

MUNICIPAL GOVERNMENT

CHAPTER 375

SENATE BILL NO. 2392
(Freed, Sands)

LEGAL NOTICE PUBLICATION

AN ACT to amend and reenact subdivision b of subsection 3 of section 21-03-07, and sections 21-03-26, 40-04-02, 40-05.1-03, 40-11-04.1, 40-21-02, 40-40-06, 40-48-32, 40-51.2-05, and 48-02-03 of the North Dakota Century Code, all relating to the publication of legal notices in a municipality's official newspaper.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Subdivision b of subsection 3 of section 21-03-07 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- b. When, after a public hearing, the governing body of such municipality shall adopt a resolution declaring it necessary to replace a municipally owned public building for the reason that such building has become unsafe or inadequate for use and occupancy as a public building, or for keeping the public records or property of such municipality housed therein. The governing body of such municipality shall give notice of such public hearing by a statement published once each week for two successive weeks in the official county newspaper, if the municipality is other than a city, or, if the municipality is a city, in the city's official newspaper as provided in section 40-01-09. Such statement shall set forth the time and place of the hearing and the reasons therefor.

SECTION 2. AMENDMENT.) Section 21-03-26 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

* 21-03-26. BONDS - CALL FOR BIDS - HOW ADVERTISED - COPY TO TAX COMMISSIONER - PENALTY.) A notice calling for bids for each proposed issue of municipal bonds shall be published at least once in the official newspaper of the county if the municipality is other than a city, or, if the municipality is a city, in the

*NOTE: Section 21-03-26 was also amended by section 1 of Senate Bill No. 2452, chapter 215.

city's official newspaper as provided in section 40-01-09, not less than ten days nor more than thirty days before the date specified therein for the receiving of such bids. Such notice may be in any form but shall specify the amount of bonds offered for sale and the date of the maturity thereof. A copy of such notice shall be mailed to the state tax commissioner at Bismarck not less than ten days before the date specified for the opening bids, and the tax commissioner shall keep such notice on file for public inspection. The county auditor, or the auditor or secretary of the municipality advertising such sale, at the same time shall file with the tax commissioner a statement giving the assessed valuation, the area, the population, and the indebtedness thereof. Failure to publish such notice or to send a copy thereof to the tax commissioner shall not impair the validity of such bonds but shall render unenforceable any executory contract entered into for the sale thereof. An auditor or secretary failing to publish or to send such notice shall be subject to a penalty of not more than five hundred dollars, at the discretion of the district court, to be recovered in an action brought by the state's attorney in the name of the state. The penalty, when collected, shall be paid into the general fund of the county.

SECTION 3. AMENDMENT.) Section 40-04-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-04-02. NOTICE OF ELECTION.) Notice of an election to be held under this chapter shall be given by the executive officer of the municipality by publication in the official newspaper of the municipality as provided in section 40-01-09 for at least twenty days.

SECTION 4. AMENDMENT.) Section 40-05.1-03 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-05.1-03. CHARTER COMMISSION - MEMBERSHIP - PREPARATION AND SUBMISSION OF CHARTER - COMPENSATION AND EXPENSES - PUBLICATION OR DISTRIBUTION.) Where proceedings have been initiated for a home rule charter, the governing body of the city shall appoint a charter commission composed of five members to frame such charter. The chairman of the charter commission shall be designated by the governing body and shall be a charter commission member. Compensation and expenses of commission members shall be as determined by the governing body. The governing body may furnish the charter commission with office space, clerical help, legal and other assistance, and supplies, and may appropriate and pay for same out of its general funds. The commission shall prepare and submit the charter within one year after appointment. The proposed charter shall then be published once in the city's official newspaper as provided in section 40-01-09. However, cities with a population of one thousand or less may, in lieu of publishing the charter in a newspaper, distribute copies of the charter door-to-door and have them posted and available at prominent locations in the city.

In the event a city does not publish the charter in a newspaper, it must still publish a notice of the election.

SECTION 5. AMENDMENT.) Section 40-11-04.1 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-11-04.1. REAL PROPERTY TRANSFER REQUIREMENTS.) Upon resolution by the governing body of a municipality authorizing the public sale of real property, a notice containing a description of the property to be sold and designating the place where and the day and hour when the sale will be held shall be published in the city's official newspaper as provided in section 40-01-09 once each week for two consecutive weeks with the last publication being at least ten days in advance of the date set for the sale. The notice shall specify whether the bids are to be received at auction or as sealed bids as determined by the governing body of the municipality. The property advertised shall be sold to the highest bidder if his bid is deemed sufficient by a majority of the members of the governing body.

SECTION 6. AMENDMENT.) Section 40-21-02 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-21-02. ELECTIONS IN COMMISSION CITIES - WHEN HELD - NOTICE - POLLS - JUDGES AND INSPECTORS.) Biennial municipal elections in cities operating under the commission system of government shall be held on the first Tuesday in April in each even-numbered year at such place or places as the board of city commissioners shall designate. Ten days' notice of the time and place of the election and of the offices to be filled at such election shall be given by the city auditor by publication in the official newspaper of the city as provided by section 40-01-09. The polls shall be opened and closed as provided by state law for the opening and closing of polls at primary, general, and special elections. For all general city elections, the board of city commissioners shall appoint one inspector for each precinct at least twenty-one days before the election is held, and two judges of election for each precinct at least ten days before the election is held. For special city elections the board of city commissioners shall appoint one inspector and two judges of election for each precinct in the city at least ten days before the election is held. Each precinct election judge, in either a general or a special city election, shall appoint a poll clerk who shall be a qualified elector of the precinct in which he is to serve.

SECTION 7. AMENDMENT.) Section 40-40-06 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-40-06. NOTICE OF PRELIMINARY BUDGET STATEMENT - CONTENTS - HOW GIVEN.) After the governing body has prepared the preliminary budget statement, the auditor of the municipality shall give notice that:

1. The preliminary budget is on file in the office of the auditor and that such budget may be examined by anyone requesting to do so;
2. The governing body shall meet at the time and place specified in the notice as prescribed by subsection 3 for the purpose of adopting the final budget and making the annual tax levy, but no later than the first Wednesday in August; and
3. The governing body shall hold a public session at such time and place designated in the notice of hearing at which any taxpayer may appear and discuss with such body any item of proposed expenditures or may object to any item thereof or to the amount of any such item.

The notice shall contain a statement of the total proposed expenditures under each group provided for in the preliminary budget and of the total proposed expenditures under all such groups, but need not contain any detailed statement of the proposed expenditures. Such notice shall be published at least once, not less than six days prior to the budget hearing, in a newspaper published in the municipality, if there is one, and if no newspaper is published in the municipality, the notice shall be published not less than six days prior to such meeting in the official city newspaper as provided by section 40-01-09.

SECTION 8. AMENDMENT.) Section 40-48-32 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-48-32. RESOLUTION ADOPTING STREET MAP - WHEN EFFECTIVE - NOTICE - CONTENTS - PROTEST.) The resolution of the governing body adopting any street map provided for in section 40-48-28 shall provide that it shall not become effective for forty days, and shall provide further that it shall not become effective until a notice of the adoption of such resolution has been published once each week for four successive weeks in the official newspaper of the municipality as provided by section 40-01-09. The resolution and the notice shall state a time within which the owners of property lying within or immediately adjoining the lines of the proposed future street opening or widening, or between any future street line and the street nearest the public highway may protest in writing against the adoption of the future street lines.

SECTION 9. AMENDMENT.) Section 40-51.2-05 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-51.2-05. NOTICE - PETITION OF OWNERS AND ELECTORS.) The governing body shall not take final action on a petition presented by owners and electors until the petitioners have given notice of presentation of their petition by one publication in the official newspaper of the municipality as provided

by section 40-01-09.

SECTION 10. AMENDMENT.) Section 48-02-03 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

48-02-03. METHOD USED IN SECURING BIDS.) The governing board shall advertise for bids for the doing of the work for which plans, drawings, and specifications are required by section 48-02-02. Such advertisement shall be published for three successive weeks, the first publication thereof to be at least twenty-one days prior to the date of the opening of bids thereunder. Such advertisement shall be published in the official newspaper of such municipality or political subdivision, and also in some trade publication of general circulation among the contractors, building manufacturers, and dealers of this state. Alterations or improvements may be accomplished by a state department or institution on competitive bids or on a time and material basis or by institutional personnel if the total cost of any one project does not exceed the sum of twenty-five thousand dollars, but if the cost exceeds five thousand dollars, prior approval shall be obtained from the state superintendent of construction. In instances where a contractor is performing work on a time and material basis, all materials and all labor supplied by such contractor must be obtained by competitive estimates from qualified suppliers for projects.

