

Introduced by

Senators Syverson, Grindberg, Tollefson

Representatives Bernstein, Clark, Koppelman

1 A BILL for an Act to amend and reenact sections 40-57-02, 40-57-03, 40-57-04, 40-57-04.1,  
2 and 40-57-05 of the North Dakota Century Code, relating to municipal industrial development  
3 bonds.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 40-57-02 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **40-57-02. ~~"Project" and "municipality" defined~~ Definitions.** As used in this chapter,  
8 unless a different meaning clearly appears from the context, the ~~term "municipality" includes~~  
9 following terms have the meanings given below:

- 10 1. "Municipality" means counties as well as municipalities of the types listed in  
11 subsection 4 of section 40-01-01 and, in the case of parking projects, municipal  
12 parking authorities created pursuant to section 40-61-02; ~~and the term "project".~~
- 13 2. "Project" means any real property, buildings, and improvements on real property or  
14 the buildings thereon, and any equipment located on such real property or in such  
15 buildings, or elsewhere, or personal property which is used or useful in connection  
16 with a revenue-producing enterprise, or any combination of two or more such  
17 enterprises, engaged or to be engaged in:
- 18 4. a. Assembling, fabricating, manufacturing, mixing, or processing of any  
19 agricultural, mineral, or manufactured products, or any combination thereof.
- 20 2. b. Storing, warehousing, distributing, or selling any products of agriculture,  
21 mining, or manufacture.
- 22 3. c. Providing hospital, nursing home, or other health care facilities and service.



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- 1           2.    Issue revenue bonds, in anticipation of the collection of revenues of the project, to  
2                    finance, in whole or in part, the cost of the project, whether then in existence or not.
- 3           3.    Lease projects to any industrial or commercial enterprise or nonprofit corporation  
4                    or to any school district for vocational education purposes, in such manner that  
5                    rents to be charged for the use of such projects shall be fixed, and revised from  
6                    time to time as necessary, so as to produce income and revenue sufficient to  
7                    provide for the prompt payment of interest upon all bonds issued hereunder, to  
8                    create a sinking fund to pay the principal of such bonds when due, and to provide  
9                    for the operation, maintenance, insurance on, and depreciation of such projects,  
10                  and any taxes thereon.
- 11          4.    With respect to any ~~hospitals, nursing homes, or other health care facilities~~  
12                  ~~comprising a project to be used by any nonprofit corporation~~, enter into ~~loan~~  
13                  revenue agreements ~~with such nonprofit corporation~~ providing for the municipality  
14                  to loan the proceeds derived from the issuance of bonds pursuant to this chapter to  
15                  the ~~nonprofit corporation~~ contracting party to be used to pay costs of the project  
16                  and providing for the repayment of the loan by the ~~nonprofit corporation~~ contracting  
17                  party, and which may provide for such loans or bonds to be secured by a mortgage  
18                  on and security in the project or such other security as may be determined by the  
19                  municipality, whether delivered or granted to the municipality, the holder or holders  
20                  of said bonds, a trustee therefor or otherwise.
- 21          5.    Pledge to the punctual payment of said bonds and the interest thereof, all or any  
22                  part of the revenues of such project, including the revenues of projects which shall  
23                  be acquired or constructed subsequent to the issuance of such bonds, as well as  
24                  revenues of projects existing when such bonds were issued.
- 25          6.    Mortgage or otherwise encumber said projects in favor of the holder, or holders, of  
26                  said revenue bonds, or a trustee therefor; provided, that in creating any such  
27                  mortgages or encumbrances, a municipality shall not have the power to obligate  
28                  itself except with respect to the project, except as otherwise provided by section  
29                  40-57-19.

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- 1           7.    Make all contracts, execute all instruments, and do all things necessary or  
2                   convenient in the exercise of the powers herein granted, or in the performance of  
3                   its covenants or duties, or in order to secure the payments of its bonds.
- 4           8.    Enter into and perform such contracts and agreements with other municipalities,  
5                   political subdivisions, and state agencies, authorities, and institutions as the  
6                   respective governing bodies of the same may deem proper and feasible for or  
7                   concerning the planning, construction, lease, or other acquisition, and the financing  
8                   of such facilities, and the maintenance thereof. Any such municipalities so  
9                   contracting with each other may also provide in their contract or agreement for a  
10                  board, commission, or such other body as their governing bodies may deem proper  
11                  for the supervision and general management of the facilities of the project.
- 12          9.    Accept from any authorized agency of the federal government loans or grants for  
13                  the planning, construction, acquisition, leasing, or other provision of any project,  
14                  and to enter into agreements with such agency respecting such loans or grants.
- 15          10.   Sell and convey all properties acquired in connection with such projects, including  
16                  without limitation the sale and conveyance thereof subject to such mortgage as  
17                  herein provided, and the sale and conveyance thereof to the lessee under an  
18                  option granted in the lease of the project, for such price and at such time as the  
19                  governing body of the municipality may determine; provided, however, that no sale  
20                  or conveyance of such properties shall ever be made in such manner as to impair  
21                  the rights or interests of the holder, or holders, of any bonds issued under the  
22                  authority of this chapter.
- 23          11.   Issue said revenue bonds to refund, in whole or in part bonds previously issued by  
24                  such municipality under authority of this chapter.
- 25          12.   In any instance where the project ~~acquired~~ financed by the municipality consists of  
26                  the construction, reconstruction, improvement, betterment of real property,  
27                  buildings and improvements on real property and buildings, the provisions of  
28                  chapter 48-02 and other applicable statutes shall apply; except that the  
29                  municipality, in the ~~lease~~ revenue agreement and resolution or mortgage defining  
30                  the terms and conditions upon which the project is to be constructed, ~~leased~~, and  
31                  financed, or in a preliminary agreement establishing the general terms of the ~~lease~~

