

# MUNICIPAL GOVERNMENT

## CHAPTER 487

SENATE BILL NO. 2332  
(Senator Keller)  
(Representative Gunsch)

### BUILDING REMOVAL TAX REQUIREMENTS

AN ACT to amend and reenact section 40-01-08 of the North Dakota Century Code, relating to the removal of a building when taxes and special assessments are due.

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

SECTION 1. AMENDMENT. Section 40-01-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-01-08. Removal of building when taxes and special assessments or share of bonded indebtedness are due - Lien - Penalty. No person shall remove a building from any lot or tract of land in any municipality, unless it is assessed as personalty or exempt from taxation, until after the taxes and special assessments then due have been paid, nor until the owner shall have paid into the sinking fund for the retirement of any bonded indebtedness of the municipality an amount equal to the just share of the tax which would then be required against the property in said the municipality to pay the principal outstanding, less amount in sinking funds, of the bonded indebtedness of such the municipality. The phrase "taxes and special assessments then due" means all taxes and special assessments that have been levied plus a pro rata estimated tax for the current assessment year. For property classified as residential, "special assessments then due" means the sum of the installments of special assessments certified to the county auditor for extension on the tax list plus the pro rata installment of the special assessment to be certified in the current assessment year. If the building is removed without the payment of the taxes and special assessments and pro rata share of bonded indebtedness, such the taxes, special assessments, and pro rata share of bonded indebtedness shall be a lien on the building notwithstanding its removal as well as upon the lot, lots, tract, or tracts of land from which the same building was removed. This section shall not apply where a building is removed to permit the erection or installation of improvements equal or greater in value than the building removed. Any person violating the provisions of this section is guilty of a class A misdemeanor.

Approved March 20, 1987  
Filed March 23, 1987

# CHAPTER 488

HOUSE BILL NO. 1521  
(C. Williams)

## MODERN COUNCIL CITY GOVERNMENT

AN ACT to amend and reenact sections 40-03.2-03 and 40-04.1-01 of the North Dakota Century Code, relating to procedures for a city to change to a modern council form of government.

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

SECTION 1. AMENDMENT. Section 40-03.2-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-03.2-03. Procedure when petition to change from council system of government is filed - Special election - Ballot. When a petition to change from the council system of government, together with the city auditor's certificate of sufficiency, is filed with the governing body of a municipality, the governing body shall call a special election at which only the question of changing from the council system of government will be submitted. The date of such election shall not be less than thirty days nor more than ninety days after the date of the auditor's certificate has been filed. The election shall be conducted, returns thereof made, and the result thereof declared in all respects as are other city elections. Notice of such election shall be given by the publication of the proposition to be voted upon, the places where the election will be held, and the date of the election, in each newspaper published in the city, not more than twenty days and not less than five days before the date of such election. The ballots to be used at the election provided for in this section shall be in substantially ~~one of~~ the following ~~forms~~ form:

Shall the city of ----- change from its organization under the council system of government and become a city under the modern council form of government with a five-man five-member (or seven-member, nine-member, or eleven-member) council?

Yes / /  
No / /

Shall the city of ----- change from its organization under the council system of government and become a city under the modern council form of government with a seven-man council?

Yes / /

No / /

Shall the city of ----- change from its organization under the council system of government and become a city under the modern council form of government with an eleven-man council?

Yes / /

No / /

SECTION 2. AMENDMENT. Section 40-04.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-04.1-01. City council - Who constitutes - Terms. The governing body of a city operating under the modern council form of government shall be the city council, which shall be composed of five members one of whom shall be the mayor all elected at large or a city council composed of seven, nine, or eleven members, four at least three of whom shall be elected by wards, and at least three of whom, including the one serving as mayor shall be elected at large. Candidates for the council shall run for either mayor or councilman but not both at the same time. The mayor shall be elected at large or, a city council composed of eleven members, seven of whom shall be elected by wards and four of whom, including the one serving as mayor, shall be elected at large. Candidates for the council shall run for either mayor or councilman but not both at the same time. The mayor shall be elected at large. When a city first adopts a modern council form of government in cities electing five council members, the candidates having the three highest number of votes shall be elected for a four-year term and the other two for a two-year term. In cities electing seven, nine, or eleven council members, the candidates, by means of their nominating petitions, must announce their intentions to seek a ward seat or an at-large seat, or the mayor's seat. A candidate seeking a ward seat shall be a resident of such ward. When a city first adopts a modern council form of government in cities electing seven, nine, or eleven members, the elected mayor candidate and the elected candidates from the four wards shall be elected for a four-year term and the three at-large elected candidates for a two-year term. When a city first adopts a modern council form of government in cities electing eleven members, the elected mayor candidate and the elected candidates from the seven wards shall be elected for a four-year term and the three at-large elected candidates for a two-year term. Thereafter the terms of members of the council shall be four years, or until their successors are elected and qualified. The city governing body shall allow council members who were previously elected to continue to hold office until their term expires. In that case, council members from the odd-numbered wards and at least two at-large council members must be elected to a four-year term at the first election, with the remainder of the council members being elected to four-year terms at the next regular city election.

