

**Fifty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2003**

SENATE BILL NO. 2261
(Senators Nething, Heitkamp, Wardner)
(Representatives Delmore, Devlin, Keiser)

AN ACT to create and enact a new subsection to section 6-09.4-07, a new section to chapter 15-10, a new subsection to section 40-05-01, a new section to chapter 40-34, a new section to chapter 54-01, a new section to chapter 54-17, three new subsections to section 57-02-08, a new subsection to section 61-24.5-09, and a new subsection to section 61-35-12 of the North Dakota Century Code, relating to long-term leases and leaseback transactions; to amend and reenact sections 40-11-04, 40-33-01, 40-33-02, 40-33-03, 40-33-04, and 40-34-02 of the North Dakota Century Code, relating to long-term leases and leaseback transactions; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 6-09.4-07 of the North Dakota Century Code is created and enacted as follows:

To do and perform any act and thing authorized by section 54-01-05.6 or 54-17-35 under, through, or by means of its officers, agents, or employees or by contracts with any person to assist the state, or any agency or institution of the state, in making, entering, and enforcing all contracts or agreements necessary, convenient, or desirable for the purposes of leasing all or part of, or an undivided or other interest in, property.

SECTION 2. A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

Long-term lease and leaseback transaction revenue. The board shall use revenue earned from long-term lease and leaseback transactions under chapter 54-01 for the repair and upkeep of campus buildings commonly referred to as deferred maintenance projects.

SECTION 3. A new subsection to section 40-05-01 of the North Dakota Century Code is created and enacted as follows:

Lease of waterworks or sewage systems. To lease, for a term not to exceed ninety-nine years, the plant or equipment of any waterworks, mains, or water distribution system and any property related thereto pursuant to subsection 5 of section 40-33-01 or to lease, for a term not to exceed ninety-nine years, any sewage system and all related property for the collection, treatment, purification, and disposal in a sanitary manner of sewage pursuant to section 40-34-01.2.

SECTION 4. AMENDMENT. Section 40-11-04 of the North Dakota Century Code is amended and reenacted as follows:

40-11-04. Ordinance required for the transfer of property. Every municipality shall enact an ordinance providing for the conveyance, sale, lease, or disposal of personal and real property of the municipality. When the property to be disposed of is estimated by the governing body of the municipality to be of a value of less than two thousand five hundred dollars, the property may be sold at private sale upon the proper resolution of the governing body. In all other cases, the property may be sold only at public sale or as provided under section 40-11-04.2. This section and sections 40-11-04.1 and 40-11-04.2 do not apply to a lease by a municipality to the state, or any agency or institution of the state, of any waterworks, mains, and water distribution system and any equipment or appliances connected therewith and any real property related thereto pursuant to subsection 5 of section 40-33-01

or of any sewage system and all related property for the collection, treatment, purification, and disposal in a sanitary manner of sewage pursuant to section 40-34-01.2.

SECTION 5. AMENDMENT. Section 40-33-01 of the North Dakota Century Code is amended and reenacted as follows:

40-33-01. Electric light, telephone, natural and artificial gas plants, pipelines and distribution systems and power plants - Municipalities may purchase, erect, construct, maintain, sell, or lease. Any municipality may purchase, erect, construct, operate, maintain, enlarge, improve and extend, or lease from any person, ~~firm, corporation, or limited liability company~~, or sell or lease to any person, ~~firm, corporation, or limited liability company~~:

1. Any electric light and power plant, site, buildings, and equipment thereof.
2. Any electric distribution system and equipment thereof.
3. Any electric transmission line and equipment thereof.
4. Any telephone plant, equipment, and distribution system thereof.
5. Any waterworks, mains, and water distribution system and any equipment or appliances connected therewith and any property related thereto, notwithstanding any other provision of law.
6. Any heating system, gas or otherwise, and the buildings and equipment necessary to furnish heat to the public buildings of the municipality and to the inhabitants of the municipality.
7. Any natural or artificial gas pipeline transmission or distribution system or plants.