1            revenue agreement and financing of the project when constructed, may permit a  
2            lessee contracting party which is not a governmental entity or a public institution,  
3            subject to such terms and conditions as the municipality shall find necessary or  
4            desirable and proper, to provide for the construction, acquisition, and installation of  
5            the buildings, improvements, and equipment to be included in the project by any  
6            means available to the lessee contracting party, whether or not the procedure  
7            followed by the lessee contracting party is in conformity with said chapter 48-02.

8            No municipality may operate any project referred to in this chapter as a business or in any  
9            manner whatsoever, except as the lessor, contract vendor, secured party, or lender thereof. No  
10           debt on the general credit of the municipality may be incurred in any manner for any purpose  
11           under this chapter, except as otherwise provided by section 40-57-19. No municipality may pay  
12           out of its general fund for, or otherwise contribute to the cost of, construction of a project,  
13           except as otherwise provided by section 40-57-19.

14            **SECTION 3. AMENDMENT.** Section 40-57-04 of the North Dakota Century Code is  
15            amended and reenacted as follows:

16            **40-57-04. Resolution authorizing project and the issuance of revenue bonds -**  
17            **Public notice and hearing - No election required.** The acquisition, construction,  
18            reconstruction, improvement, betterment, extension, or financing of any project, and the issue  
19            of bonds in anticipation of the collection of the revenues of such project to provide funds to pay  
20            for the cost thereof, may be authorized by an ordinance or resolution of the governing body  
21            adopted at a regular meeting thereof by the affirmative vote of a majority of its members. Prior  
22            to the issuance of revenue ~~or refunding~~ bonds under authority of this chapter, the governing  
23            body shall give notice and hold a public hearing on the proposed bond issue. Notice of the  
24            hearing shall be published in the official newspaper of the municipality once a week for two  
25            successive weeks prior to the time set for the hearing. The notice shall specify the time and  
26            place of the hearing, and the amount and purpose of the proposed bond issue. The governing  
27            body shall not approve the bond issue unless it appears, after the public hearing, that such  
28            approval is in the public interest of the municipality. Except as provided in section 40-57-19, no  
29            election shall be required to authorize the use of any of the powers conferred by this chapter.  
30            No public hearing is required prior to the issuance of refunding bonds issued pursuant to  
31            section 40-57-19.1.

1           **SECTION 4. AMENDMENT.** Section 40-57-04.1 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3           **40-57-04.1. Notice to competitors - Authority to issue bonds limited if project**  
4 **would compete with existing enterprises.** Prior to approval of the issuance of any bonds  
5 under authority of this chapter, except refunding bonds issued pursuant to section 40-57-19.1,  
6 the governing body of the municipality shall, when a competitive project is involved, include  
7 notice of the competitive nature of the proposed project in the public notice required to be  
8 published prior to the public hearing required under section 40-57-04. The governing body shall  
9 not approve the bond issue unless it appears that the impact and effect of the issue upon  
10 existing industry and business will not result in an unfair advantage for the proposed project to  
11 the substantial detriment of existing enterprises.

12           **SECTION 5. AMENDMENT.** Section 40-57-05 of the North Dakota Century Code is  
13 amended and reenacted as follows:

14           **40-57-05. Notice to securities commissioner - Approval of public officer not**  
15 **required.** Upon the issuance of bonds under this chapter, the ~~project-lessee~~ contracting party  
16 shall furnish the state securities commissioner the following information concerning the project:

- 17           1. The name of the ~~project-lessee~~ contracting party.
- 18           2. The location and nature of the project.
- 19           3. The amount and nature of the bonds issued.
- 20           4. The general terms and nature of the financing arrangement.
- 21           5. A copy of the official statement of the offering, if one was prepared.

22 The consent of any governmental body or public officer of the state shall not be required to  
23 authorize the issuance or sale of bonds or the making of any mortgage in connection therewith.