Approved April 6, 1977

CHAPTER 376

HOUSE BILL NO. 1473
(Metzger, McCaffrey, Conmy)

**TRAFFIC ORDINANCES APPLY TO MOBILE
HOME PARKS**

AN ACT to create and enact a new section to chapter 40-05 of the North Dakota Century Code, relating to the application of city traffic ordinances to streets located within certain mobile home parks; and to amend and reenact subsection 21 of section 39-01-01 of the North Dakota Century Code, relating to the definition of highway as applicable to motor vehicle operation and regulation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Subsection 21 of section 39-01-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

21. "Highway" shall mean the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel and of every way privately maintained within a mobile home park, trailer park, or campground containing five or more lots for occupancy by mobile homes, travel trailers, or tents when any part thereof is open for purposes of vehicular travel;

SECTION 2.) A new section to chapter 40-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

CITY TRAFFIC ORDINANCES TO APPLY TO STREETS WITHIN MOBILE HOME PARKS.) Every city ordinance regulating the operation or equipment of motor vehicles or regulating traffic shall apply to the private ways, streets, lanes, and alleys of mobile home parks, trailer parks, and campgrounds containing five or more lots for occupancy by mobile homes, travel trailers, or tents.

Approved March 23, 1977

CHAPTER 377

SENATE BILL NO. 2421
(Lashkowitz, Walsh, Holmberg, Schirado)

INTEREST OF OFFICERS IN CONTRACTS

AN ACT to require disclosure of conflict of interest by municipal officials in contracts in which the municipality is a party; and providing a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. MUNICIPAL OFFICERS - CONTRACTS - DISCLOSURE
REQUIRED.) No municipal officer shall refuse or fail to disclose to the governing board to which he or she is a member, any personal interest, direct or indirect, in any contract requiring the expenditure of municipal funds.

SECTION 2. PENALTY.) Any person who shall violate any provision of this Act shall be guilty of an infraction and shall, in addition, be subject to removal from office.

Approved March 31, 1977

CHAPTER 378

SENATE BILL NO. 2316
(Thane, Teneffos, Lodoen)

HOT PURSUIT BY POLICE OFFICER

AN ACT to amend and reenact section 40-20-05 of the North Dakota Century Code, relating to chief of police and police officer powers and duties, and allowing hot pursuit by a police officer beyond the one and one-half mile limits of a city to make an arrest when obtaining aid of a peace officer having jurisdiction beyond that limit would cause a delay permitting escape.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 40-20-05 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-20-05. CHIEF OF POLICE AND POLICE OFFICERS - POWERS AND DUTIES - HOT PURSUIT.)

1. The chief of police shall perform such duties as shall be prescribed by the governing body for the preservation of the peace. The chief of police shall have the authority to administer oaths to police officers under his supervision. Within the city limits, and for a distance of one and one-half miles in all directions outside the city limits, the police officers and watchmen of the city shall perform the duties and exercise the powers of peace officers as defined and prescribed by the laws of this state.
2. A police officer in "hot pursuit" may continue beyond the one and one-half mile limit to make an arrest, in obedience to a warrant or without a warrant under the conditions of section 29-06-15, whenever obtaining the aid of peace officers having jurisdiction beyond that limit would cause a delay permitting escape. As used in this subsection, "hot pursuit" means the immediate pursuit of a person who is endeavoring to avoid arrest.
3. Police officers shall serve and execute any warrant, writ, process, order, or notice issued to them by a police magistrate within the city in any civil or criminal action or proceeding for or on account of a

violation of any city ordinance or in any action or proceeding in which the city is a party or is interested beneficially. The police, within the limits prescribed in this section, may serve and execute all writs and process issued by justices in civil actions. In addition to the duties set out in this section, the police shall perform such other duties as may be prescribed by ordinance or statute.

Approved March 17, 1977

CHAPTER 379

HOUSE BILL NO. 1051
(Legislative Council)
(Interim Committee on Judiciary "A")

CITY ELECTION POLLING PLACES

AN ACT to create and enact a new section to chapter 40-21 of the North Dakota Century Code, relating to the establishment of polling places for municipal elections; and to repeal section 16-09-04.1 of the North Dakota Century Code, relating to the establishment of polling places for municipal elections.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1.) A new section to chapter 40-21 of the North Dakota Century Code is hereby created and enacted to read as follows:

DESIGNATION OF POLLING PLACES FOR MUNICIPAL ELECTIONS.)
The governing body of any municipality at the time of calling any general or special municipal election, or prior to the time of registration for said election, if such registration is required by law, where officers of said municipality are not to be elected by wards or districts, may by resolution, designate such voting precincts and polling places for said election as it may deem necessary for the conduct of the same, and shall in giving notice of said election, designate such voting precincts and polling places.

SECTION 2. REPEAL.) Section 16-09-04.1 of the North Dakota Century Code is hereby repealed.

Approved March 5, 1977

CHAPTER 380

SENATE BILL NO. 2204
(Lips)

CONTRACTOR'S BOND CONDITIONS

AN ACT to amend and reenact subsection 3 of section 40-22-31 of the North Dakota Century Code, relating to conditions of contractor's bond.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Subsection 3 of section 40-22-31 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. That in case of a default on the part of the bidder or contractor in the performance of the work as provided in his contract, the sum named in the bond shall be taken and held to cover the amount necessary to compensate the municipality for the correction, repair, or replacement caused by such default, and that the full amount thereof may be recovered from said bidder and his sureties in an action by the municipality against them on said bond only in the event of a complete failure of performance on the part of the contractor. Nothing herein shall be construed to prevent the municipality from receiving the amount, not in excess of the amount of the bond, necessary to compensate the municipality for correction, repair, or replacement caused by default of the contractor which does not constitute complete failure of performance by the contractor.

Approved March 31, 1977

CHAPTER 381

SENATE BILL NO. 2121
(Fritzell)

STREET BEAUTIFICATION ASSESSMENTS

AN ACT to amend and reenact section 40-24-08 of the North Dakota Century Code, relating to special assessments for street beautification and the period for payment of the same; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 40-24-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-24-08. ASSESSMENTS FOR STREET BEAUTIFICATION EXTENDED OVER A PERIOD OF NOT MORE THAN TEN YEARS.) Special assessments for maintaining grass plots or trees, or for parking or other improvements for the beautification of the streets of the municipality, shall be payable in equal annual installments extending over a period of not more than ten years as the governing body may fix by ordinance or resolution.

SECTION 2. EMERGENCY.) This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 4, 1977

CHAPTER 382

SENATE BILL NO. 2376
(Strinden)

ISSUANCE OF REFUNDING BONDS

AN ACT to amend and reenact section 40-27-13, subsection 4 of section 40-36-05, and subsection 3 of section 40-36-13 of the North Dakota Century Code, relating to refunding callable bonds issued to purchase outstanding special assessment warrants of a municipality, what the resolution of the municipality's governing body may provide in issuing revenue bond refunding bonds, and what the governing body must determine to sell or exchange revenue bond refunding bonds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 40-27-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-27-13. REFUNDING CALLABLE FUNDING BONDS OR REFUNDING WARRANTS - TERMS AND CONDITIONS.) Any municipality may refund, according to the procedure set forth in this chapter, any funding bonds issued under the provisions of this chapter which are callable prior to maturity or which shall be surrendered voluntarily for refunding, by the issuance of bonds upon the same terms and conditions except as to interest, whenever by so doing a saving in interest can be effected. Any municipality having valid outstanding refunding special improvement warrants or bonds issued pursuant to the provisions of this chapter, which are past due or which are redeemable either at the option of the municipality or with the consent of the warrant or bondholders, may issue new refunding special improvement bonds to refund such outstanding warrants or bonds, if there is not sufficient money in the fund or funds against which such outstanding refunding warrants or bonds are drawn to pay the same. Such new bonds may be issued for the purpose of extending the maturities of the outstanding refunding warrants or bonds, or reducing the interest cost thereon, or equalizing the general tax which the municipality may be, or may become, obligated to levy to discharge deficiencies in the fund or funds against which they are drawn. Such new bonds shall be issued according to the procedure set forth in this chapter for the issuance of the original refunding special improvement warrants or bonds. In any case where refunding improvement bonds are issued and sold six months or more before

the earliest date on which all outstanding refunding improvement warrants or bonds of the issue to be refunded thereby mature or are prepayable in accordance with their terms, the proceeds of the new bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company, having its principal place of business within or without the state, and shall be invested in such amount and in securities maturing on such dates and bearing interest at such rates as shall be required to provide funds sufficient to pay when due the interest to accrue on each warrant or bond refunded to its maturity or, if it is prepayable, to the earliest prior date upon which it may be called for redemption, and to pay and redeem the principal amount of each such warrant or bond at maturity or, if prepayable, at its earliest redemption date, and any premium required for redemption on such date. The governing body's resolution authorizing the new bonds shall irrevocably appropriate for these purposes the escrow fund and all investments thereof, which shall be held in safekeeping by the escrow agent, and all income therefrom, and shall provide for the call for redemption of all prepayable bonds in accordance with their terms. The securities to be purchased with the escrow fund shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: banks for cooperatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association. Such securities shall be purchased simultaneously with the delivery of the new bonds. Moneys on hand in the refunding improvement bond fund maintained for the payment of the outstanding bonds, and not immediately needed for the payment of interest or principal due, may likewise be deposited in the escrow fund and invested in the same manner as the proceeds of the new bonds, to the extent consistent with the provisions of resolutions authorizing the outstanding bonds.