For purposes of subsection 5, the term "lease" includes any lease, sublease, purchase agreement, lease-purchase agreement, installment purchase agreement, leaseback agreement, or other contract, agreement, instrument, or arrangement pursuant to which any rights, interests, or other property are transferred to, by, or from any party to, by, or from one or more parties, and any related documents entered or to be entered, including any operating agreement, service agreement, indemnity agreement, participation agreement, loan agreement, or payment undertaking agreement. A lease obligation of a municipality under subsection 5 may not exceed a term of ninety-nine years. A lease obligation of a municipality under subsection 5 does not constitute an indebtedness of the municipality, or a pledge of the full faith and credit or unlimited taxing resources of the municipality. Notwithstanding any other provision of law, a municipality may solicit and accept one or more proposals for a lease transaction, including the arrangement thereof, under subsection 5. The municipality, by resolution of its governing body upon a majority vote of the members of the governing body, may accept a proposal that it determines to be in the public interest. A lease under subsection 5, and any related documents entered or to be entered, may be authorized by resolution of the governing body of the municipality.

SECTION 6. AMENDMENT. Section 40-33-02 of the North Dakota Century Code is amended and reenacted as follows:

40-33-02. Acquiring, erecting, or improving plant, system, or line without election prohibited - ~~Exception~~ Exceptions. No municipal officers may purchase, erect, substantially enlarge, improve, or extend an existing plant, or lease from others any plant, system, or line provided for in section 40-33-01, unless the proposition has been submitted by a resolution of the governing body to the qualified electors of the city at a biennial or special election called, held, and conducted upon the notice and in the manner specified by this title for the election of the governing body of the city, and has been approved by a majority of the electors voting thereon. If the cost of any enlargement, improvement, or extension will be paid out of the earnings of the plant and the cost does not exceed the sum of five thousand dollars, or if eighty per centum or more of the cost of any waterworks, mains, water system and equipment or appliances therefor is to be paid by special assessments or by the

earnings of the plant or by both, the governing body is not required to submit the proposition to the electors of the city. If the improvement and facilities are to provide for a greater and more adequate water supply to meet the needs of the city for domestic use, fire protection, or for sanitation and sewage disposal, regardless of cost the governing body thereof may by resolution provide for the needed improvement and facilities in cooperation with the state or federal government, or any agency thereof, without an election if funds for such cooperation or for defraying the entire cost thereof are available in the municipal utilities fund as defined by section 40-33-10. If the lease by the city of any plant, system, or line provided for in subsection 5 of section 40-33-01 is from the state, or any agency or institution of the state, the governing body is not required to submit the proposition to the electors of the city.

SECTION 7. AMENDMENT. Section 40-33-03 of the North Dakota Century Code is amended and reenacted as follows:

40-33-03. Sale or lease of plant, system, or line - Offer or written proposition - Election - Proceeds. No municipality shall sell any municipal plant, system, or line, nor lease the same, or any substantial part thereof, or interest therein, to any person, firm, corporation, or limited liability company unless the person, firm, corporation, or limited liability company shall have filed in the office of the auditor of the municipality a complete written offer or proposition, nor unless a majority of the qualified electors of the municipality shall have voted in favor of accepting the offer or proposition at an election called, held, and conducted as specified in section 40-33-02. A copy of the offer or proposition shall be published with the notice of the election. The proceeds of any sale or lease made according to this section shall be applied toward the payment of the existing indebtedness of the municipality incurred for the purpose of purchasing, erecting, operating, or enlarging, improving, or extending such plant, system, or line. The purchaser or lessee, however, shall not be required to see that the consideration of the purchase or lease is applied correctly as provided in this section, but he shall be protected fully in making the payment or payments by the receipt of the city auditor. Nothing contained in this section shall prevent the governing body from selling or disposing of any machinery, material, or other property belonging to any such utility which may have been inadequate or insufficient for the purposes for which it was intended to be used. This section does not apply to a lease by a municipality of any plant, system, or line to the state, or any agency or institution of the state pursuant to subsection 5 of section 40-33-01.

SECTION 8. AMENDMENT. Section 40-33-04 of the North Dakota Century Code is amended and reenacted as follows:

40-33-04. Manner of payment of purchase, erection, improvement, or leasing of plant, system, or line. Any municipality may pay the cost of purchasing, erecting, enlarging, improving, extending, or leasing any municipal plant, system, line, or any part thereof:

1. Out of the earnings of the plant, system, or line;
2. By issuing special assessment warrants as provided in section 40-33-05;
3. By issuing bonds of the municipality as provided in section 40-33-07;
4. Partly by such special assessment warrants and partly by such bonds; or
5. Partly out of the earnings of the plant, system, or line, and partly by such special assessments or bonds or special assessments and bonds.