Approved March 12, 1987

Filed March 16, 1987

## CHAPTER 489

SENATE BILL NO. 2444  
(Senator Mushik)  
(Representative Ulmer)

## COMMUNITY DEVELOPMENT BLOCK GRANT TRANSACTIONS

AN ACT to amend and reenact subsection 74 of section 40-05-01 of the North Dakota Century Code, relating to the powers of municipalities in administering community development block grant transactions.

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

SECTION 1. AMENDMENT. Subsection 74 of section 40-05-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

74. Community development block grant program. To loan or give grant money to and secure a mortgage from individuals, associations, or corporations and to purchase ownership shares in corporations or other business associations as provided through the procedures established by the state's community development block grant program established pursuant to the Housing and Community Development Act of 1974 [Pub. L. 93-383, 88 Stat. 633, 42 U.S.C. 5301 et seq.]. This power applies to all community development block grant transactions of the governing body, including any transactions prior to ~~March 22, 1985~~ July 1, 1987. A city is not lending its funds or extending its credit to any individual, association, or organization under this subsection and no general liability on the part of the city is incurred.

Approved April 1, 1987  
Filed April 2, 1987

## CHAPTER 490

HOUSE BILL NO. 1105  
(Committee on Political Subdivisions)  
(At the request of the Public Service Commission)

### CITY TRAFFIC REGULATION APPROVAL

AN ACT to amend and reenact subsection 14 of section 40-05-02 of the North Dakota Century Code, relating to public service commission approval of municipal traffic regulations.

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

\* SECTION 1. AMENDMENT. Subsection 14 of section 40-05-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14. Traffic regulation. To regulate, control, or restrict within designated zones, or congested traffic districts, except that the speed limit for vehicles on those streets designated as part of any state highway shall be as determined by mutual agreement with the state highway commissioner, the use of streets, alleys, or other public ways by various classes of traffic, except that any municipal regulations shall be ineffective as to common carriers licensed by this state under a certificate of public convenience and necessity until such regulations are approved by the public service commission.

Approved March 12, 1987  
Filed March 16, 1987

\* NOTE: Section 40-05-02 was also amended by section 25 of House Bill No. 1050, chapter 73.

## CHAPTER 491

HOUSE BILL NO. 1608  
(Knudson, Martin)

## CITY COUNCIL MEMBERS

AN ACT to amend and reenact sections 40-08-08 and 40-08-09 of the North Dakota Century Code, relating to filling vacancies on city councils and remuneration of city council members who serve as ambulance drivers.

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

SECTION 1. AMENDMENT. Section 40-08-08 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-08-08. Vacancies on council - How filled. If a vacancy occurs in the office of alderman by death, resignation, or otherwise, the city council may call a special city election to fill such vacancy for the unexpired term, or may, after fifteen days of the date of such vacancy appoint a person from the ward in which the alderman previously holding was elected or appointed to fill such vacancy until the next city election, at which election the unexpired term shall be filled. Upon petition of five percent of the qualified electors of such ward, as determined by the total number of votes cast in such ward in the last general election, the council shall call a special election to fill a vacancy occurring more than six months before the next city election, provided such petition has been submitted within fifteen days and before four p.m. of the fifteenth day of the date of such vacancy or of the vacancy being filled by appointment. If the petition is mailed it ~~shall~~ must be in the possession of the council or its representative before four p.m. on the fifteenth day after the vacancy occurs or after the vacancy was filled by appointment.

SECTION 2. AMENDMENT. Section 40-08-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-08-09. Restrictions on members of council. Ne

1. Except as provided in subsection 2, no member of the city council shall:

- 1- a. Be eligible to any other office the salary of which is payable out of the city treasury;
  - 2- b. Hold any other office under the city government; or
  - 3- c. Hold a position of remuneration in the employment of the city.
2. A member of the city council may serve as an ambulance driver, employed by the city or under a contract with the city, and be remunerated for those services.

Approved March 27, 1987  
Filed March 30, 1987

## CHAPTER 492

SENATE BILL NO. 2088  
(Lodoen)

## WATER PROJECT CONSTRUCTION AGREEMENTS

AN ACT to amend and reenact section 40-22-06, subsection 3 of section 61-16.1-09, and section 61-16.1-19 of the North Dakota Century Code, relating to agreements authorized to be entered into by cities and water resource districts for the construction of water projects.

