

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

HOUSE BILL NO. 1426
(Representatives Skarphol, Belter, Glassheim)
(Senators Andrist, Nelson, Wardner)

AN ACT to provide for the creation of commerce authorities; to create and enact a new subsection to section 57-15-06.7, a new subsection to section 57-15-10, a new subsection to section 57-15-20.2, a new section to chapter 57-15, a new subdivision to subsection 2 of section 57-38-30.3, and a new subsection to section 57-39.2-04 of the North Dakota Century Code, relating to tax levies for commerce authorities and exemption from income, sales, and use taxes; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in sections 1 through 15 of this Act, unless the context requires otherwise:

1. "Bonds" means any bonds, notes, interim certificates, debentures, or similar obligations issued by a commerce authority.
2. "Commerce authority" means an authority created under section 3 of this Act.
3. "Political subdivision" means any county, city, or other unit of local government. The term includes a job development authority created under chapter 11-11.1 or 40-57.4.
4. "Project" means facilities including all real and personal property, structures, equipment, and appurtenances owned or operated by a commerce authority.

SECTION 2. Purposes of commerce authority. A commerce authority may be created to:

1. Promote, stimulate, develop, and advance commerce, economic development, and general prosperity within its jurisdiction and this state;
2. Endeavor to increase the volume of commerce within its jurisdiction and this state through planning, advertising, acquisition, development, construction, improvement, maintenance, operation, and regulation, of transportation, storage, or other facilities that promote the safe, efficient, and economical handling of commerce;
3. Cooperate and act in conjunction with other organizations in the development and promotion of commerce, industry, manufacturing, services, natural resources, agriculture, livestock, recreation, tourism, health care, and other economic activity; and
4. Support the creation, expansion, modernization, retention, and relocation of new and existing businesses and industries and otherwise stimulate, assist in, and support growth of all kinds of economic activity that promote commerce and business development, maintain economic stability and prosperity of its jurisdiction and this state, and thus provide maximum opportunities for employment and improvement in the standard of living of citizens of its jurisdiction and this state.

SECTION 3. Creation of commerce authority. One or more political subdivisions may form a commerce authority as follows:

1. Any political subdivision may create, by resolution of its governing body, a public body corporate and politic to be known as a commerce authority that may exercise its functions upon the appointment and qualification of the first commissioners of the commerce

authority. The governing body by resolution may determine to exercise any powers granted to a commerce authority until the powers have been conferred upon a commerce authority. Upon the adoption of a resolution creating a commerce authority, the governing body of the political subdivision shall appoint, pursuant to the resolution, no fewer than five individuals as commissioners of the commerce authority.

2. Two or more political subdivisions, whether in this state or in an adjoining state provided that at least one political subdivision is in this state, may create by execution of a joint agreement authorized by resolution of the governing body of each participating subdivision, a commerce authority that may exercise its functions upon the issuance by the secretary of state of a certificate of incorporation. The governing bodies of the participating political subdivisions shall appoint, pursuant to the joint agreement, no fewer than five persons as commissioners of the commerce authority.
3. A commerce authority may be increased to serve one or more additional political subdivisions if each additional political subdivision and each of the political subdivisions then participating in the authority, adopt a resolution consenting to the addition.
4. A commerce authority may be decreased if each of the political subdivisions in the commerce authority consent to the decrease and make provisions for the retention or disposition of its assets and liabilities. If the commerce authority has any bonds outstanding, no decrease may be effected unless all of the holders of the bonds consent to the decrease.

SECTION 4. Filing of agreement and resolutions - Certificate of incorporation - Beginning of corporate existence. The joint agreement, if applicable, and a certified copy of the resolution of each political subdivision creating or agreeing to participate in a commerce authority must, be filed with the secretary of state. If the agreement and resolutions conform to the requirements of section 3 of this Act, the secretary of state shall issue a certificate of incorporation that states the name of the commerce authority and the date of incorporation. The existence of the commerce authority as a political subdivision of this state begins upon the issuance of the certificate of incorporation. The certificate of incorporation is conclusive evidence of the existence of the commerce authority.