A municipality may pay the cost of leasing any municipal plant, system, line, or any part thereof from the state, or any agency or institution of the state under subsection 5 of section 40-33-01 solely from revenues to be derived by the municipality from the ownership, sale, lease, disposition, and operation of the waterworks, mains, and water distribution system; the funds or any other amounts invested by the municipality pursuant to section 21-06-07, or invested on the municipality's behalf by the state, or any agency or institution of the state, in conformity with policies of the industrial commission, including investment in a guaranteed investment contract and any earnings thereon, to the

extent pledged therefor; and funds, if any, appropriated annually by the governing body of the municipality or received from federal or state sources.

When such cost, or any part thereof, is to be paid out of the earnings, the cost or the part thereof payable out of the earnings shall not become a general obligation of the municipality payable out of the money raised through taxation but shall be a special obligation payable solely and exclusively out of the earnings derived from the operation of the plant, system, or line.

SECTION 9. A new section to chapter 40-34 of the North Dakota Century Code is created and enacted as follows:

Agreements between municipalities and with the state or private parties - Leasing property. Notwithstanding any other law, any municipality of the state, either individually or jointly by agreement, may enter agreements to lease to the state, or any agency or institution of the state, or to any person for such compensation and upon such terms and conditions as the parties under such agreement may stipulate, all or part of, or an undivided or other interest in, its sewage system and all related real and personal property for the collection, treatment, purification, and disposal in a sanitary manner of sewage. In addition, any municipality of the state, either individually or jointly by agreement, may enter agreements to lease from the state, or any agency or institution of the state, or from any person all or part of, or an undivided or other interest in, its sewage system and all related real and personal property for the collection, treatment, purification, and disposal in a sanitary manner of sewage for such compensation and upon such terms and conditions as the parties under such agreement may stipulate. Such agreements must be authorized by resolution of the governing body of a municipality upon a majority vote of the members of the governing body. For the purposes of this section, such agreements include any lease, sublease, purchase agreement, lease-purchase agreement, installment purchase agreement, leaseback agreement, or other contract, agreement, instrument, or arrangement pursuant to which any rights, interests, or other property are transferred to, by, or from any party to, by, or from one or more parties, and any related documents entered or to be entered, including any operating agreement, service agreement, indemnity agreement, participation agreement, loan agreement, or payment undertaking agreement. A lease obligation under this section may not exceed a term of ninety-nine years. A lease obligation under this section does not constitute an indebtedness of the municipality or a pledge of the full faith and credit or unlimited taxing resources of the municipality. Notwithstanding any other law, a municipality may solicit and accept one or more proposals for a lease transaction, including the arrangement thereof, under this section. The municipality may, by resolution of the governing body upon a majority vote of the members of the governing body, accept a proposal that it determines to be in the public interest.

SECTION 10. AMENDMENT. Section 40-34-02 of the North Dakota Century Code is amended and reenacted as follows:

40-34-02. Methods of defraying cost of sewage or garbage disposal improvements or lease. The total cost of a sewage or garbage disposal system, or any portion thereof, may be defrayed by the following alternative methods:

1. Out of the general current tax revenues on hand and appropriated for that purpose.
2. Out of the proceeds of the sale of general liability bonds issued in accordance with the procedure and subject to the conditions and limitations prescribed by chapter 21-03, as far as the same are applicable.
3. Partly out of general current tax revenues on hand and appropriated for that purpose and the residue out of the proceeds of the sale of general liability bonds as provided in subsection 2, as the governing body of the municipality shall determine by a majority vote.
4. Partly from moneys secured by the issuance of mortgage bonds secured by the net revenues of the improvement or system and by a mortgage or deed of trust upon the improvement or system issued by the municipality. Bonds issued under this subsection

shall not exceed sixty percent of the cost of the improvement, and the remaining forty percent of such cost shall be defrayed as provided in subsection 1, 2, or 3.

5. From moneys secured by the issuance and sale of first mortgage bonds secured by the assets and property of the improvement or system in like manner as provided in subsection 4, except that such bonds may be issued for the total cost of the improvement upon compliance with this subsection. Bonds issued under this subsection shall be secured by a pledge of the net revenues of the improvement or system to be set apart as an interest and sinking fund to pay the principal and interest of such first mortgage bonds as they mature. If the method provided in this subsection is utilized by any municipality to defray the cost of a sewage disposal system, it, by a resolution of its governing body, shall create the district, provide for and approve the plans and specifications and estimates of the cost, and adopt and publish the resolution declaring the work necessary to be done in accordance with the requirements of chapter 40-22 as far as the same may be applicable. If the owners of property liable to be imposed with the sewage disposal service charges as provided in this subsection shall file with the city auditor, within thirty days after the first publication of the resolution, a written protest against the improvement, the governing body at its next meeting after the expiration of the time for filing protests against the improvement, shall hear and determine the sufficiency of the protests. After the hearing has been had, the governing body, if it finds the protests to contain the signatures of the owners of a majority of the property liable to be charged, shall not proceed further with the improvement. If the protests are found insufficient or invalid, the governing body of the municipality may cause the improvement to be made, contract therefor, and defray the cost thereof in the manner provided in this subsection.