SECTION 2. AMENDMENT.) Subsection 4 of section 40-36-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. The rate or rates of interest which such bonds shall bear;

SECTION 3. AMENDMENT.) Subsection 3 of section 40-36-13 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Exchange or sell any refunding bonds more than six months in advance of the date on which the bonds being refunded mature or are redeemable in accordance with their terms to reduce the interest costs, extend or adjust maturities in relation to the revenues pledged for payment of the bonds, permit the more advantageous sale of additional bonds, or any other purpose deemed

necessary or desirable by the governing body, then the proceeds of the refunding bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company, having its principal place of business within or without the state, and shall be invested in such amount and in securities maturing on such dates and bearing interest at such rates as shall be required to provide funds sufficient to pay when due the interest to accrue on each bond refunded to its maturity or, if it is prepayable, to the earliest prior date upon which it may be called for redemption, and to pay and redeem the principal amount of each such bond at maturity or, if prepayable, at its earliest redemption date, and any premium required for redemption on such date. The governing body's resolution authorizing the refunding bonds shall irrevocably appropriate for these purposes the escrow fund and all investments thereof, which shall be held in safekeeping by the escrow agent, and all income therefrom, and shall provide for the call for redemption of all prepayable bonds in accordance with their terms. The securities to be purchased with the escrow fund shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: banks for cooperatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association. Such securities shall be purchased simultaneously with the delivery of the refunding bonds. Moneys on hand in the sinking fund maintained for the payment of the outstanding bonds, and not immediately needed for the payment of interest or principal due, may likewise be deposited in the escrow fund and invested in the same manner as the proceeds of the new bonds, to the extent consistent with the provisions of resolutions authorizing the outstanding bonds.

Approved March 17, 1977

CHAPTER 383

HOUSE BILL NO. 1388
(Lardy, Gengler)

RAMPED CURBING AT INTERSECTION CROSSWALKS

AN ACT to create and enact a new section to chapter 40-31 of the North Dakota Century Code, requiring cities to provide ramped curbing at intersections for wheelchair traffic upon undertaking extensive curb and gutter repair or installation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1.) A new section to chapter 40-31 of the North Dakota Century Code is hereby created and enacted to read as follows:

RAMPED CURBING FOR WHEELCHAIRS.) Each city shall hereafter in intersection curb and gutter repair or installation projects provide ramped curbing at each intersection crosswalk in said projects for the convenience of persons confined to wheelchairs. This section shall be complied with whenever a city is undertaking extensive intersection curb and gutter repair or installation.

Approved April 21, 1977

CHAPTER 384

SENATE BILL NO. 2381
(Tallackson, Strand, Rait)

MUNICIPAL POWER AGENCIES

AN ACT to create and enact chapter 40-33.2 of the North Dakota Century Code, relating to municipal power agencies, authorizing, creating, and defining their powers and responsibilities, authorizing the issuance of bonds and notes; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1.) Chapter 40-33.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

40-33.2-01. FINDINGS AND PURPOSE.) The purpose of this chapter is to provide a means for those North Dakota cities which now operate a utility pursuant to law for the local distribution of electric energy to secure, by individual or joint action among themselves or by contract with other public or private entities within or outside the state, an adequate, economical, and reliable supply of energy. To accomplish this purpose it is necessary for such cities to have the authority, by agreement between two or more of their number, to create a separate municipal corporation with the power and authority to finance and acquire facilities for the generation or transmission of electric energy, or interest in such facilities or rights to part or all of the capacity thereof. It is determined that an adequate, economical, and reliable supply of electric energy is essential to the orderly growth and prosperity of these communities, and a shortage of such energy is inimical to the safety, health, welfare, and prosperity of residents of the state and to the sound growth and development of its communities. Such a shortage exists and is expected to continue and increase because of the difficulty in the operation of municipal generating plants, of achieving economies of size, limiting environmental impacts, and providing for peak loads. Accordingly it is determined that the exercise of the authority granted herein will benefit the people of the state and serve a valid public purpose in improving and otherwise promoting their health, welfare, and prosperity.

40-33.2-02. DEFINITIONS.) In this chapter unless the context or subject matter otherwise requires:

1. "Agency agreement" means a written agreement between two or more cities establishing a municipal power agency.
2. "City" means a city organized under the laws of this state and authorized to engage in the local distribution and sale of electric energy pursuant to section 40-33-02. Any city so engaged on January 1, 1977, is authorized to continue such distribution and sale, and every city so authorized may exercise, either individually or as a member of a municipal power agency, all of the powers granted in this chapter.
3. "City council" means the city council or the board of city commissioners, as the case may be, of the city concerned or affected.
4. "Distribution" means the conveyance of electric energy to retail consumers from a transmission system or from a generation facility situated within or in the immediate vicinity of a city.
5. "Generation" means the production of electricity by any means and the acquisition of fuel of any kind for that purpose, and includes the acquisition of fuel deposits and the acquisition or construction and operation of facilities for extracting fuel from natural deposits, for converting it for use in another form, for burning it in place, and for transportation and storage.
6. "Governing body", with respect to a city, means the city council or, if another board, commission, or body is empowered by law or its charter or by resolution of the city council to establish and regulate rates and charges for the distribution of electric energy within the city, such board, commission, or body shall be deemed to be the "governing body"; provided, however, that when the levy of a tax or the incurring of an obligation payable from taxes or any other action of such board, commission, or body requires the concurrence, approval, or independent action of the city council or another body under the city's charter or any other law, such action shall not be taken until such concurrence or approval is received or such independent action is taken and approved by not less than sixty percent of the qualified electors voting on the question at any regular or special election; and provided further, that the concurrence of the city council or other elected body charged with the general management of a city shall be required, prior to the adoption by the city of any resolution approving an agency agreement.
7. "Municipal power agency" means a separate political subdivision and municipal corporation created by agreement between two or more cities, and approved by not less than

sixty percent of the qualified electors voting on the question at any regular or special election in each of those cities pursuant to section 40-33.2-03 to exercise any of the powers of acquisition, construction, re-construction, operation, repair, extension, or improvement of electric generation or transmission facilities or the acquisition of any interest therein or any right to part or all of the capacity thereof.

8. "Person" means an individual, public agency, or a private corporation, firm, partnership, cooperative association, or business trust of any nature whatsoever, organized and existing under the laws of any state or the United States or under the laws of the Dominion of Canada or any province or political subdivision thereof.
9. "Project" means any plant, works, system, facilities, and property of any nature whatsoever, together with all parts thereof and appurtenances thereto, used or useful in the generation, production, transmission, purchase, sale, exchange, or interchange of electric energy or any interest therein or capacity thereof.
10. "Public agency" means any city or other municipal corporation, political subdivision, governmental unit, or public corporation created by or pursuant to the laws of this state or of another state or of the United States or any municipal corporation, political subdivision, governmental unit, or public corporation created by or pursuant to the laws of the Dominion of Canada or any province thereof, or other body declared by the laws of any state or the United States or the Dominion of Canada, or any province thereof to be a department, agency, or instrumentality thereof.
11. "Real property" means lands, structures, franchises, and interests in land; including lands under water, riparian rights, fees simple absolute, lesser interests such as easements, rights-of-way, uses, leases, licenses, and all other incorporeal hereditaments, legal and equitable estates, interests, and rights, terms of years, liens on real property by way of judgments, mortgages, or otherwise, and claims for damages to real property.
12. "Transmission" means the transfer of electric energy from a generating facility to or between one or more cities or municipal power agencies or other persons with whom they may contract, and includes conversion of current and voltage and transfer of energy from another source in exchange for energy supplied by such contracting parties, but does not include distribution.

40-33.2-03. MUNICIPAL POWER AGENCIES - INCORPORATION.)

1. Any two or more cities may form a municipal power agency by executing an agency agreement authorized by a resolution of the governing body of each city and approved by not less than sixty percent of the qualified electors voting on the question at any regular or special election in each of those cities. The agency agreement when completed shall state:
 - a. That the municipal power agency is created and incorporated under this chapter as a municipal corporation and a political subdivision of the state.
 - b. The name of the agency, which shall include the words "municipal power agency".
 - c. The names of the cities which have approved the agency agreement and are the initial members of municipal power agency.
 - d. The names and addresses of the persons initially appointed by the resolutions approving the agreement to act as the representatives of the cities, respectively, in the exercise of their powers as members.
 - e. Any limitations upon the terms of representatives of the respective member cities, provided that such representatives shall always be selected and vacancies in their offices declared and filled by resolutions of the governing bodies of the respective cities.
 - f. The names of the initial board of directors of the municipal power agency, who shall be not less than three persons who are representatives of the respective member cities, selected by such representatives. The agreement shall provide that each member city shall be represented on the board of directors.
 - g. The location of the registered office of the municipal power agency.
 - h. That the cities which are members of the municipal power agency are not liable for its obligations.
 - i. Any other provision for regulating the business of the municipal power agency or the conduct of its affairs which may be agreed by the member cities, consistent with this chapter.
2. The agency agreement and a certified copy of the resolution of the governing body of each city shall be filed for record with the secretary of state. If the agency agreement

conforms to the requirements of this section, the secretary of state shall record it and issue and record a certificate of incorporation. The certificate shall state the name of the municipal power agency and the fact and date of incorporation. Upon the issuance of the certificate of incorporation, the municipal power agency shall exist as a municipal corporation and a political subdivision of the state. The certificate of incorporation shall be conclusive evidence of the fact of incorporation.