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

SECTION 1. AMENDMENT. Section 40-22-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-22-06. Municipality may enter into agreement Agreement with highway department or state agency, county, water resource district, or federal agency for certain improvements. Any municipality in this state, through its governing body, may enter into an agreement with the highway department of the state of North Dakota, or with any state agency, the board of county commissioners, or water resource board of the county in which such the municipality is located, or both, or a joint water resource board which jurisdiction includes the municipality, or any federal agency, or any combination thereof, for the improvement of streets, sewers, and water mains, flood control projects, or of any of such facilities, under the terms of which the contract for such work is to be let by the state highway department or by agency, the board of county commissioners, or by both jointly, water resource board, joint water resource board, the federal agency, or any combination thereof, and for this purpose may create a special improvement district or districts. No such agreement shall be entered into until and unless the governing body certifies that it has obtained authority in accordance with this section to issue improvement warrants to finance the amount that the municipality will be obligated to pay thereunder, over and above the amount of any bonds which have been voted and any other funds which are on hand and properly available for such purpose. If any portion of the cost is to be paid by the levy of special assessments, the governing body shall by resolution declare the necessity of the improvement, setting forth its general nature, the approximate amount or fraction of the cost which the municipality will be



obligated to pay under the agreement, and the fact that this amount, or such lesser amount as the governing body may specify, is proposed to be paid by the levy of special assessments upon property determined to be benefited by the improvement. Any portion of the cost for which the municipality is obligated and which is not assessed upon benefited property or paid from other funds may be agreed to be paid by general taxation of all the taxable property in the municipality, if approval for the incurring of such debt is obtained and provision for the payment thereof is made in accordance with section 40-24-10. The resolution of necessity shall be published once each week for two consecutive weeks in the official newspaper of the municipality and protests may be filed and their sufficiency to bar the improvement shall be determined in accordance with sections 40-22-16 through 40-22-18; except that if under the terms of the resolution of necessity the portion of the cost of the project to be assessed upon benefited property does not exceed twenty-five percent of the total cost to be paid by the highway department or state agency, county, water resource board, joint water resource board, federal agency, and municipality, written protests by the owners of seventy-five percent of the property liable to be assessed for the improvement shall be required to bar further proceedings with reference thereto. In districts created under this section the governing body may dispense with all requirements, other than those herein stated, preliminary to the construction of an improvement by the special assessment method, including the preparation and approval of plans and specifications, advertisement for bids, and execution of contracts and bonds. At any time after the period for filing protests has expired and the protests filed, if any, have been heard and determined to be insufficient, the governing body may issue warrants on the fund of the improvement in the total amount for which the municipality is obligated under the agreement, and may cause to be certified to the special assessment commission that portion of the cost to be borne by the property owners within the district, and the assessment of such amount may be made and such warrants may be issued as in other cases provided for in chapters 40-23 and 40-24.

**SECTION 2. AMENDMENT.** Subsection 3 of section 61-16.1-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Accept funds and property or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purposes of aiding the construction or maintenance of water conservation, distribution, and flood control projects; and cooperate and contract with the state or federal government, or any department or agency thereof, or any municipality within the district, in furnishing assurances and meeting local cooperation requirements of any project involving control, conservation, distribution, and use of water.

**SECTION 3. AMENDMENT.** Section 61-16.1-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**61-16.1-19. Protest.** At the hearing, the affected landowners, and any county, township, or city to be assessed, shall also be informed when and where protests against such proposed project may be filed. Affected landowners, and the governing body of any county, township, or city to be assessed, shall then have thirty days after the date of the hearing to file written protests with the secretary of the water resource board, protesting the project. Any form of written objection which sufficiently indicates the intention of the writer shall be sufficient. Once the deadline for filing protests against the proposed project has been reached, no more protests may be filed and no person may withdraw his or her name from the list of those filing protests against the proposed project. Any withdrawal of a protest against the proposed project before that time must be in writing. When the protests have been filed and the deadline for filing protests has passed, the board shall immediately determine the sufficiency of the protests. If the board finds that fifty percent or more of the total votes, as determined by section 61-16.1-20, have protested against the proposed project, then the protests shall be a bar against proceeding further with the project. If the protests are found to be insufficient in number or invalid, the board shall issue an order establishing the proposed project and may proceed, after complying with the requirements of sections 61-16.1-21 and 61-16.1-22, to contract or provide for the construction or maintenance of the project in substantially the manner and according to the forms and procedure provided in title 40 for the construction of sewers within municipalities. The board may enter into an agreement with any federal or state agency under the terms of which the contract for the project is to be let by the federal agency, the state agency, or a combination thereof. In projects where there is an agreement that a party other than the board will let the contract, the board may dispense with all of the requirements of title 40. Upon making an order establishing or denying establishment of a project, the board shall publish notice of the order in a newspaper of general circulation in the area in which the affected landowners reside, and in the official county newspaper of each county in which the benefited lands are located. Any right of appeal shall begin to run on the date of publication of the notice. As used in this section, "board" means water resource board.

