

GOVERNMENTAL FINANCE

CHAPTER 285

HOUSE BILL NO. 1417
(Sorensen)

EVIDENCE OF INDEBTEDNESS REVIEW

AN ACT to provide for judicial review of proceedings by political subdivisions relating to the issuance of evidence of indebtedness.

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

SECTION 1. Proceedings to judicially confirm evidence of indebtedness proceedings. Any political subdivision of the state authorized to issue evidence of indebtedness, prior to or subsequent to adoption of any or all of the proceedings regarding the issuance of that evidence of indebtedness or proceedings relating to the payment of that evidence of indebtedness may commence a special proceeding in district court to have those proceedings judicially examined, approved, and confirmed or disapproved.

SECTION 2. Petition by political subdivision of the state for court to examine and approve evidence of indebtedness proceedings - Contents of petition. Any political subdivision of the state may file in the district court of any county in which the political subdivision is situated, in whole or in part, a petition, prior to or subsequent to issuance of any evidence of indebtedness, requesting that any or all of the proceedings regarding the issuance or payment of the evidence of indebtedness be examined, approved, and confirmed by the court. The petition must state the facts concerning the proceedings and that the petitioner is a political subdivision of the state.

SECTION 3. Hearing of petition - Notice of filing and hearing. The court shall fix the time for the hearing of the petition provided for in this Act and shall order the clerk of court to have published a notice of the filing of the petition, stating the time and place the court will hear the petition, and stating that any person interested in the proceedings for the issuance or payment of the evidence of indebtedness, on or before the day fixed for hearing of the petition, may answer the petition. The petition may be referred to and described in the notice as the petition of the named political subdivision requesting that the proceedings be examined, approved, and confirmed by the court. Notice must be given by publication in the official newspaper of the county in which the

petition is filed, once each week for two consecutive weeks. The hearing must be held, in the discretion of the court, not less than fifteen days nor more than sixty days after the last publication of the notice.

SECTION 4. Answer to petition - Defense by person interested. Any person interested in the proceedings for issuance or sale of the evidence of indebtedness or proceedings relating to the payment of the evidence of indebtedness may answer the petition. The provisions of title 28 and the North Dakota Rules of Civil Procedure relating to the answer to a complaint are applicable to an answer to a petition. The person answering the petition must be the defendant in the special proceeding and the political subdivision must be the plaintiff. Every material statement of the petition not specifically controverted by the answer, for the purpose of the special proceeding, is to be taken as true. Each person failing to answer the petition is deemed to admit as true all the material statements of the petition. The rules of pleading and practice provided by title 28 and the North Dakota Rules of Civil Procedure which are not inconsistent with the provisions of this Act are applicable to the special proceeding provided for in this Act.

SECTION 5. Powers of court upon trial - Amendment of petition. At the time and place for the hearing, the court shall find and determine whether the notice of the filing of the petition has been published. When the court has determined that it has jurisdiction to hear the petition, it shall proceed with the hearing and shall conduct the hearing as in the case of a trial of a civil action without a jury. The court shall examine into and determine the legality and validity of the proceedings and all matters affecting the legality or validity of proceedings for the issuance or payment of the evidence of indebtedness. The court shall disregard any error, irregularity, or omission which does not affect the substantial rights of the parties to the hearing. The court shall permit the petition to be amended so as to conform to the evidence and facts presented at the hearing.

SECTION 6. Conclusion of hearing - Findings - Decree - Costs of hearing - Filing copies of findings. Upon the conclusion of the hearing the court shall determine the legality and validity of the proceedings for the issuance or payment of the evidence of indebtedness and shall determine the validity and legality of any other matter properly before the court. The court shall prepare its findings of fact and conclusions of law and shall order that the decree of the court be entered.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 286

SENATE BILL NO. 2439
(Nething, Todd, Olson)

SECURITY PLEDGES

AN ACT to amend and reenact section 21-04-09 of the North Dakota Century Code, relating to financial institutions pledge of investment company shares in place of depository bond.