A municipality may pay the cost of leasing any sewage systems and all related real and personal property for the collection, treatment, purification, and disposal in a sanitary manner of sewage from the state, or any agency or institution of the state under section 40-34-01.2, solely from revenues to be derived by the municipality from the ownership, sale, lease, disposition, and operation of the sewage systems; the funds or any other amounts invested by the municipality pursuant to section 21-06-07, or invested on the municipality's behalf by the state, or any agency of the state, in conformity with policies of the industrial commission, including investment in a guaranteed investment contract and any earnings thereon, to the extent pledged therefor; and funds, if any, appropriated annually by the governing body of the municipality or received from federal or state sources.

SECTION 11. A new section to chapter 54-01 of the North Dakota Century Code is created and enacted as follows:

Lease of state-owned property. Notwithstanding any other provision of law, the state, or any agency or institution of the state, may enter agreements to lease all or part of, or an undivided or other interest in, any real or personal property belonging to the state, or any agency or institution of the state, to and, or, from any agency or institution of the state or any person for such compensation and upon such terms and conditions as the parties under such agreement may stipulate. Such agreements must be authorized by the board, if any, or commissioner or other executive officer of the commission, agency, or institution holding, controlling, possessing, or owning the property or on whose behalf the property is held, and must be approved by the industrial commission. For purposes of this section, the agreements include any lease, sublease, purchase agreement, lease-purchase agreement, installment purchase agreement, leaseback agreement, or other contract, agreement, instrument, or arrangement pursuant to which any rights, interests, or other property are transferred to, by, or from any party to, by, or from one or more parties, and any related documents entered or to be entered, including any operating agreement, service agreement, indemnity agreement, participation agreement, loan agreement, or payment undertaking agreement entered as part of a long-term lease and leaseback transaction. A lease obligation under this section may not exceed a term of ninety-nine years. A lease obligation entered into under this section is payable solely from revenues to be derived by the state, or any agency or institution of the state, from the ownership, sale, lease, disposition, and operation of the property; any funds or investments permitted under state law, and any earnings thereon, to the extent pledged therefor; revenues to be derived by the state, or any agency or institution of the state, from any

support and operating agreement, service agreement, or any other agreement relating to the property; funds, if any, appropriated annually by the legislative assembly or received from federal sources; and income or proceeds from any collateral pledged or provided therefor. A lease obligation under this section does not constitute an indebtedness of the state, or any agency or institution of the state, or a pledge of the full faith and credit or unlimited taxing resources of the state, or any agency or institution of the state. Notwithstanding any other law, the state, or any agency or institution of the state, may solicit and accept one or more proposals for a lease transaction, including the arrangement thereof, under this section, and accept any proposal that is determined to be in the public interest. The bond bank, on behalf of the state, or any agency or institution of the state, may do and perform any acts and things authorized by this section, including making, entering, and enforcing all contracts or agreements necessary, convenient, or desirable for the purposes of this section.

SECTION 12. A new section to chapter 54-17 of the North Dakota Century Code is created and enacted as follows:

Lease of municipal waterworks and sewage systems. Notwithstanding any other provision of law, the state, acting by and through its industrial commission, may enter agreements to lease all or part of, or an undivided or other interest in, the plant or equipment of any waterworks, mains, or water distribution system and any property related thereto pursuant to subsection 5 of section 40-33-01, subsection 12 of section 61-24.5-09, or subsection 23 of section 61-35-12 or any sewage system and all related property for the collection, treatment, purification, and disposal in a sanitary manner of sewage pursuant to section 40-34-01.2 or subsection 23 of section 61-35-12 to or from a municipality or other political subdivision or agency of the state, or to or from any person, for such compensation and upon such terms and conditions as the parties under such agreement may stipulate. For the purposes of this section, such agreements include any lease, sublease, purchase agreement, lease-purchase agreement, installment purchase agreement, leaseback agreement, or other contract, agreement, instrument, or arrangement pursuant to which any rights, interests, or other property are transferred to, by, or from any party to, by, or from one or more parties, and any related documents entered or to be entered, including any operating agreement, service agreement, indemnity agreement, participation agreement, loan agreement, or payment undertaking agreement. Any lease obligation entered under this section is payable solely from revenues to be derived by the state or any agency or institution of the state from the ownership, sale, lease, disposition, and operation of the plant or equipment of any waterworks, mains, or water distribution system and any property related thereto or sewage systems and all related property for the collection, treatment, purification, and disposal in a sanitary manner of sewage; any funds or investments permitted under state law, and any earnings thereon, to the extent pledged therefor; revenues to be derived by the state from any support and operating agreement, service agreement, or any other agreement relating to the waterworks, mains, and water distribution system or sewage system; funds, if any, appropriated annually by the legislative assembly; and income or proceeds from any collateral pledged or provided therefor. A lease obligation entered under this section does not constitute an indebtedness of the industrial commission, the state, or any agency or officer or agent thereof, or a pledge of the full faith and credit or unlimited taxing resources of the industrial commission, the state, or any agency or officer or agent thereof. The industrial commission may authorize the bond bank or another agency or institution of the state to do and perform any acts and things authorized by this section, including making, entering, and enforcing all contracts or agreements necessary, convenient, or desirable for the purposes of this section.

SECTION 13. Three new subsections to section 57-02-08 of the North Dakota Century Code are created and enacted as follows:

Notwithstanding any other law, all property, including any possessory interest therein, relating to any waterworks, mains, and water distribution system leased to the state, or any agency or institution of the state, or to a private entity pursuant to subsection 5 of section 40-33-01, subsection 12 of section 61-24.5-09, or subsection 23 of section 61-35-12, which property is operated by, or providing services to, a municipality or other political subdivision or agency of the state, or its citizens.

Notwithstanding any other law, all property, including any possessory interest therein, relating to any sewage systems and facilities for the collection, treatment, purification, and disposal in a sanitary manner of sewage leased to the state, or any agency or institution of the state, or to a private entity pursuant to section 40-34-01.2 or subsection 23 of section 61-35-12, which property is operated by, or providing services to, a municipality or other political subdivision or agency of the state, or its citizens.

Notwithstanding any other law, all property, including any possessory interest therein, leased to a private entity pursuant to section 54-01-05.6, which property is operated by, or providing services to, the state or its citizens.

SECTION 14. A new subsection to section 61-24.5-09 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding any other law, to exercise the powers granted to a municipality under subsection 5 of section 40-33-01 pursuant to the limitations set forth therein. The authority may pay the cost of leasing any waterworks, mains, and water distribution system and any equipment or appliances connected therewith and any property related thereto pursuant to subsection 5 of section 40-33-01 solely from revenues to be derived by the authority from the ownership, sale, lease, disposition, and operation of the waterworks, mains, and water distribution system; the funds or any other amounts invested by the authority pursuant to the laws of the state or invested on the authority's behalf by the state, or any agency or institution of the state, in conformity with policies of the industrial commission, including investment in a guaranteed investment contract and any earnings thereon, to the extent pledged therefor; and funds, if any, appropriated annually by the board of the authority or received from federal or state sources.

SECTION 15. A new subsection to section 61-35-12 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding any other law, exercise the powers granted to a municipality under subsection 5 of section 40-33-01 and section 40-34-01.2, pursuant to the limitations set forth therein. A district may pay the cost of leasing any waterworks, mains, and water distribution system and any equipment or appliances connected therewith and any property related thereto pursuant to subsection 5 of section 40-33-01, or of any sewage system and all related property for the collection, treatment, purification, and disposal in a sanitary manner of sewage pursuant to section 40-34-01.2, solely from revenues to be derived by the district from the ownership, sale, lease disposition, and operation of the waterworks, mains, and water distribution system or sewage system; the funds or any other amounts invested by such district pursuant to section 21-06-07, or invested on such district's behalf by the state, or any agency or institution of the state, in conformity with policies of the industrial commission, including investment in a guaranteed investment contract and any earnings thereon, to the extent pledged therefor; and funds, if any, appropriated annually by the board of the district or received from federal or state sources.

SECTION 16. EMERGENCY. This Act is declared to be an emergency measure.

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-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2261 and that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 40 Nays 5 Absent 2

President of the Senate

Secretary of the Senate

This certifies that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 84 Nays 8 Absent 2

Speaker of the House

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2003.

Approved at _____ M. on _____, 2003.

Governor

Filed in this office this _____ day of _____, 2003,

at ___ o'clock _____ M.

Secretary of State