Approved March 26, 1987  
Filed March 30, 1987

## CHAPTER 493

HOUSE BILL NO. 1297  
(Moore)

## SPECIAL ASSESSMENT PROJECT BIDS

AN ACT to amend and reenact section 40-22-27 of the North Dakota Century Code, relating to rejection of bids on city projects for improvements by special assessment.

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

SECTION 1. AMENDMENT. Section 40-22-27 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-22-27. Rejection of bids - Readvertising for bids or construction by municipality without contract - Reevaluation of project. The governing body, if in its opinion the best interests of the municipality ~~will~~ be subserved thereby require, may reject any and all bids filed under the provisions of this chapter. If all bids are rejected, the governing body may:

1. Readvertise for new bids; or
2. Cause the work described in the plans, specifications, and estimates to be done directly by the municipality by the employment of labor and the purchase of materials required, or in any other manner which the governing body shall consider proper, and payment for such work may be provided through special assessments in the same manner as though the work had been performed under contract, provided this work shall amount to no more than fifty thousand dollars.
3. Cause the work described in the plans, specifications, and estimates to be reviewed and reevaluated by the engineer for the municipality so that the governing body may determine whether the entire project or only a portion of the project is feasible.

Approved March 20, 1987  
Filed March 23, 1987

## CHAPTER 494

HOUSE BILL NO. 1615  
(Representative R. Hausauer)  
(Senator Thane)

### BUSINESS DEVELOPMENT SPECIAL ASSESSMENTS

AN ACT to create and enact chapter 40-22.1 of the North Dakota Century Code, relating to city levy of special assessment taxes for improvements by special assessment for promotion of business activity and new business development.

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

SECTION 1. Chapter 40-22.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

40-22.1-01. **Power of municipalities to defray expense of improvements by special assessments for business promotion.** A municipality may defray the expense of improvements by special assessments for the promotion of business activity and new business development through any means not inconsistent with the purposes of this chapter including, but not limited to, advertising, public information, marketing, decoration of public places, promotion of public events, furnishing of music in any public place, providing professional management, planning and promotion, and the general promotion of trade activities. For purposes of this chapter, "municipality" means a city with a population of ten thousand or less. The governing body of the municipality may make and execute necessary or convenient agreements to exercise the powers and functions under this chapter including contracts with any entity. In planning an improvement project, under this chapter, the governing body may include any work and materials which are deemed necessary or reasonably incidental to the project.

40-22.1-02. **Improvement districts to be created.** For an improvement project under section 40-22.1-01 and defraying the costs of the project by special assessments, a municipality may create and alter a business improvement district by ordinance or resolution. The governing body of the municipality shall designate the district by an appropriate name and by a number distinguishing it from other improvement districts. A municipality may make and finance any improvement and levy special assessments for the improvement under any alternate procedure in this title. If the proposal for creation

of an improvement project under this chapter is made by any person, group, or entity that is not an officer, board, or agency of the municipality, the person, group, or entity shall file a bond or other sufficient security, payable to the municipality, to defray all costs incurred if the improvement project is later barred under section 40-22.1-08. The bond or other sufficient security must be filed with the city auditor prior to the initiation of any further proceedings under this chapter. The governing body of the municipality shall determine the amount and form of the bond or other sufficient security.

**40-22.1-03. Size and form of improvement district - Regulations governing.** Any business improvement district created by a municipality may embrace two or more separate property areas. A business improvement district must include all properties which in the judgment of the governing body, after consultation with the city auditor or city auditor's designee planning the improvement, will be benefited by the creation of all or a portion of the business improvement project. A district may be created without uniformity among the types, items, or quantities of work and materials to be used at particular locations throughout the district. The jurisdiction of a municipality to make, finance, and assess the cost of any improvement project may not be impaired by any lack of commonness, unity, or singleness of the location, purpose, or character of the improvement, or by the fact that any one or more of the properties included in the district is subsequently determined not to be benefited by the improvement, or by a particular portion of the improvement. Upon receipt of a petition signed by the owners of three-fourths of the area to be added to a business improvement district in which an improvement is proposed or created the governing body may enlarge the district. Any district created under this chapter shall include only property devoted, in whole or in part, to commercial or business use.