3. The initial board of directors of the municipal power agency, unless otherwise provided by the agency agreement, shall be elected prior to the filing of the agreement by a majority vote of the persons acting as representatives of the member cities, from among their members. After commencement of existence, the first meeting of the board of directors shall be held at the call of the directors, after notice, for the purpose of adopting the initial bylaws, electing officers, and for any other business that comes before the meeting.
4. Unless otherwise provided by the agency agreement, the bylaws of the municipal power agency, and any amendments thereto, shall be proposed by the board of directors and shall be adopted by a majority vote of the representatives of the member cities, at a meeting held after notice. The agency agreement or the bylaws shall not take effect until approved by not less than sixty percent of the qualified electors who voted on the question in the last regular or special election. The agency agreement or the bylaws shall state:
 - a. The qualifications of member cities, and any limitations upon their number.
 - b. Any conditions of membership.
 - c. Manner and time of calling regular meetings of representatives of member cities.
 - d. Manner and conditions of terminating membership.
 - e. Such other provisions for regulating the affairs of the municipal power agency as the representatives of the member cities shall determine to be necessary.
5. Every municipal power agency shall maintain an office in the state to be known as its registered office. When a municipal power agency desires to change the location of its registered office, it shall file with the secretary of state a certificate of change of location of registered

office, stating the new location and the effective date of change. When the certificate of change of location has been duly filed, the municipal power agency may make the change without any further action.

6. Each of the directors shall hold office for the term selected and until a successor has been selected and has qualified. Directors shall discharge their duties in good faith, and with diligence and care. The agency agreement or the bylaws may prescribe the number, term of office, powers, authority, and duties of directors, the time and place of their meetings, and other regulations concerning directors. Except where the agency agreement or bylaws prescribe otherwise, the term of office of a director shall be for one year. Except where the agency agreement or bylaws prescribe otherwise, a meeting of the board of directors may be held at any place, within or without the state, designated by the board, after notice, and an act of the majority of the directors present at a meeting at which a quorum is present is the act of the municipal power agency. Any vacancy occurring on the board shall be filled in the same manner and by a representative of the same city as on the initial board.
7. Except where the agency agreement or bylaws prescribe otherwise, the board of directors shall appoint a president from its membership, and a secretary and treasurer, and any other officers or agents deemed to be necessary, who need not be directors or representatives of the member cities. Except where the agency agreement or bylaws prescribe otherwise, an officer may be removed without cause by the board of directors. Officers of the municipal power agency shall have the authority and duties in the management of the business of the municipal power agency that the agency agreement or bylaws prescribe, or in the absence of such prescription, as the board of directors determines.
8. Except as otherwise provided in the agency agreement or the bylaws, the duly authorized representatives of each member city shall act as, and vote on behalf of, such city. Except where the agency agreement or bylaws provide otherwise, representatives of the member cities shall hold at least one meeting each year for the election of directors and for the transaction of any other business. Except where the agency agreement or bylaws prescribe otherwise, special meetings of the representatives may be called for any purpose upon written request by any representative to the president or secretary to call the meeting. Such officer shall give notice of the meeting to be held within the time period prescribed by the agency agreement or the bylaws.

Unless the agency agreement or bylaws provide for a different percentage, a quorum for a meeting of the representatives of the member cities is a majority of the total representatives of the member cities and a quorum for meetings of the board of directors is a majority of the membership of such board.

9. The agency agreement may be amended as proposed at any meeting of the representatives of the member cities for which notice, stating the purpose, shall be given to each representative and unless the agency agreement or bylaws require otherwise, shall become effective when ratified by resolutions of a majority of the governing bodies of the member cities and approved by not less than sixty percent of the qualified electors in each of those cities voting on the question at the last regular or special election. Each amendment and the resolutions of such governing bodies approving it shall be filed for record with the secretary of state.
10. Each member city shall have full power and authority, within budgetary limits applicable to it, to appropriate money for the payment of expenses of the formation of the municipal power agency and of its representative or representatives in exercising its functions as a member of the municipal power agency.

40-33.2-04. MUNICIPAL POWER AGENCIES - POWERS.) A municipal power agency shall be a municipal corporation and a political subdivision of the state and shall have all of the powers enumerated in this section, in furtherance of the purpose stated in section 40-33.2-01, and in the exercise thereof shall be deemed to be performing an essential governmental function. All powers of the municipal power agency shall be exercised by its board of directors, unless otherwise provided by the agency agreement or bylaws. A municipal power agency:

1. May plan, acquire, construct, reconstruct, operate, maintain, repair, extend, or improve one or more projects within or outside the state; or acquire any interest in or any right to capacity of a project and may act as agent, or designate one or more of the other persons participating in a project to act as its agent, in connection with the planning, acquisition, construction, reconstruction, operation, maintenance, repair, extension, or improvement of the project.
2. May investigate the desirability of and necessity for additional sources and supplies of electric energy, and make studies, surveys, and estimates as may be necessary to determine the feasibility and cost thereof.
3. May cooperate with other persons in the development of sources and supplies of electric energy.

4. May apply to any public agency for consents, authorizations, or approvals required for any project within its powers and take all actions necessary to comply with the conditions thereof.
5. May perform any act authorized by this chapter through or by means of its officers, agents, or employees or by contract with any person.
6. May acquire, hold, use, and dispose of income, revenues, funds, and money.
7. May acquire, own, hire, use, operate, lease as lessor or lessee, and dispose of personal property or real property, and interests in real property, and make improvements on real property.
8. May grant the use by franchise, lease, or otherwise, and make charges for the use of any property or facility owned or controlled by it.
9. May borrow money and issue negotiable bonds, notes, or other debt instruments secured or unsecured, in accordance with section 40-33.2-05.
10. Subject to any agreement with bondholders or noteholders, may invest money of the municipal power agency not required for immediate use, including proceeds from the sale of any bonds or notes, in such obligations, securities, and other investments as the municipal power agency shall deem prudent, notwithstanding the provisions of any other law relating to the investment of public funds.
11. May determine the location and character of, and all other matters in connection with, any and all projects it is authorized to acquire, hold, establish, effectuate, operate, or control.
12. May contract with any person, within or outside the state and within or outside the United States, for the construction of any project or for the sale or transmission of electric energy generated by any project, or for any interest therein or any right to capacity thereof, on such terms and for such period of time as the municipal power agency determines.
13. May purchase, sell, exchange, or transmit electric energy within and outside the state and within or outside the United States, in such amounts as it shall determine to be necessary and appropriate to make the most effective use of its powers and to meet its responsibilities, and may enter into agreements with any person with respect

to that purchase, sale, exchange, or transmission, on such terms and for such period of time as its board of directors determines.

14. May procure insurance against any losses in connection with its property, operations, or assets in such amounts and from such insurers as it deems desirable.
15. May contract for and accept any gifts or grants or loans of funds or property or financial or other aid in any form from any person, and may comply, subject to this chapter, with the terms and conditions thereof.
16. May mortgage, pledge, and grant a security interest in any or all of its property to secure the payment of its bonds, notes, or other obligations or contracts.
17. Shall pay to each taxing authority within whose taxing jurisdiction its property is situated, in lieu of taxes on its property, the amounts of the taxes which would be payable if its property were owned by a private person. For this purpose the property of a municipal power agency shall be valued in the same manner and by the same procedure as the property of private utility companies.
18. May sue and be sued, complain, and defend in its agency name.
19. May exercise all other powers not inconsistent with the Constitution of this state or the United States Constitution, which powers may be reasonably necessary or appropriate for or incidental to the effectuation of its authorized purposes or to the exercise of any of the powers enumerated in this chapter, and generally may exercise in connection with its properties and affairs, and in connection with property within its control, any and all powers which might be exercised by an individual or a private corporation in connection with similar property and affairs.

40-33.2-05. BONDS AND NOTES.)

1. A municipal power agency may from time to time issue its bonds or notes in such principal amounts as the municipal power agency shall deem necessary to provide sufficient funds to carry out any of its corporate purposes and powers, including but not limited to the acquisition or construction of any project to be owned or leased, as lessor or lessee, by the municipal power agency, or the acquisition of any interest therein or any right to capacity thereof, the funding or refunding of the principal of, or interest or redemption premiums on, any

bonds or notes issued by it whether or not such bonds or notes or interest to be funded or refunded have or have not become due, the establishment or increase of reserves to secure or to pay such bonds or notes or interest thereon, and the payment of all other costs or expenses of the municipal power agency incident to and necessary or convenient to carry out its corporate purposes and powers.