SECTION 5. Commissioners - Compensation - Officers.

1. The power of each commerce authority is vested in its commissioners. A commerce authority may adopt and amend rules for its own operation subject to the agreement of the participating political subdivisions and sections 1 through 15 of this Act.
2. A commissioner of a commerce authority may not receive compensation for services but is entitled to reimbursement of necessary expenses incurred in the discharge of duties at the rates provided in sections 44-08-04 and 54-06-09.
3. The commissioners of a commerce authority shall elect a chairman, a vice chairman, and a secretary-treasurer from among the commissioners.
4. The commissioners of a commerce authority may appoint or elect an executive director, and any other officers, agents, and employees determined to be necessary and shall determine their qualifications, duties, and compensation. The commissioners of a commerce authority may delegate powers and duties of the commerce authority to one or more of its officers, agents, or employees.

SECTION 6. Powers of political subdivisions in aid of a commerce authority. A political subdivision creating or participating in a commerce authority may:

1. Lend or donate money to the commerce authority.

2. Provide that all or a portion of the taxes or funds available to the political subdivision for economic development purposes be transferred or paid directly to the commerce authority.
3. Cause water, sewer, drainage, or any other facilities that the political subdivision is authorized to provide to be furnished adjacent to or in connection with a project.
4. Dedicate, sell, convey, or lease any of the political subdivision's interest in any property or grant easements, licenses, or any other rights or privileges therein to the commerce authority.
5. Plan, dedicate, close, pave, install, grade, or regrade, to the extent allowed by title 24, streets, roadways, and walks from established streets or roads to a project.
6. Aid and cooperate with the commerce authority in the planning, construction, or operation of a project.
7. Enter agreements with the commerce authority regarding action to be taken by the political subdivision under this section.
8. Establish the geographical boundaries of the commerce authority within or coextensive with the geographical boundaries of one or more of the participating political subdivisions.
9. Establish the extent to which the financial incentives provided under sections 1 through 15 of this Act will apply to the commerce authority.
10. Acquire property to carry out the purposes of sections 1 through 15 of this Act by condemnation and the exercise of eminent domain in the manner provided in chapter 32-15 and other laws applicable to political subdivisions in exercising the right of eminent domain.

SECTION 7. Powers of commerce authority. A commerce authority has all the powers necessary or convenient to carry out the purposes of sections 1 through 15 of this Act, including the power to:

1. Execute contracts and other instruments.
2. Sue and be sued.
3. Plan, acquire, develop, construct, improve, maintain, equip, operate, and regulate transportation, storage, or other facilities.
4. Acquire by lease, purchase, gift, or other lawful means and to hold in its name for its use and control both real and personal property and easements and rights of way within or without the limits of the commerce authority.
5. Convey, sell, dispose of, or lease personal and real property.
6. Employ or procure services of engineers, attorneys, technical experts, and other persons to assist, advise, and act for the commerce authority.
7. Accept, receive, disburse, and expend federal, state, local, and other moneys, public or private, made available by grant or loan.
8. Cooperate and contract with this state or any other governmental entity to obtain infrastructure and services.
9. Develop, obtain, and furnish water supply, treatment, storage, and transportation facilities and electric, natural gas, and telecommunications facilities and services.

10. Obtain local, state, and federal permits necessary to develop resources and infrastructure authorized by sections 1 through 15 of this Act.
11. Issue warrants in anticipation of taxes levied to pay current and anticipated expenses relative to the development and operation of its assets.
12. Create a debt service fund and accumulate in the fund a sum determined by the commerce authority, together with interest on that sum, for the use, repair, maintenance, and capital outlays of the commerce authority.
13. Adopt, amend, and repeal such reasonable resolutions, regulations, and orders as necessary for the management and use of a project owned or operated by the commerce authority.

SECTION 8. Bonds and other obligations.