**40-22.1-04. Auditor's report required - Contents.** After a business improvement district has been created, the governing body of a municipality, to make any of the improvements set out in section 40-22.1-01 in the manner provided in this chapter, shall direct the city auditor for the municipality or some other person, group, or entity to prepare a report as to the general nature, purpose, and feasibility of the proposed improvement and an estimate of the probable cost of the work.

**40-22.1-05. Approval of plans, specifications, and estimates.** At any time after receiving the report required by section 40-22.1-04, the governing body may direct the city auditor or other person, group, or other entity preparing the report to prepare detailed plans and specifications concerning the improvement. The plans and specifications must be approved by a resolution of the governing body of the municipality. The plans, specifications, and estimates are the property of the municipality and must be filed in the office of the city auditor and shall remain on file in that office subject to inspection by the public.

**40-22.1-06. Resolution declaring improvements necessary - Contents of resolution - Publication of resolution.** After the report required by section 40-22.1-04 has been filed and approved, the governing body of the municipality shall declare by resolution that it is necessary to make the improvements. A resolution is not required if the governing body determines by resolution that a written petition for the improvement, signed by the owners of a majority of the area of the property included within a district, has been received. The resolution must refer intelligibly to the report and must include a map of the municipality showing the proposed business improvement district. The resolution must be published once each week for two consecutive weeks in the official newspaper of the municipality.

**40-22.1-07. Protest against resolution of necessity - Meeting to hear protest.** If, within thirty days after the first publication of the resolution declaring the necessity of a business improvement project, the owners of any property within the improvement district file written protest with the city auditor against the adoption of the resolution and describing the property which is the subject of the protest, the governing body of the municipality, at its next meeting after the expiration of the time for filing protests, shall hear and determine the sufficiency of the protests.

**40-22.1-08. Protest bar to proceeding - Invalid or insufficient protest - Payment of costs - Tax levy.** If the governing body finds the protest to contain the names of the owners of one-third or more of the area of the property included within the business improvement district, the protest bars proceeding further with the improvement project described in the plans and specifications. If the governing body finds the protest to contain the names of the owners of one-third or more of any separate property area included within the district, the protest bars proceeding with the applicable portion of the improvement project, but does not bar proceeding with the remainder of the improvement project or assessing the cost of the improvement project against other areas within the district, unless the protest represents one-third or more of the area of the entire district. Termination of proceedings does not relieve the municipality of responsibility for payment of costs incurred. The municipality is not responsible for payment of costs incurred if the improvement project is proposed by any person, group, or entity that is not an officer, board, or agency of the municipality. Payment of the costs incurred for such a barred improvement project must be as provided in section 40-22.1-02. For payment of costs incurred for a barred improvement project proposed by a municipality, the municipality may, if available funds are insufficient, issue its certificates of indebtedness or warrants, or levy a tax which shall be considered a tax for a portion of the costs of a special improvement project by general taxation within the meaning of section 57-15-10. If the protests are found to be insufficient or invalid, the governing body may cause the improvement to be made, levy and collect necessary assessments, and contract for the improvement and acquisition of necessary property or services.

40-22.1-09. Execution and filing of contracts. All contracts under this chapter must be entered into in the name of the municipality and must be executed for the municipality by the executive officer and countersigned by the auditor. After the contract is signed by the other party, it must be filed in the office of the city auditor.

40-22.1-10. Contracts - Conditions and terms. A contract executed under this chapter must require the work to be done pursuant to the plans and specifications on file in the office of the city auditor, subject to the approval of the city auditor acting for the municipality, and must provide:

1. The governing body may suspend the work at any time for improper performance and relet the contract or order reperformance of all or any of the work improperly done.
2. The time within which the work is to be completed.
3. The period of time for which the work must be guaranteed or warranted.
4. The fund from which the contract price is to be paid by the municipality.
5. That the consideration expressed in the contract is payable only in warrants drawn on the fund described in the contract.
6. That the municipality assumes and incurs no general liability under the contract.
7. That the failure of the city auditor to reject work and materials which are not up to specifications and acceptance of the job by the city auditor does not release the party from liability for any failure to perform work or furnish materials in accordance with the plans and specifications.

The city auditor acting for the municipality shall supervise and inspect the work during its progress. In addition to any rights which a municipality may have under its contract for establishment and operation of part or all of a business improvement after a contract has been awarded and before contract work has been completed a municipality may, with the consent of the other party and without advertising for bids, order additional work done by that party of the same character as that which was contracted for, whether within or without the improvement district for which the original contract was made, and upon the same terms and conditions specified in the original contract except as to time of performance, and at the same prices for the additional work; provided, that the total price payable to said party for such additional work may not exceed twenty percent of the amount estimated by the city auditor for the municipality to be payable for that character of work under the original contract.