2. Except as may be otherwise expressly provided by this chapter or by the municipal power agency agreement, every issue of bonds or notes of the agency shall be payable out of any revenues or funds of the agency, subject only to any agreements with the holders of particular bonds or notes pledging any particular revenues or funds. A municipal power agency may issue such types of bonds or notes as it may determine, including bonds or notes as to which the principal and interest are payable exclusively from the revenues from one or more projects, or from an interest therein or a right to capacity thereof, or from one or more revenue-producing contracts made by the municipal power agency with any person, or from its revenues generally. Any such bonds or notes may be additionally secured by a pledge of any grant, subsidy, or contribution from any person, or a pledge of any income or revenues, funds, or moneys of the municipal power agency from any source whatsoever.
3. All bonds and notes of a municipal power agency shall be negotiable within the meaning and for all the purposes of title 41, subject only to any registration requirement.
4. Except where the agency agreement or bylaws prescribe otherwise, bonds or notes of a municipal power agency shall be authorized by resolution of its board of directors and approved by not less than sixty percent of the qualified electors in each of the member cities voting on the question at any regular or special election and may be issued under such resolution or under a trust indenture or other security agreement, in one or more series, and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, carry such conversion, registration, and exchange privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment at such place or places within or outside the state or within or outside the United States, be subject to such terms of redemption with or without premiums, and contain or be subject to such other terms as the resolution, trust indenture, or other security agreement may provide, and shall not be restricted by the provisions of any other law limiting the amounts, maturities, interest rates, or

other terms of obligations of cities, public agencies, or private persons.

5. Any bonds or notes may be issued and delivered, notwithstanding that one or more of the officers executing them shall have ceased to hold office at the time when the bonds or notes are actually delivered.
6. Pending preparation of definitive bonds, a municipal power agency may issue temporary bonds which shall be exchanged for the definitive bonds.
7. Bonds or notes of a municipal power agency may be sold at public or private sale for such price or prices and in such manner as the agency determines.
8. Bonds or notes of a municipal power agency may be issued under the provisions of this chapter, and rents, rates, and charges may be established pursuant to section 40-33.2-07 and pledged for the security of bonds or notes and interest and redemption premiums thereon, without obtaining the consent of any department, division, commission, board, bureau, or agency of this state and without any other proceeding or the happening of any other condition or occurrence except as specifically required by this chapter.
9. The resolution, trust indenture, or other security agreement under which any bonds or notes are issued shall constitute a contract with the holders of the bonds or notes, and may contain provisions, among others, prescribing:
 - a. The terms and provisions of the bonds or notes.
 - b. The mortgage or pledge of and the grant of a security interest in any property and all or any part of the revenue from any project or any revenue-producing contract made by the municipal power agency with any person to secure the payment of bonds or notes, subject to any agreements with the holders of bonds or notes which might then exist.
 - c. The custody, collection, securing, investment, and payment of any revenues, assets, money, funds, or property with respect to which the municipal power agency may have any rights or interest.
 - d. The rates or charges for electric energy sold by, or services rendered by, the municipal power agency, the amount to be raised by the rates or charges, and the use and disposition of any or all revenue.
 - e. The creation of reserves or sinking funds and the regulation and disposition thereof.

- f. The purposes to which the proceeds from the sale of any bonds or notes then or thereafter to be issued may be applied, and the pledge of the proceeds to secure the payment of the bonds or notes.
- g. Limitations on the issuance of any additional bonds or notes, the terms upon which additional bonds or notes may be issued and secured, and the refunding of outstanding bonds or notes.
- h. The rank or priority of any bonds or notes with respect to any lien or security.
- i. The creation of special funds or moneys to be held in trust or otherwise for operating expenses, payment, or redemption of bonds or notes, reserves or other purposes, and the use and disposition of moneys held in these funds.
- j. The procedure by which the terms of any contract with or for the benefit of the holders of bonds or notes may be amended or abrogated, the amount of bonds or notes the holders of which must consent thereto, and the manner in which consent may be given.
- k. The definition of the acts or omissions to act which shall constitute a default in the duties of the municipal power agency to holders of its bonds or notes, and the rights and remedies of the holders in the event of default including, if the municipal power agency so determines, the right to accelerate the due date of the bonds or notes or the right to appoint a receiver or receivers of the property or revenues thereof subject to the lien of the resolution, trust indenture, or other security agreement.
- l. Any other or additional agreements with or for the benefit of the holders of bonds or notes or any covenants or restrictions necessary or desirable to safeguard the interests of the holders.
- m. The custody of any of its properties or investments, the safekeeping thereof, the insurance to be carried thereon, and the use and disposition of insurance proceeds.
- n. The vesting in a trustee or trustees, within or outside the state of such properties, rights, powers, and duties in trust as the municipal power agency may determine; or the limiting or abrogating of the rights of the holders of any bonds or notes to appoint a trustee, or the limiting of the rights, powers, and duties of such trustee.

- o. The appointment of and the establishment of the duties and obligations of any paying agent or other fiduciary within or outside the state.
10. For the security of bonds or notes issued or to be issued by a municipal power agency, the municipal power agency may, subject to approval by not less than sixty percent of the qualified electors in each of the member cities voting on the question at any regular or special election, mortgage or execute deeds of trust of the whole or any part of its property and franchises. Such mortgages or deeds of trust may by their terms include after-acquired property and shall be valid and effectual for that purpose as if such after-acquired property were owned by, and in possession of, the municipal power agency giving such mortgage or deed of trust at the time of the execution thereof. Any mortgage, or deed of trust covering the whole or any part of easements or other interests in real estate less than fee simple used in the generation or transmission of electric power, and covering fixtures annexed to the real estate in which the municipal power agency has an easement or other less than fee simple interest, may be filed in the office of the secretary of state with or as part of the financing statement covering the fixtures. Such filing of the mortgage or deed of trust shall have the same effect, and shall be notice of the rights and interest of the mortgagee or trustee in such easements and other less than fee simple interests in real estate and in such fixtures to the same extent as if such mortgage or deed of trust were duly recorded in the office of the register of deeds of the county or counties in which the real estate subject to such easements or less than fee simple interests is situated. Any such mortgage or deed of trust so filed shall be deemed to contain a sufficient description to give notice of the rights and interests of the mortgagee or trustee in the easements and other less than fee simple interests in the real estate used in the generation or transmission of electric power if such mortgage or deed of trust states that the securing includes rights-of-way of or generation or transmission systems of or lines of the municipal power agency, or all property owned by the municipal power agency. This subsection shall not apply to any real estate owned by the municipal power agency in fee simple. All filings required under title 41 to perfect a security interest against the personal property or fixtures of a municipal power agency shall be made and maintained in the office of the secretary of state.
11. Neither the officials, the directors, nor the members of a municipal power agency nor any person executing bonds or notes shall be liable personally on the bonds or

notes or be subject to any personal liability or accountability by reason of the issuance thereof. A municipal power agency shall have power to indemnify and to purchase and maintain insurance on behalf of any director, officer, employee, or agent of the municipal power agency in connection with any action or proceeding, other than an action by or in the right of the municipal power agency, by reason of the fact that the person's status as a director, officer, employee, or agent of the municipal power agency, or as a director, officer, employee, or agent of another entity at the municipal power agency's request, against expenses, including attorney's fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by the person in connection with such action or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in the best interests of the municipal power agency, and with respect to any criminal action or proceeding, had no reason to believe the conduct was unlawful. No indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of duty to the municipal power agency unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper. The termination of any action or proceeding in any manner shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in the best interests of the municipal power agency, and with respect to any criminal actions or proceedings, had reasonable cause to believe that the conduct was unlawful.

12. A municipal power agency shall have power to purchase, out of any funds available therefor, its bonds or notes, and to hold, pledge, cancel, or resell the bonds or notes, subject to and in accordance with any agreements with the holders.
13. The principal of and interest upon any bonds or notes issued by a municipal power agency shall be payable solely from the revenues or funds pledged or available for their payment as authorized in this chapter. Each bond and note shall contain a statement that the principal and interest is payable solely from revenues or funds of the municipal power agency and that neither the state nor any political subdivision thereof, other than the municipal power agency, nor any city which is a member of the municipal power agency is obligated to pay the principal or interest and that neither the faith and credit nor the taxing power of the state or any political subdivision

thereof or of any such city is pledged to the payment of the principal or interest on the bonds or notes. This subsection does not preclude the use of tax or other revenue by a city for payment of amounts due and performance of covenants under any contract of the city as provided in subsection 3 of section 40-33.2-08.

40-33.2-06. EMINENT DOMAIN.) Except as otherwise provided by this section, a municipal power agency may acquire all property that it deems necessary for carrying out the purposes of this chapter, whether in fee simple absolute or a lesser interest, by condemnation and the exercise of the power of eminent domain in accordance with chapter 32-15. A municipal power agency shall have no power of eminent domain with respect to any property owned by any person as part of a system, whether existing, under construction, or being planned, of facilities for the generation, transmission, or distribution of electric power.

40-33.2-07. RULES AND RATES.) A municipal power agency may make and enforce bylaws or rules which it deems necessary or desirable, and may establish, levy, and collect or may authorize, by contract, franchise, lease, or otherwise, the establishment, levying, and collection of rents, rates, and other charges for the services afforded by the municipal power agency. Rents, rates, and other charges shall be at least sufficient to meet the expenses thereof, including reasonable reserves, interest, and principal payments, including payments into one or more sinking funds for the retirement of principal. A municipal power agency may pledge its rates, rents, and other revenues, or any part thereof, as security for the repayment, with interest and redemption premiums, if any, of any moneys borrowed by it or advanced to it for any of its authorized purposes and as security for the payment of amounts due and owing by it under any contract.

40-33.2-08. CITY POWERS.)

