

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

SENATE BILL NO. 2388
(Senators Syverson, Grindberg, Tollefson)
(Representatives Bernstein, Clark, Koppelman)

AN ACT to amend and reenact sections 40-57-02, 40-57-03, 40-57-04, 40-57-04.1, and 40-57-05 of the North Dakota Century Code, relating to municipal industrial development bonds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. "Municipality" means counties as well as municipalities of the types listed in subsection 4 of section 40-01-01 and, in the case of parking projects, municipal parking authorities created pursuant to section 40-61-02; ~~and the term "project"~~.
2. "Project" means any real property, buildings, and improvements on real property or the buildings thereon, and any equipment located on such real property or in such buildings, or elsewhere, or personal property which is used or useful in connection with a revenue-producing enterprise, or any combination of two or more such enterprises, engaged or to be engaged in:
 - 1- a. Assembling, fabricating, manufacturing, mixing, or processing of any agricultural, mineral, or manufactured products, or any combination thereof.
 - 2- b. Storing, warehousing, distributing, or selling any products of agriculture, mining, or manufacture.
 - 3- c. Providing hospital, nursing home, or other health care facilities and service.
 - 4- d. Improvements or equipment used or to be used for the abatement or control of environmental pollution in connection with any new or existing revenue-producing enterprise.
 - 5- e. Public vocational education.
 - 6- f. Any other industry or business not prohibited by the constitution or laws of the state of North Dakota.

In no event, however, does the term "project" include those undertakings defined in chapter 40-35, with the exception of projects referred to in ~~subsections 3, 4, and 5~~ this subsection.

3. "Revenue agreement" means a written agreement between a municipality and a contracting party with respect to a project, whereby the contracting party agrees to pay to the municipality or its order amounts sufficient at all times to pay when due the principal of, premium, if any, and interest on all bonds issued by the municipality with respect to that project. A revenue agreement may be in the form of a lease, mortgage, direct or installment sale contract, loan agreement, take-or-pay or similar agreement, and be secured in a manner the parties agree to or be unsecured.

SECTION 2. AMENDMENT. Section 40-57-03 of the North Dakota Century Code is amended and reenacted as follows:

40-57-03. Powers of municipality. Any municipality, in addition to the powers prescribed elsewhere by the laws of this state, shall have the power to:

1. Acquire whether by purchase, lease, or gift, from any source whatsoever, any real property, buildings, improvements on real property or buildings, including but not limited to easements, profits, rights in land and water rights deemed necessary in connection therewith, and to construct, reconstruct, improve, better, or extend to real property, buildings, and improvements on real property and buildings of any project which shall be located within this state; provided, that the property acquired for the project shall be located wholly within the boundaries of the municipality acquiring it unless a contract or agreement between that municipality and any other municipality in which part or all of the property is located is entered into as authorized by subsection 8.
2. Issue revenue bonds, in anticipation of the collection of revenues of the project, to finance, in whole or in part, the cost of the project, whether then in existence or not.
3. Lease projects to any industrial or commercial enterprise or nonprofit corporation or to any school district for vocational education purposes, in such manner that rents to be charged for the use of such projects shall be fixed, and revised from time to time as necessary, so as to produce income and revenue sufficient to provide for the prompt payment of interest upon all bonds issued hereunder, to create a sinking fund to pay the principal of such bonds when due, and to provide for the operation, maintenance, insurance on, and depreciation of such projects, and any taxes thereon.
4. With respect to any ~~hospitals, nursing homes, or other health care facilities comprising a project to be used by any nonprofit corporation~~, enter into ~~loan~~ revenue agreements with ~~such nonprofit corporation~~ providing for the municipality to loan the proceeds derived from the issuance of bonds pursuant to this chapter to the ~~nonprofit corporation~~ contracting party to be used to pay costs of the project and providing for the repayment of the loan by the ~~nonprofit corporation~~ contracting party, and which may provide for such loans or bonds to be secured by a mortgage on and security in the project or such other security as may be determined by the municipality, whether delivered or granted to the municipality, the holder or holders of said bonds, a trustee therefor or otherwise.
5. Pledge to the punctual payment of said bonds and the interest thereof, all or any part of the revenues of such project, including the revenues of projects which shall be acquired or constructed subsequent to the issuance of such bonds, as well as revenues of projects existing when such bonds were issued.
6. Mortgage or otherwise encumber said projects in favor of the holder, or holders, of said revenue bonds, or a trustee therefor; provided, that in creating any such mortgages or encumbrances, a municipality shall not have the power to obligate itself except with respect to the project, except as otherwise provided by section 40-57-19.
7. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of the powers herein granted, or in the performance of its covenants or duties, or in order to secure the payments of its bonds.
8. Enter into and perform such contracts and agreements with other municipalities, political subdivisions, and state agencies, authorities, and institutions as the respective governing bodies of the same may deem proper and feasible for or concerning the planning, construction, lease, or other acquisition, and the financing of such facilities, and the maintenance thereof. Any such municipalities so contracting with each other may also provide in their contract or agreement for a board, commission, or such other body as their

governing bodies may deem proper for the supervision and general management of the facilities of the project.

9. Accept from any authorized agency of the federal government loans or grants for the planning, construction, acquisition, leasing, or other provision of any project, and to enter into agreements with such agency respecting such loans or grants.
10. Sell and convey all properties acquired in connection with such projects, including without limitation the sale and conveyance thereof subject to such mortgage as herein provided, and the sale and conveyance thereof to the lessee under an option granted in the lease of the project, for such price and at such time as the governing body of the municipality may determine; provided, however, that no sale or conveyance of such properties shall ever be made in such manner as to impair the rights or interests of the holder, or holders, of any bonds issued under the authority of this chapter.
11. Issue said revenue bonds to refund, in whole or in part bonds previously issued by such municipality under authority of this chapter.
12. In any instance where the project ~~acquired~~ financed by the municipality consists of the construction, reconstruction, improvement, betterment of real property, buildings and improvements on real property and buildings, the provisions of chapter 48-02 and other applicable statutes shall apply; except that the municipality, in the ~~lease~~ revenue agreement and resolution or mortgage defining the terms and conditions upon which the project is to be constructed, ~~leased~~, and financed, or in a preliminary agreement establishing the general terms of the ~~lease~~ revenue agreement and financing of the project when constructed, may permit a ~~lessee~~ contracting party which is not a governmental entity or a public institution, subject to such terms and conditions as the municipality shall find necessary or desirable and proper, to provide for the construction, acquisition, and installation of the buildings, improvements, and equipment to be included in the project by any means available to the ~~lessee~~ contracting party, whether or not the procedure followed by the ~~lessee~~ contracting party is in conformity with said chapter 48-02.

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

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

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

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

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

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

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

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

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

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. 2388.

Senate Vote: Yeas 39 Nays 4 Absent 4

House Vote: Yeas 91 Nays 2 Absent 1

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