40-22.1-11. Abbreviations, letters or figures may be used in proceedings for levy and collection of special assessments. In all proceedings for the levy and collection of special assessments abbreviations, letters and figures may be used to denote full or partial additions, lots, blocks, sections, townships, and ranges or years, days of the month, and amounts of money.

40-22.1-12. City auditor to keep complete record of improvements - Record as evidence. The city auditor shall keep a complete record of all the proceedings in the matter of making any improvements under this chapter. The records must include all reports and confirmations, all petitions, orders, appointments of commissioners, notices and proofs of publication, and resolutions of the governing body. The records, a certified transcript of the records, or the original papers, proofs, publications, orders, or resolutions on file in the auditor's office may be admitted in evidence in any court or place in this state without further proof as evidence of the facts they contain.

40-22.1-13. Defects and irregularities in improvement proceedings are not fatal. If the proceedings are for a lawful purpose, unaffected by fraud, and do not violate any constitutional limitation or restriction, defects or irregularities in proceedings under this chapter do not invalidate the proceedings. No action may be commenced or maintained and no defense or counterclaim in any action may be recognized in the courts of this state founded on any defects or irregularities in proceedings under this chapter, unless commenced within thirty days of the adoption of the resolution of the governing body awarding the sale of warrants to finance the improvement.

40-22.1-14. City auditor's statement of estimated cost required - Governing body to enter into contracts. Before adopting or rejecting any contract proposed under this chapter, the governing body shall require the city auditor for the municipality to make a careful and detailed statement of the estimated cost of the work. The governing body may not award the contract if the city auditor's estimate prepared under this section exceeds the estimate prepared under section 40-22.1-04. If all proposals are not rejected, the governing body shall award the contract to that person, firm, corporation or other entity best able to perform the work, upon the basis of cash payment for the work.

Approved April 7, 1987

Filed April 9, 1987



## CHAPTER 495

HOUSE BILL NO. 1536  
(Representatives O'Shea, Hill)  
(Senator Freborg)

## MUNICIPAL POWER AGENCIES

AN ACT to amend and reenact section 40-33.2-01 and subsection 2 of section 40-33.2-02 of the North Dakota Century Code, relating to municipal power agencies.

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

SECTION 1. AMENDMENT. Section 40-33.2-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-33.2-01. Findings and purpose. The purpose of this chapter is to provide a means for these North Dakota cities which now operate a utility pursuant to under 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~~ interests in such those 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 electrical 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.

SECTION 2. AMENDMENT. Subsection 2 of section 40-33.2-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

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.

Approved March 12, 1987  
Filed March 16, 1987

## CHAPTER 496

HOUSE BILL NO. 1308  
(R. Hausauer)

## ELECTRIC FACILITIES IN VACATED AREAS

AN ACT to amend and reenact section 40-39-04 of the North Dakota Century Code, relating to electric facilities existing on vacated streets and alleys.

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

SECTION 1. AMENDMENT. Section 40-39-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-39-04. Vacation of streets and alleys where sewers, water mains, pipes, and lines located - Conditions. No public grounds, streets, alleys, or parts thereof over, under, or through which ~~shall~~ have been constructed, lengthwise, any sewers, water mains, gas, or other pipes, or telephone ~~or telegraph~~, electric, or cable television lines, of the municipality or the municipality's grantees of the right of way therefor, ~~shall~~ may be vacated unless such the sewers, mains, pipes, or lines have been abandoned and are not in use, or unless such the grantee ~~shall consent~~ consents thereto, or unless perpetual easements for the maintenance of such the sewers, water mains, gas, or other pipes, or telephone ~~or telegraph~~, electric, or cable television lines have been given. Any vacation of areas within which are located electric facilities, whether underground or aboveground, is subject to the continued right of location of such electric facilities in the vacated areas.

Approved March 20, 1987  
Filed March 23, 1987

## CHAPTER 497

HOUSE BILL NO. 1116  
(Committee on Political Subdivisions)  
(At the request of the State Auditor)

## CITY BUDGETING AND BORROWING

AN ACT to amend and reenact sections 40-40-05 and 40-40-18 of the North Dakota Century Code, relating to budget requirements of municipalities and borrowing from various funds to meet emergencies; and to repeal section 40-40-17 of the North Dakota Century Code, relating to municipal transfers of appropriated line items.