1. A city may by resolution of its governing body exercise any of the powers granted in this chapter to a municipal power agency, upon fulfillment of the conditions provided in this chapter for the exercise of any such power, but without complying with the terms of section 40-33.2-03 relating to incorporation, and notwithstanding any provision of any city charter or any other law denying, limiting, or placing conditions upon the exercise of any such power. Nothing in this section shall be construed to repeal any charter provision or law requiring an election or other condition precedent to the establishment after January 1, 1977, of a city electric energy distribution system.
2. Every resolution adopted in accordance with subsection 1 shall be published in the official newspaper of the city. No action may be brought and no defense may be

interposed in an action brought more than thirty days after publication of the resolution, placing at issue the validity of any provision of the resolution or the power of the city to make any contract or to issue any bond, note, or other obligation authorized thereby.

3. Nothing in this chapter authorizes any city to issue general obligation bonds for any purposes specified in this chapter without approval of its electors or performance of such other procedural conditions as may be required by its charter or the laws of this state. A city may, however, by resolution of its governing body and without approval of the electors or performance of other conditions provided in any charter or other law, enter into contracts with a municipal power agency for the purchase, sale, exchange, or transmission of electric energy and other services, on such terms and for such period of time as the resolution may provide. A city may appropriate and use tax and other revenues received to make payments due or to comply with covenants to be performed under any contract made by the city when acting as a municipal power agency, or any contract made by the city with a municipal power agency, as contemplated by this chapter, subject to the provisions of its charter and the laws of this state regarding budget and payment procedures and annual tax levy limitations.

40-33.2-09. CONSTRUCTION CONTRACTS.) A city or municipal power agency may contract for the planning, acquisition, construction, reconstruction, operation, maintenance, repair, extension, and improvement of generation and transmission facilities outside of its corporate limits or those of its members, or may contract with other public or private owners of these facilities to perform these functions, without advertising for bids, preparing final plans and specifications in advance of construction, or securing performance and payment bonds. If a payment bond is secured as provided in chapter 48-01, it shall be enforceable as therein provided, and no lien may be filed under chapter 35-27.

40-33.2-10. AUTHORIZED INVESTMENTS - SECURITY FOR PUBLIC DEPOSITS.) Notwithstanding any other law to the contrary, the state of North Dakota and all its public officers, governmental units, agencies, and instrumentalities, all banks, trust companies, savings and loan associations, investment companies, credit unions, and other persons carrying on a banking business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees, and other fiduciaries, and the Bank of North Dakota, may legally invest any sinking funds, money, or other funds belonging to them or within their control in any bonds or notes issued pursuant to this chapter.

SECTION 2. EMERGENCY.) This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

CHAPTER 385

SENATE BILL NO. 2520
(Lashkowitz, Schirado)

POLICE PENSION SYSTEM COMPOSITION

AN ACT to amend and reenact section 40-45-03 of the North Dakota Century Code, relating to city ordinances regarding police pensions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 40-45-03 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-45-03. ORDINANCES.) The governing body of the city may adopt ordinances relating to the composition of and membership in police pension systems subject to the provisions of this chapter.

Approved April 20, 1977

CHAPTER 386

HOUSE BILL NO. 1058
(Legislative Council)
(Interim Committee on Judiciary "C")

RETENTION OF RETIREMENT BENEFITS

AN ACT to amend and reenact sections 40-45-15 and 40-46-16 of the North Dakota Century Code, relating to the loss of a policeman's and a city employee's right to retirement benefits upon conviction of a felony, and providing that conviction of a felony shall not cause forfeiture once a person is entitled to be retired.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 40-45-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-45-15. RIGHT TO RETIREMENT ONCE ACQUIRED CANNOT BE LOST.) After any member of a police department shall have become entitled to be retired under the provisions of this chapter, such right shall not be lost or forfeited by discharge or for any other reason.

SECTION 2. AMENDMENT.) Section 40-46-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-46-16. RIGHT OF RETIREMENT ONCE ACQUIRED CANNOT BE LOST.) After any employee of the city shall become entitled to be retired, such right shall not be lost nor forfeited by discharge or for any other reason.

Approved March 12, 1977

CHAPTER 387

SENATE BILL NO. 2372
(Nelson)

CITY EMPLOYEES' PENSION PLAN MILL LEVY

AN ACT to create and enact a new section to chapter 40-46 of the North Dakota Century Code, relating to the tax levy for city employees' pension fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1.) A new section to chapter 40-46 of the North Dakota Century Code is hereby created and enacted to read as follows:

TAX LEVY FOR CITY EMPLOYEES' PENSION PLAN AUTHORIZED - LIMITATIONS.) In addition to any other levies authorized by law, any city which has not adopted a civil service system for its employees may levy an annual tax of not more than three mills for the purpose of creating and maintaining a city employees' pension plan when such levy is approved at any regular or special city election by an affirmative vote of at least sixty percent of the electors voting on the issue.

Approved March 31, 1977

CHAPTER 388

HOUSE BILL NO. 1340
(Wentz)

CITY EMPLOYEES' PENSION PLAN CHANGES

AN ACT to amend and reenact sections 40-46-04, 40-46-06, 40-46-09, 40-46-13, 40-46-20, and 40-46-27 of the North Dakota Century Code, relating to employees' pension plans in cities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 40-46-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-46-04. MEMBERSHIP FEES AND ASSESSMENTS.) Every full-time city employee who qualifies for membership in the city employees' pension fund shall, at the time of employment, pay to the treasurer of the pension fund a membership fee to be fixed by the board of trustees in an amount not exceeding twenty-five dollars. Each member shall be assessed and required to pay annually an amount not more than seven percent, to be determined by the board of trustees, upon the amount of annual salary paid to him, and such assessment shall be deducted and retained out of such salary in equal monthly installments. No assessment shall be made after retirement.

SECTION 2. AMENDMENT.) Section 40-46-06 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follow:

40-46-06. BOARD OF TRUSTEES - MANAGEMENT OF PENSION FUND - WHAT CONSTITUTES - OFFICERS - BOND OF AUDITOR - COMPENSATION.) The executive officer, the city auditor, the city attorney, and two persons elected by and from the members of the city employees' pension plan, which persons are currently being assessed, shall constitute the board of trustees for the management of the city employees' pension fund. No member shall be eligible for election until he or she has eight years of service as a city employee. The election shall be held on the second Tuesday in June of each year. Each elected member shall serve for a term of two years, except that at the first election one trustee shall be elected for a term of one year and the other for a term of two years. The terms of elected members shall commence on July first of each year. The executive officer shall be the president and the city auditor shall be the treasurer of the board. The faithful performance of the duties of the treasurer

shall be secured by his official bond as the city auditor. Such trustees shall receive no compensation for their services as members of the board.

SECTION 3. AMENDMENT.) Section 40-46-09 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-46-09. WHO MAY BE RETIRED ON PENSION - AMOUNT PAID TO RETIRING EMPLOYEE.) Any appointed full-time employee, who shall be a member of a city employees' pension fund, including but not limited to librarians and other employees of a public library, and full-time employees of a city recreation commission, of a city having an employees' pension fund who shall have served two hundred forty months or more, whether or not consecutive, as an employee and shall have reached the age of sixty years, or who, while employed by such city, shall suffer permanent mental or physical disability so that he is unable to discharge his duties, shall be entitled to be retired. Upon retirement, he shall be paid out of the pension fund of such city a monthly pension of not to exceed sixty percent of one-twelfth of his highest three-year average annual earnings as provided for in the plan adopted by the governing body of the city. If any member shall have served two hundred forty months in such city employment but shall not have reached the age of sixty years, he shall be entitled to retirement, but no pension shall be paid while he lives until he reaches the age of sixty years.

SECTION 4. AMENDMENT.) Section 40-46-13 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-46-13. PAYMENTS TO SPOUSE, CHILDREN AND SURVIVING PARENTS UPON DEATH OF ACTIVE OR RETIRED MEMBER.) Upon the death of any active or retired employee of a city maintaining an employees' pension fund under this chapter, leaving a spouse or minor child, or dependent father or mother surviving him or her, there shall be paid out of the fund as follows:

1. To the surviving spouse as long as he or she remains unmarried, a sum equal to two-thirds of the pension to which the employee would have been entitled, but not less than forty dollars per month;
2. If there is no surviving spouse, or if such spouse shall die or remarry, then to the dependent father and mother, if both survive, or to either dependent parent if one survives, the sum of forty dollars per month;
3. To the father or mother of each surviving child, if such parent survives, for the benefit of such surviving child, until he or she shall arrive at the age of eighteen years, a sum not to exceed twenty-five dollars per month, and in case no parent of any such surviving child survives,

then to the guardian of each surviving child a sum not to exceed twenty-five dollars per month until he or she shall arrive at the age of eighteen years. The aggregate of all such payments shall not exceed the amount provided for in the plan and in no event more than sixty percent of the highest three-year average earnings of such employee during the most recent two hundred forty months of his employment, if he was employed that long, and if not, during the total period of his employment, or the maximum amount fixed by the governing body by ordinance.