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

SECTION 1. AMENDMENT. Section 21-04-09 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-04-09. Pledge of security in place of depository bond. The board of any public corporation may accept from any financial institution, as security for repayment of deposits, a pledge of securities in lieu of a personal or surety bond. When securities are so pledged to the board of any public corporation, such board shall require security in the amount of one hundred ten dollars for every one hundred dollars of public deposits. Securities which shall be eligible for such pledge shall be bills, notes, or bonds issued by the United States government, its agencies or instrumentalities, all bonds and notes guaranteed by the United States government, federal land bank bonds, bonds, notes, warrants, certificates of indebtedness, insured certificates of deposit, shares of investment companies registered under the Investment Companies Act of 1940, and all other forms of securities issued by the state of North Dakota, its boards, agencies, or instrumentalities, or by any county, city, township, school district, park district, or other political subdivision of the state of North Dakota, whether payable from special revenues or supported by the full faith and credit of the issuing body, and bonds issued by any other state of the United States or such other securities approved by the banking board. Such securities may be delivered to and held for safekeeping by any financial institution, other than the depository, which the depository and the public corporation may agree upon, which financial institution prior thereto has been approved as a custodian for such purpose by the state auditor. Whenever any such securities are so deposited for safekeeping with any custodian, such custodian

shall issue a receipt therefor jointly to the depository and the public corporation.

Any financial institution pledging such securities, at any time it deems it advisable or desirable, and without the consent of the board of the public corporation, may substitute other eligible securities for all or any part of the securities so pledged. The securities so substituted shall, at the time of such substitution, have a market value at least equal to the market value of the securities released and delivered to the depository.

In the event of such substitution the holder or custodian of the pledged securities shall, on the same day, forward by registered or certified mail to the public corporation and the depository financial institution a receipt specifically describing and identifying both the securities so substituted and those released and returned to the depository financial institution.

No pledge of security or bond shall be required for any funds deposited with a financial institution to the extent that such deposits are insured by the federal deposit insurance corporation or the federal savings and loan insurance corporation or the national credit union association.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 287

SENATE BILL NO. 2285
(Lodoen)

BOND VALIDATION

AN ACT to amend and reenact section 21-09-05 of the North Dakota Century Code, relating to the validation of bonds issued by public bodies of the state prior to July 1, 1987.

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

SECTION 1. AMENDMENT. Section 21-09-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-09-05. Application of chapter. The provisions of this chapter relating to validation apply to all bonds issued and proceedings taken by any public body prior to July 1, ~~1983~~ 1987.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 288

HOUSE BILL NO. 1236
(Committee on State and Federal Government)
(At the request of the State Investment Board)

STATE INVESTMENT BOARD FUND

AN ACT to create and enact a new section to chapter 21-10 of the North Dakota Century Code, relating to investment costs; to amend and reenact sections 21-10-03, 21-10-06, and 21-10-10 of the North Dakota Century Code, relating to secretary of the state investment board, separate accounts, and cost of operation of the state investment board; to provide an effective date; and to provide an expiration date.

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

* SECTION 1. AMENDMENT. Section 21-10-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-10-03. Cooperation with Bank of North Dakota. Activities of the board, its agents, and its employees shall be coordinated with the Bank of North Dakota to the maximum extent practicable. The president of the Bank of North Dakota shall serve as secretary of the state investment board.

** SECTION 2. AMENDMENT. Section 21-10-06 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-10-06. Funds under management of board - Accounts. The board is charged with the investment of the following funds:

1. State bonding fund.
2. Teachers' fund for retirement, in accordance with section 15-39.1-26.
3. State fire and tornado fund.
4. Workmen's compensation fund.
5. Veterans' home improvement fund, in accordance with section 37-15-14.1.

* NOTE: Section 21-10-03 was repealed by section 14 of House Bill No. 1031, chapter 190.

