipt specifically describing and identifying both the securities ~~so~~ substituted and those released and returned to the depository financial institution.

~~Any~~ A depository financial institution may fulfill the pledge of securities requirements of this section by maintaining a security pledge schedule that establishes the following:

1. The names of all public bodies maintaining deposits with the financial institution.
2. The amount of each deposit maintained by each public body.
3. The amount of federal deposit insurance corporation insurance applied to each account.
4. The net deposits exceeding federal deposit insurance corporation coverage for each account.
5. The amount of net deposit exceeding federal deposit insurance corporation deposit insurance multiplied by one hundred ten percent for each account.
6. The amount of securities needed to be pledged to fulfill the requirements of this section.
7. The total number of qualified securities pledged by the financial institution under the requirements of this section.

A financial institution is in compliance with this section as long as the security pledge schedule discloses the total qualified securities pledged in excess of the total pledges needed for a total amount of deposits maintained ~~with~~ by all the public bodies with the financial institution as verified by the custodian of the securities every three months and copies thereof are provided to the custodian of the securities and to each of the public corporations maintaining deposits with the financial institution.

No pledge of security or bond may be required for any funds deposited with a financial institution to the extent that ~~such~~ the deposits are insured by the federal deposit insurance corporation or ~~the federal savings and loan insurance corporation~~ or the national credit union ~~association~~ administration.

Approved April 1, 1997
Filed April 2, 1997