SECTION 5. AMENDMENT.) Section 40-46-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-46-20. EMPLOYEE ENTITLED TO REFUND FROM FUND OR PARTIAL RETIREMENT UPON TERMINATION OF EMPLOYMENT WITH CITY.) Any employee who shall have contributed to the city employees' pension fund, and who voluntarily and while in good standing as an employee of said city shall have left the employment of such city, shall be entitled, upon application at the time of such retirement to a refund of all contributions made by him without interest and exclusive of the membership fee, payable in a lump sum. If a participant dies and no dependent benefits are payable, his named beneficiary or estate shall receive his contributions without interest, less any benefit payments theretofore received. Any employee who shall have served one hundred eighty months or more, but less than two hundred forty months, and who shall have contributed to the city employees' pension fund, and who voluntarily and while in good standing as an employee of said city shall have left the employment of such city, shall be entitled to elect retirement instead of refund, but at a pension equal to the proportion of a full pension as herein provided which the total number of months employed under the plan bears to two hundred forty months, but no pension shall be paid while he lives until he reaches the age of sixty years.

SECTION 6. AMENDMENT.) Section 40-46-27 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-46-27. PENSION COST OF LIVING INCREASE.) In July of each year, the city employees' pension board may add, if found actuarially sound, a cost of living increase to the monthly amounts paid beneficiaries. The total monthly payment under this section shall not exceed sixty percent of the monthly salary average during the preceding thirty-six months for the same or comparable position in the city's employment service as held by the retiree in the last month of his employment.

Approved March 31, 1977

CHAPTER 389

SENATE BILL NO. 2265
(Lips)

TERMS OF OFFICE OF PARK COMMISSIONERS

AN ACT to amend and reenact section 40-49-05 of the North Dakota Century Code, relating to the term of office of members of boards of park commissioners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 40-49-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-49-05. BOARD OF PARK COMMISSIONERS IN CITY - TERM - TERM ON FIRST BOARD.) The powers of a park district in a city shall be exercised by a board of park commissioners consisting of five members. Members of the first board shall hold office as follows:

1. Three members until the third Tuesday in April in the year in which the next regular biennial city election is held.
2. Two members until two years from the date mentioned in subsection 1 of this section.

Thereafter, each commissioner shall hold office for four years from and after the third Tuesday in April following the date of his election and qualification and until his successor is elected and qualified. Members of existing boards of park commissioners shall be elected and hold office as follows:

3. If two members are to be elected at the next regular biennial city election, two members two years from the next regular biennial city election, and one member four years from the next regular biennial city election, then terms of office shall be as follows:
 - a. Current members shall serve until their current terms expire.
 - b. All members elected hereafter, other than those elected to fill an unexpired term according to section 40-49-09, shall hold office for four years.

4. If one member is to be elected at the next regular biennial city election, two members two years from the next regular biennial city election, and two members four years from the next regular biennial city election, the terms of office shall be as follows:
 - a. Current members shall serve until their current terms expire.
 - b. All members elected hereafter, other than those elected to fill an unexpired term according to section 40-49-09, shall hold office for four years.
5. If two members are to be elected at the next regular biennial city election, one member two years from the next regular biennial city election, two members four years from the next regular biennial city election, then terms of office shall be as follows:
 - a. Current members shall serve until their current terms expire.
 - b. At the next regular biennial city election, two members shall be elected, with the candidate receiving the highest number of votes to serve a four-year term, and the candidate receiving the second highest number of votes to serve a two-year term.
 - c. All members elected after the next regular biennial city election, other than those elected to fill an unexpired term according to section 40-49-09, shall hold office for four years.

Approved March 12, 1977

CHAPTER 390

HOUSE BILL NO. 1383
(Metzger)

PROJECTS FOR REVENUE BOND ISSUANCE

AN ACT to create and enact subsection 8 to section 40-61-08 of the North Dakota Century Code, relating to the issuance of revenue bonds by municipal parking authorities for parking projects; to amend and reenact section 40-57-02, subsection 3 of section 40-57-03, and section 40-61-10 of the North Dakota Century Code, relating to the financing of health care, parking, and pollution control projects used or useful in connection with revenue-producing enterprises by the issuance of municipal revenue bonds; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 40-57-02 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-57-02. "PROJECTS" AND "MUNICIPALITIES" DEFINED.) As used in this chapter, unless a different meaning clearly appears from the context, the term "municipality" shall include counties as well as municipalities of the types listed in section 40-01-01, subsection 1, and, in the case of parking projects, municipal parking authorities created pursuant to section 40-61-02; and the term "project" shall mean 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. Assembling, fabricating, manufacturing, mixing, or processing of any agricultural, mineral, or manufactured products, or any combination thereof.
2. Storing, warehousing, distributing, or selling any products of agriculture, mining, or manufacture.
3. Providing hospital, nursing home, or other health care facilities and service.

4. 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. Public vocational education.
6. Any other industry or business not prohibited by the Constitution or laws of the state of North Dakota.

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

SECTION 2. AMENDMENT.) Subsection 3 of section 40-57-03 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- * 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;

SECTION 3.) Subsection 8 to section 40-61-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

8. An authority shall also have power and is hereby authorized from time to time to issue revenue bonds in accordance with the provisions of chapter 40-57, but only for the purpose of financing a parking project in support of those projects referred to in subsection 3 of section 40-57-02. In the issuance of such bonds the authority shall have all of the powers granted to a municipality in chapter 40-57, and shall be controlled in the exercise of such powers only by the provisions of chapter 40-57, and not by any of the provisions of this chapter with reference to other bonds and notes of the authority.

SECTION 4. AMENDMENT.) Section 40-61-10 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-61-10. DEBT GUARANTEE.) Prior to the issuance of any bonds authorized by this chapter, except revenue bonds authorized in subsection 8 of section 40-61-08, the authority shall require

*NOTE: Subsection 3 of section 40-57-03 was also amended by section 1 of Senate Bill No. 2463, chapter 392.

that the payment of not less than ten percent of the principal and interest of the bonds issued for any project be guaranteed through the use of one or more of the following methods:

1. A contract of personal guarantee entered into between the authority, the bondholders, and at least three benefited property owners.
2. The guarantee of said payments by the municipality through the issuance of municipal bonds or other obligations, budgeting of current funds, the levy of taxes or special assessments or by any combination of these pursuant to and in accordance with the provisions of chapters 21-03, 40-22 to 40-27, 40-35, 40-40, 40-57, and of all other applicable laws now in force or hereinafter enacted.

SECTION 5. EMERGENCY.) This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved April 9, 1977

CHAPTER 391

SENATE BILL NO. 2233

(Committee on Political Subdivisions)

(At the request of Business and Industrial Development Department)

MUNICIPAL INDUSTRIAL DEVELOPMENT PROJECTS

AN ACT to amend and reenact subsection 1 of section 40-57-03 of the North Dakota Century Code, relating to municipal industrial development projects of cities and counties, and to amend and reenact section 40-57.1-02 of the North Dakota Century Code, relating to tax exemptions for new industries.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Subsection 1 of section 40-57-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- * 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 7 of this section;

SECTION 2. AMENDMENT.) Section 40-57.1-02 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-57.1-02. "PROJECTS" AND "MUNICIPALITIES" DEFINED.) As used in this chapter, unless a different meaning clearly appears from the context, the term "municipality" shall include counties as well as municipalities of the types listed in section 40-01-01, subsection 1, and the term "project" shall mean any real property, buildings and improvements on real property or the buildings thereon, and any equipment permanently located on such real property or in such buildings, which are used or useful in connection with revenue-producing

*NOTE: Subsection 1 of section 40-57-03 was also amended by section 1 of Senate Bill No. 2463, chapter 392.

enterprises, or any combination of two or more such enterprises, engaged or to be engaged in:

1. Assembling, fabricating, manufacturing, mixing, or processing of any agricultural, mineral, or manufactured products, or any combination thereof, including the retail sale of any such product by the enterprise that assembled, fabricated, manufactured, mixed, or processed it and the incidental sale of any service of a kind essential to the primary activities of the enterprise.
2. Storing, warehousing, distributing, or selling any products of agriculture, mining, or manufacturing, provided that "selling" shall not include the sale of any service except storing, warehousing, and distributing or as provided in subsection 1 nor shall it include the sale at retail of any product except as provided in subsection 1.

Approved April 19, 1977

CHAPTER 392

SENATE BILL NO. 2463
(Reiten)

MIDA FINANCING OF HEALTH CARE FACILITIES

AN ACT to amend and reenact sections 40-57-03, 40-57-04, 40-57-07, 40-57-14, and 40-57-18 of the North Dakota Century Code, relating to municipalities, certain municipal bonds, authorizing municipalities to enter into certain loan agreements, and relating to costs to be financed by certain municipal bonds; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 40-57-03 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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 of this section;
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;

*NOTE: Subsection 1 of section 40-57-03 was also amended by section 1 of Senate Bill No. 2233, chapter 391.

- * 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 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 to be used to pay costs of the project and providing for the repayment of the loan by the nonprofit corporation, 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,

*NOTE: Subsection 3 of section 40-57-03 was also amended by section 2 of House Bill No. 1383, chapter 390.

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 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 of the North Dakota Century Code and other applicable statutes shall apply; except that the municipality, in the lease 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 and financing of the project when constructed, may permit the lessee 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, whether or not the procedure followed by the lessee is in conformity with said chapter 48-02.