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

SECTION 1. AMENDMENT. Section 40-40-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-40-05. Contents of preliminary budget statement. A preliminary budget shall be prepared as required by generally accepted accounting principles. The preliminary budget shall set forth specifically:

1. An estimated revenue schedule for the general fund of the municipality, including the following information:
  - a. The actual revenues received from all sources during the preceding fiscal year.
  - b. The estimated revenues from all sources for the current fiscal year.
  - c. An estimate of the probable amounts that may be received during the ensuing fiscal year from sources other than direct property taxes.
2. An appropriations schedule for the general fund of the municipality, including the following information:
  - a. The actual expenditures for all purposes for the preceding fiscal year.

- b. The estimated expenditures for all purposes for the current fiscal year.
- c. The estimated expenditures for all purposes for the ensuing fiscal year. Expenditures shall be segregated and itemized as follows:
- (1) Current expenditures. This shall include all maintenance and operation expenses, including all wages, salaries, and other items which comprise the current expenditures of the municipality. Although the whole amount paid for wages and salaries may be stated in one sum in the budget statement, there shall be on file with the governing body and open to public inspection a detailed statement showing the names of all persons receiving salaries or wages and the annual amount paid to each person. Municipalities may include an item of expense for equipment replacement, the amount of which may not exceed the total of the anticipated reasonable costs of depreciation for the ensuing fiscal year, based on current costs, on all equipment owned by the city, and no expenditure may be paid out of said equipment replacement fund except for the purchase of equipment to replace equipment which is worn out, damaged, or obsolete. The term "equipment" does not include structures or building fixtures. The expense for equipment replacement shall be placed in a separate fund. Current expenditures are categorized as general government, public safety, public works, health and welfare, culture and recreation, and other budgeted items of a current nature.
  - (2) Capital expenditures. This shall include all capital and betterment expenditures, including new construction, major repairs, and all other items which go toward adding to the permanent improvement and value of the municipal property an item which shall be placed in a separate fund as a building reserve. The building reserve fund item may not exceed the total of the anticipated reasonable costs of depreciation for the ensuing fiscal year, based on the original costs of all buildings and structures owned by the city, and no expenditures may be paid out of the said fund except for purchase, construction, or reconstruction to replace buildings or structures which are obsolete, substandard, or generally unfit for public use.

- (3) Debt service expenditures. This shall cover all debt retirement requirements, including all amounts required to retire floating indebtedness, bonded indebtedness, and to pay interest thereon during the current fiscal year.
3. A separate schedule for each special revenue fund of the municipality, including the following information:
    - a. The actual revenues received from all sources during the preceding fiscal year.
    - b. The estimated revenues from all sources for the current fiscal year.
    - c. An estimate of the probable amounts that may be received during the ensuing fiscal year from sources other than direct property taxes.
    - d. The actual expenditures for all purposes for the preceding fiscal year.
    - e. The estimated expenditures for all purposes for the current fiscal year.
    - f. The estimated expenditures for all purposes for the ensuing fiscal year.
  4. A separate schedule for each enterprise fund of the municipality, including the following information:
    - a. The estimated revenues for the current fiscal year.
    - b. The estimated revenues for the ensuing fiscal year.
    - c. The estimated expenditures for the current fiscal year.
    - d. The estimated expenditures for the ensuing fiscal year.
  5. The estimated cash balance standing to the debit or credit of the municipality at the end of the current fiscal year for the general fund, each special revenue fund, and each enterprise fund.
  - 6- A statement of all uncollected taxes due to the municipality-
  - 7- A statement of all uncollected special assessments due to the municipality-

- 8- A statement showing the amounts and terms of bond issues, certificates of indebtedness, and warrants or other debts to be taken care of by the levies for debt retirement.

**SECTION 2. AMENDMENT.** Section 40-40-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**40-40-18. Amounts taken from various funds and borrowings to meet emergency - Vote required - Contents of resolution.** Upon the happening of any emergency caused by the destruction or impairment of any municipal property necessary for the conduct of the affairs of the municipality, or by epidemic or threatened epidemic, or by the entry by a court of competent jurisdiction of a judgment for damages against the municipality, the governing body may meet any such emergency in the manner provided in this section. If there is a sufficient unexpended balance in any fund or funds ~~embraced within groups A or B~~ except funds established for debt retirement to provide for the emergency, the governing body, by a resolution adopted by the vote of two-thirds of the members present at any meeting, or, if the governing body consists of less than three members, by a unanimous vote of all the members thereof, may take the amount necessary to meet the emergency from any such fund or funds. If the municipality has not reached its debt limit, the governing body, by the vote required to take moneys from a designated fund, may order its executive officer and financial committee to borrow an amount sufficient to meet the emergency. Any amount so borrowed shall be for a time not to extend beyond the close of the fiscal year, and such amount and the interest thereon shall be a part of the next budget. The resolution authorizing any emergency expenditure shall recite the facts showing the existence of an emergency of the kind specified in this section.