1. A commerce authority may borrow money and issue bonds, including refunding bonds, in the form and upon the terms as it may determine, payable out of any revenues of the commerce authority.
2. Any bonds issued under this section are payable, as to principal and interest, solely from revenues of the commerce authority, and must so state on the face of the bond. If any issue of bonds constitutes an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, each bond of the issue is, subject to the requirements of subsection 8, an equally valid and binding special obligation of the commerce authority or participating political subdivision, as the case may be, in accordance with its terms, in an amount proportionate to the total amount of the issue which is within the limitation or restriction. A commissioner of a commerce authority or an individual executing the bonds is not liable personally on the bonds by reason of the issuance of the bonds, except to the extent that the bonds, if constituting an indebtedness, exceed any applicable limitation or restriction.
3. If any commissioner or officer of a commerce authority whose signature appears on any bonds or coupons ceases to be a commissioner or officer after authorization but before the delivery of the bonds, the signature, is valid and sufficient for all purposes, the same as if the commissioner or officer had remained in office until delivery.
4. Any bond reciting in substance that the bond has been issued by the commerce authority under this section and for a purpose authorized by sections 1 through 15 of this Act is conclusively deemed, in any proceeding involving the validity or enforceability of the bond or the security of the bond to have been issued under this section and for that purpose.
5. Bonds issued by a commerce authority under this section are declared to be issued for an essential public government purpose, and together with interest and income on the bonds, are exempt from all individual and corporate taxes imposed under sections 57-35.3-03, 57-38-29, 57-38-30, and 57-38-30.3.
6. For the security of the bonds, the commerce authority by resolution may make any covenant, agreement, or indenture authorized to be made as security for revenue bonds issued under chapter 40-35. The sums required to pay principal and interest and to create and maintain a reserve for the bonds may be payable from any revenues referred to in sections 1 through 15 of this Act, before the payment of current costs of operation and maintenance of the facilities.
7. When bonds are issued under this section and made payable from revenues of a commerce authority involving political subdivisions with a population over ten thousand, subject to the requirements of subsection 8, the governing bodies of the political subdivisions, if at any time all revenues, including taxes, appropriated and to that time

collected for the bonds are insufficient to pay the principal or interest then due, shall levy a general tax upon all of the taxable property in the political subdivisions for the payment of the deficiency. If a deficiency is likely to occur within one year for the payment of principal and interest due on the bonds, the governing bodies, in their declaration, may levy a general tax upon all the taxable property in the political subdivisions for the payment of the deficiency. The taxes are not subject to any limitation of rate or amount applicable to other political subdivisions taxes.

8. For bonds issued under this section to be an obligation of a political subdivision or commerce authority, the issuance of the bonds must be approved by a majority vote of the governing body of each political subdivision involved or, within thirty days after the commerce authority decides to issue the bonds, the political subdivision or commerce authority must put the question, specifying the amount of the bond at issue, to the electors at any primary, general, or special election. If a majority of the qualified electors voting on the issue vote in favor of issuing the bonds, the commerce authority or political subdivision, to the amount authorized in the election, may pledge the general obligation of the commerce authority or political subdivision to guarantee the repayment of the principal and interest on the bonds.

SECTION 9. Operation and use privileges.

1. In connection with the operation of a project owned or controlled by a commerce authority, the commerce authority may enter a contract, lease, and other arrangement with any person:
 - a. Granting the privilege of using or improving the project or any portion or space in the project for commercial purposes.
 - b. Conferring the privilege of supplying goods or services at the project.
 - c. Making available services to be furnished by the commerce authority or its agents at the project.
2. The commerce authority may establish the terms and conditions and fix the charges, rentals, or fees for the privileges or services, which must be reasonable and uniform for the same class or privilege or service.

SECTION 10. Sales and use tax incentives. The elected governing body of a participating political subdivision may offer sales and use tax exemptions from sales and use taxes the participating political subdivision has imposed for tangible personal property purchased and made a part of the commerce authority's infrastructure if the tangible personal property is placed within the geographic boundaries of the political subdivision and is necessary and directly services infrastructure needs of the commerce authority.