** NOTE: Section 21-10-06 was also amended by section 8 of House Bill No. 1031, chapter 190.

6. National guard training area and facility development trust fund.
7. National guard tuition trust fund.

Separate accounts accounting shall be maintained for each of the above funds and the moneys or securities of the individual funds shall not be commingled. However, when it is deemed advantageous in the purchase, sale, or exchange of securities, securities belonging to one or more of the funds or the Bank of North Dakota may be purchased, sold, or exchanged as part of a single transaction. In the event of such sale, the respective funds shall immediately be credited with their proportionate share of the proceeds. In the event of such purchase or exchange, title to or credit for the securities shall be taken in the name of the individual funds, proportionate to their share of the total purchase price.

The board of university and school lands shall consult with the state investment board or the director thereof on investment policies, and the board of university and school lands may delegate authority to the state investment board or the investment director to make such purchases, sales, or exchanges on its behalf.

SECTION 3. A new section to chapter 21-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

Investment costs. Investment costs, such as investment counseling fees, trustee fees, custodial fees, performance measurement fees, and asset allocation expenses, charged by money management firms or investment consultants under contract with the state investment board must be paid directly out of the funds listed in section 21-10-06 by the fund incurring the expense.

SECTION 4. AMENDMENT. Section 21-10-10 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-10-10. State investment board fund - Cost of operation of board. The biennial costs of operation of the board and its agents in carrying out the provisions of this chapter, shall be estimated by the board and prorated among the various funds enumerated under section 21-10-06 in proportion to the services rendered for such funds. Such estimates shall be submitted to the office of the budget and appropriations for the operations of the investment board shall be made from the respective funds in accordance with such proration estimates. The proportion allocated for services rendered to funds under the control of the board of university and school lands shall be paid from its legislative appropriation. A special fund known as the "state investment board fund" must be established for the purpose of defraying administrative expenses of the state investment board and its agents in carrying out the provisions of this chapter. The administrative costs of operating the state investment board must be estimated biennially and presented to the office of management and budget in accordance with chapter 54-44.1.

The actual amount of administrative expenses incurred by the state investment board must be paid from the respective funds, without need for appropriation, to the state investment board fund in proportion to the services rendered for each fund as estimated by the state investment board. The funds necessary to pay all administrative expenses of the state investment board are hereby appropriated and must be paid directly from the state investment board fund by preparing an appropriate voucher and submitting the voucher to the office of management and budget.

SECTION 5. AMENDMENT. Section 21-10-10 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-10-10. State investment board fund - Cost of operation of board. The biennial costs of operation of the board and its agents in carrying out the provisions of this chapter, shall be estimated by the board and prorated among the various funds enumerated under section 21-10-06 in proportion to the services rendered for such funds. Such estimates shall be submitted to the office of the budget and appropriations for the operations of the investment board shall be made from the respective funds in accordance with such proration estimates. The proportion allocated for services rendered to funds under the control of the board of university and school lands shall be paid from its legislative appropriation. A special fund known as the "state investment board fund" must be established for the purpose of defraying administrative expenses of the state investment board and its agents in carrying out the provisions of this chapter. The administrative costs of operating the state investment board must be estimated biennially and presented to the office of management and budget in accordance with chapter 54-44.1. The actual amount of administrative expenses incurred by the state investment board must be paid from the respective funds, without need for appropriation, to the state investment board fund in proportion to the services rendered for each fund as estimated by the state investment board. The funds necessary to pay all administrative expenses of the state investment board must be paid from the state investment board fund under legislative appropriation authority.

SECTION 6. EFFECTIVE DATE - EXPIRATION DATE. Section 5 of this Act becomes effective on July 1, 1989. Section 4 of this Act is effective through June 30, 1989, and after that date is ineffective.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 289

HOUSE BILL NO. 1233
(Committee on Political Subdivisions)
(At the request of the Governor)

PRIVATE ACTIVITY BOND CEILING

AN ACT to provide a formula for allocating North Dakota's private activity bond ceiling under federal law among the governmental units in North Dakota having authority to issue private activity bonds; and to provide an effective date.