No municipality shall have the power to operate any project referred to in this chapter as a business or in any manner whatsoever, except as the lessor thereof. No debt on the general credit of the municipality shall be incurred in any manner for any purpose under the provisions of this chapter, except as otherwise provided by section 40-57-19. No municipality may pay out of its general fund,

or otherwise contribute to the cost of a project, nor can it use any land already owned by or in which the municipality has an interest, for the construction thereof of a project, except as otherwise provided by section 40-57-19.

SECTION 2. AMENDMENT.) Section 40-57-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-57-04. RESOLUTION AUTHORIZING PROJECT AND THE ISSUANCE OF REVENUE BONDS - 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. No election shall be required to authorize the use of any of the powers conferred by this chapter.

SECTION 3. AMENDMENT.) Section 40-57-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

* 40-57-07. COST OF PROJECT - HOW DETERMINED.) In determining the cost of a project, the governing body may include all cost and estimated cost of the issuance of the revenue bonds, all engineering, inspection, fiscal, and legal expense, any bond reserves and the interest which it is estimated will accrue during the construction period and for six months thereafter on money borrowed or which it is estimated will be borrowed pursuant to this chapter, and with respect to any hospital, nursing home, or other health care facilities comprising a project, the cost of retiring any existing indebtedness in connection with the project which the governing body of the municipality determines to be necessary or desirable and in furtherance of the public health or welfare, whether or not such existing indebtedness constitutes all or a portion of the cost being financed by the issuance of the bonds.

SECTION 4. AMENDMENT.) Section 40-57-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-57-14. COVENANTS THAT MAY BE INSERTED IN ORDINANCE OR RESOLUTION AUTHORIZING BONDS.) Any ordinance or resolution authorizing the issuance of bonds under this chapter to finance, in whole or in part, the cost of any project may contain covenants, notwithstanding that such covenants may limit the exercise of powers conferred by this chapter, as to:

1. The rents or payments to be charged with respect to the project;
2. The use and disposition of the revenues of said projects;
3. The creation and maintenance of sinking funds and the regulation, use, and disposition thereof;

*NOTE Section 40-57-07 was also amended by section 5 of Senate Bill No. 2375, chapter 216.

4. The creation and maintenance of funds to provide for maintaining the project and replacement of those properties which are subject to depreciation;
5. The purpose, or purposes, to which the proceeds of this sale of said bonds may be applied and the use and disposition of said proceeds;
6. The nature of mortgages or other encumbrances on the project made in favor of the holder or holders of such bonds, or a trustee therefor;
7. The events of default and the rights and liabilities arising thereon and the terms and conditions upon which the holders of bonds issued under this chapter may bring any suit or action on said bonds or on any coupons thereof;
8. The issuance of other or additional bonds or instruments payable from or constituting a charge against the revenue of said project;
9. The insurance to be carried upon the project and the use and disposition of insurance moneys;
10. The keeping of books of account and the inspection and audit thereof;
11. The terms and conditions upon which any or all of the bonds shall become or may be declared due before maturity and the terms and conditions upon which such declaration and its consequences may be waived;
12. The rights, liabilities, powers, and duties arising upon the breach by the municipality of any covenants, conditions, or obligations;
13. The vesting in a trustee or trustees of the rights to enforce any covenants made to secure, to pay, or in relation, to the bonds; the powers and duties of such trustee or trustees, and the limitation of liabilities thereof;
14. The terms and conditions upon which the holder or holders of the bonds, or the holders of any proportion or percentage of them, may enforce any covenants made under this chapter or any duties imposed thereby;
15. A procedure by which the terms of any ordinance or resolution authorizing bonds or of any other contract with bondholders, including, but not limited to, an indenture of trust or similar instrument, may be amended or abrogated, and the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

16. The subordination of the security of any bonds issued hereunder and the payment of principal and interest thereof, to the extent deemed feasible and desirable by the governing body, to other bonds or obligations of the municipality issued to finance the project or that may be outstanding when the bonds thus subordinated are issued and delivered.

Nothing in this section, or in this chapter, except as provided in section 40-57-19, shall authorize any municipality to do anything or for any purpose which would result in the creation or incurring of a debt or indebtedness or the issuance of any instrument which would constitute a bond or debt within the meaning of any provisions, limitation, or restriction of the constitution relating to the creation or incurring of a debt or indebtedness or the issuance of an instrument constituting a bond or debt.

SECTION 5. AMENDMENT.) Section 40-57-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-57-18. CONSTRUCTION.) The powers conferred by this chapter shall be in addition and supplemental to and not in substitution for, and the limitations imposed by this chapter shall not affect the powers conferred by, any other law. Revenue bonds may be issued under this chapter without regard to any other provisions of the laws of this state. The project may be financed or acquired, purchased, constructed, reconstructed, improved, bettered, and extended, and bonds may be issued under this chapter for said purposes, notwithstanding that any other law may provide for the financing, acquisition, purchase, construction, reconstruction, improvement, betterment, and extension of a like project or for the issuance of bonds for like purposes, and without regard to the requirements, restrictions, debt, or other limitations or other provisions contained in any other law, including but not limited to, any requirement for any restriction or limitation on the incurring of indebtedness or the issuance of bonds. In so far as the provisions of this chapter are inconsistent with any other law of this state, the provisions of this chapter shall be controlling with reference to the issuance of revenue bonds and the security therefor.

SECTION 6. EMERGENCY.) This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved April 20, 1977

CHAPTER 393

SENATE BILL NO. 2134
(Committee on Political Subdivisions)
(At the request of the Bank of North Dakota)

BANK PURCHASE OF MIDA REVENUE BONDS

AN ACT to amend and reenact section 40-57-10 of the North Dakota Century Code, relating to limitations on purchase of municipal industrial revenue bonds by North Dakota state and national banks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 40-57-10 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-57-10. SALE OF REVENUE BONDS.) Revenue bonds shall be sold at not less than ninety-five percent of par plus any accrued interest. Such bonds may be sold at private sale, or such bonds may be sold at public sale after notice of such sale has been published once at least five days prior to such sale in a newspaper circulating in the municipality, and in at least two financial newspapers published in Chicago, Illinois; in New York, New York; in Minneapolis, Minnesota; or in San Francisco, California. State or national banks may purchase bonds from each issue of revenue bonds issued under the provisions of this chapter in an amount not to exceed at any time twenty-five percent of the unimpaired capital and surplus of the bank.

Approved March 4, 1977

CHAPTER 394

SENATE BILL NO. 2532
(Morgan, Pietron)

REFUNDING BONDS FOR MIDA PROJECTS

AN ACT to create and enact a new section to chapter 40-57 of the North Dakota Century Code, relating to the authority of municipalities to issue refunding bonds with respect to municipal industrial development projects; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1.) A new section to chapter 40-57 of the North Dakota Century Code is hereby created and enacted to read as follows:

REFUNDING BONDS.)

1. Any municipality is authorized to provide for the issuance of refunding bonds to refund, in whole or in part, bonds previously issued by such municipality under the authority of this chapter for any of the following purposes:
 - a. To extend the maturities of the outstanding bonds;
 - b. To consolidate or restructure or reduce the debt service of the outstanding bonds; or
 - c. To remove covenants made with respect to the issuance of the outstanding bonds.
2. The principal amount of the refunding bonds may include:
 - a. The principal amount of the outstanding bonds to be refunded;
 - b. Any interest accrued or to accrue to the earliest or subsequent date of redemption, or maturity of the outstanding bonds to be refunded;
 - c. Any redemption premium required to be paid on the outstanding bonds to be refunded;

- d. Any expenses related to the issuance of the refunding bonds; and
 - e. Any interest on the refunding bonds to be paid with the proceeds of the refunding bonds.
3. In any case where the refunding bonds are issued and sold more than six months in advance of the date or dates determined by the issuer for the redemption or retirement of all of the outstanding bonds to be refunded, the proceeds of the refunding bonds, including any premium or accrued interest thereon, shall be deposited in escrow with a suitable bank or trust company, having its principal place of business within or without the state. Such escrowed proceeds shall be invested and reinvested in direct obligations of the United States or any agency or instrumentality of the United States, in any obligations of which the principal and interest are unconditionally guaranteed by the United States, in certificates of deposit or time deposits secured by direct obligations of the United States, or by obligations of which the principal and interest are unconditionally guaranteed by the United States. Funds other than proceeds of the refunding bonds, including moneys on hand in a bond fund or sinking fund maintained for the payment of the outstanding bonds to be refunded and not immediately needed for the payment of interest or principal due thereon, may likewise be deposited in the escrow fund and invested in the same manner as the proceeds of the refunding bonds. The principal of and earnings on the obligations or securities in the escrow fund may be used to retire or redeem the outstanding bonds, pay any principal of or interest on the refunding bonds, or pay any expenses relating to the retirement or redemption of the outstanding bonds or the issuance of the refunding bonds. Any proceeds of the refunding bonds or moneys in the escrow fund not expended as set forth in this section may be returned to the industrial or commercial enterprise as an overpayment of rentals or purchase price installments.

SECTION 2. EMERGENCY.) This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 31, 1977