SECTION 11. Commerce authority property and income exempt from taxation. Any property in this state acquired by a commerce authority for the purposes of the commerce authority, and any income derived by the commerce authority from the ownership, operation, or control of the property, is exempt from taxation to the same extent as other property used for public purposes.

SECTION 12. Out-of-state jurisdiction authorized - Reciprocity with adjoining governmental agencies. A political subdivision creating a commerce authority may exercise those powers within any political subdivision or jurisdiction adjoining this state, subject to the laws of that political subdivision.

SECTION 13. Tax levy by political subdivision. The commerce authority may certify annually to the governing bodies the amount of tax requested to be levied by each political subdivision participating in the commerce authority. The governing body of each political subdivision shall consider the levy request of the commerce authority and determine the amount to be levied. The levy may not

exceed the maximum levy permitted for commerce authority purposes. Each political subdivision shall collect the taxes levied on behalf of a commerce authority in the same manner as other taxes are levied and collected. The proceeds of the taxes must be deposited in a special account or accounts in which other revenues of the commerce authority are deposited and may be expended by the commerce authority as provided in sections 1 through 15 of this Act. Before issuance of bonds under section 9 of this Act, the commerce authority by resolution may covenant and agree that the total amount of the taxes authorized by law, or the portion of the taxes specified by the resolution, will be certified and deposited annually until the bonds and interest are fully paid.

SECTION 14. Maximum tax levy - county levy not applied in political subdivision making levy. In a political subdivision that is a party to an agreement creating a commerce authority, a levy, not exceeding four mills, may be made for the purposes of the commerce authority. A county levy under section 57-15-06.7 does not apply to any other political subdivision within that county making a levy for the purposes of the commerce authority.

SECTION 15. Favorable rates. A commerce authority may charge favorable rates for services provided by the commerce authority to persons taxed for the commerce authority.

SECTION 16. A new subsection to section 57-15-06.7 of the North Dakota Century Code is created and enacted as follows:

Counties supporting commerce authorities may levy a tax not exceeding four mills in accordance with section 14 of this Act.

SECTION 17. A new subsection to section 57-15-10 of the North Dakota Century Code is created and enacted as follows:

Taxes levied for commerce authority purposes may be levied in an amount not exceeding four mills.

SECTION 18. A new subsection to section 57-15-20.2 of the North Dakota Century Code is created and enacted as follows:

A township levying a tax for commerce authority purposes may levy a tax not exceeding four mills.

SECTION 19. A new section to chapter 57-15 of the North Dakota Century Code is created and enacted as follows:

Township levy for commerce authority purposes. The electors of each township may vote at the annual meeting to levy a tax for the purpose of supporting a commerce authority in an amount not exceeding the limitation in section 18 of this Act. The tax levy provided in this section does not apply to any city, park district, or other taxing district that already has a commerce authority levy.

SECTION 20. A new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Reduced by interest and income from bonds issued under this Act.

SECTION 21. A new subsection to section 57-39.2-04 of the North Dakota Century Code is created and enacted as follows:

Gross receipts from all sales of tangible personal property purchased by a commerce authority and made a part of the infrastructure of a commerce authority, otherwise taxable under this chapter, if the personal property is placed within the geographic boundaries of the political subdivisions that created the commerce authority and is necessary and directly services infrastructure needs of the commerce authority. The commissioner shall issue a certificate of exemption to a political subdivision exempted by this subsection, and the

political subdivision shall present the certificate of exemption to each retailer whenever the exemption is claimed.

SECTION 22. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2002.

SECTION 23. EMERGENCY. This Act is declared to be an emergency measure.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1426 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 87 Nays 0 Absent 7

Speaker of the House

Chief Clerk of the House

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

Vote: Yeas 35 Nays 6 Absent 6

President of the Senate

Secretary of the Senate

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