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

SECTION 1. Definitions. As used in this Act, unless the context clearly requires otherwise, the following definitions apply:

1. "Ceiling" means the dollar amount applicable to North Dakota for any calendar year for the issuance of tax-exempt private activity bonds, as determined under the Tax Reform Act.
2. "Governmental unit" means any political subdivision of North Dakota or other authority in the state, including the state or any of its agencies, instrumentalities, or authorities, having the authority to issue private activity bonds.
3. "Private activity bond" means a tax-exempt evidence of indebtedness which is a private activity bond under the Tax Reform Act.
4. "Tax Reform Act" means the Tax Reform Act of 1986 [Pub. L. 99-514] and any federal regulations issued thereunder relating to the allocation of North Dakota's ceiling for the issuance of tax-exempt private activity bonds.

SECTION 2. Allocation of ceiling. In lieu of the formula set out in the Tax Reform Act for allocating the ceiling among the state's governmental units, the governor shall, by executive order or proclamation, establish a different allocation formula which may allocate to a governmental unit a portion of the ceiling or may establish a procedure for a governmental unit to apply to the governor's office for an allocation by the governor within the

ceiling. The application established by the governor may include a request for the following information:

1. The name of the governmental unit applying for an allocation of the ceiling.
2. A description of the governmental unit's proposed project or purpose for which the private activity bonds are intended to be issued.
3. The location of the project authorized by the governmental unit.
4. The name and address of the project owner or operator and all principal users of the project or the manager or director of the program which is the purpose for which the private activity bonds are to be issued.
5. A certified copy of the inducement resolution adopted by the governmental unit under the Tax Reform Act approving the project or purpose and granting preliminary authorization for the issuance of the private activity bonds, or other preliminary approval of the issuance of the private activity bonds which is comparable to an inducement resolution.
6. A preliminary opinion of a qualified bond counsel which states that the proposed bond issue qualifies as a private activity bond under applicable federal law and, if the private activity bonds are issued, that the bonds must be within the ceiling for the interest on the bonds to be exempt from federal income taxation under the Tax Reform Act.
7. Evidence that all public hearing requirements concerning the proposed project or purpose have been met under state law and the Tax Reform Act.
8. The allocation of the ceiling requested by the governmental unit.

SECTION 3. Order in which allocations issued. Allocations of the ceiling may be made on the basis of the chronological receipt of completed applications or, if completed applications are received on the same day by the governor, according to the earliest inducement resolution date, or on a case by case basis without regard to the date of receipt of the application or to the date of the inducement resolution.

SECTION 4. Requirements of allocations. The governor may establish, by executive order or proclamation, other procedures and requirements for the proper allocation of the ceiling, which may include the following:

1. The procedure for notification of approval or disapproval of application for an allocation.
2. The period during which the private activity bonds must be issued under an allocation and a procedure for applying for an extension of that period.
3. A procedure for authorizing a carryforward to a governmental unit of all or a portion of the excess of North Dakota's ceiling for any calendar year over the aggregate amount of tax-exempt private activity bonds actually issued during that calendar year by governmental units, to the extent and for the period for which a purpose is eligible to be treated as a carryforward project under the Tax Reform Act.
4. Whether an allocation validly granted may be transferred between projects and purposes by governmental units.
5. A procedure for reapplication if a request for an allocation by a governmental unit has been disapproved.
6. A procedure for recapturing an allocation for which the period during which the allocation is valid has expired.
7. Any additional procedures or requirements which the governor determines to be necessary for the proper administration and to carry out the purposes of this Act.

SECTION 5. EFFECTIVE DATE. This Act becomes effective on January 1, 1988.

Approved April 15, 1987
Filed April 15, 1987