**SECTION 3. REPEAL.** Section 40-40-17 of the North Dakota Century Code is hereby repealed.

Approved March 12, 1987  
Filed March 16, 1987

CHAPTER 498

SENATE BILL NO. 2300  
(Holmberg)

ELECTION OF PARK COMMISSIONERS

AN ACT to amend and reenact sections 40-49-05, 40-49-07, and 40-49-08 of the North Dakota Century Code, relating to coincidence of terms and election of office of park district commissioners and providing for sharing of costs of elections by cities and park districts.

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 - Terms.

- 1. The powers of a park district in a city shall be exercised by a board of park commissioners consisting of five members. Except as provided in subsection 2, each commissioner shall hold office for a term of four years and until a successor is elected and qualified. The term of office of a commissioner begins two weeks after the regular biennial city election at which the commissioner is elected.
- 2. Members of ~~the first~~ a newly created board shall hold office as follows:
  - a. Three members until ~~the third Tuesday in April in the year in which~~ two weeks after the next regular biennial city election is held.
  - b. Two members until two years from the ~~date~~ time mentioned in subdivision a.

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.



3. Members of existing boards of park commissioners which existed before July 1, 1987, shall be elected and hold office as follows-
- a- 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:
    - (1) Current members shall serve until their current terms expire.
    - (2) 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.
  - b- 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:
    - (1) Current members shall serve until their current terms expire.
    - (2) 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.
  - e- 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:
    - (1) Current members shall serve until their current terms expire.
    - (2) 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.
    - (3) 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 on the staggered basis in effect on June 30, 1986.

SECTION 2. AMENDMENT. Section 40-49-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-49-07. Election and qualification of members of board of park commissioners. The members of the board of park commissioners shall possess the qualifications of electors of the municipality city and shall be elected by the qualified electors of the park district. The members of the first board may be elected at any regular municipal city election or at a special election called for that purpose by the governing body of the municipality city. Thereafter, members of the board shall be elected at the regular municipal city elections. Such members shall qualify within ~~ten days~~ two weeks after their election by taking and filing with the city auditor the oath prescribed for civil officers. The board of park commissioners may enter into an agreement with the governing body of the city concerning sharing of election personnel, printing of election materials, and apportioning of election expenses.

SECTION 3. AMENDMENT. Section 40-49-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-49-08. Organization of board of park commissioners - Municipal City auditor to act as treasurer of board or board to appoint clerk. On the third Tuesday in April Two weeks after their election, the members of the board of park commissioners shall organize the board by selecting a president and a vice president. The city auditor of the municipality shall be ex officio treasurer of the park district or the board may appoint a clerk and such other employees as shall be deemed needed for the efficient conduct of the district's business and shall fix their compensation. The clerk shall take the oath prescribed for civil officers and shall obtain such bond as may be required by the board.

Approved March 20, 1987  
Filed March 23, 1987

## CHAPTER 499

HOUSE BILL NO. 1333  
(Representative Moore)  
(Senator Satrom)

## PARK DISTRICT CONTRACT BIDS

AN ACT to amend and reenact section 40-49-14 of the North Dakota Century Code, relating to bids on contracts let by a board of park commissioners.

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

SECTION 1. AMENDMENT. Section 40-49-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-49-14. When ye a and nay vote taken - Letting contracts - Debt limit - Bills, claims, and demands against board. Ye a and nay votes shall be taken on all propositions involving the expenditure of money, levying of taxes, or the issuance of bonds or certificates of indebtedness. Approval of an expenditure of money shall be recorded in the record of the board's proceedings and this shall be sufficient to indicate approval without requiring the members to sign or initial the voucher or order for payment. All contracts exceeding ten thousand dollars shall be let to the lowest responsible bidder after advertisement in the official newspaper of the municipality once each week for ~~three~~ two successive weeks. The board may reject any or all bids. All contracts shall be in writing and shall be signed by the president ~~and clerk~~ of the board or a designated representative and unless so executed, they shall be void. The debt of a park district shall not exceed one percent of the taxable property within the district according to the last preceding assessment. No bill, claim, account, or demand against the district shall be audited, allowed, or paid until a full, written, itemized statement has been filed with the governing body or unless otherwise authorized by the governing body pursuant to contract or other action. The governing body, in its discretion, may require the filing of any additional information which it may deem necessary to the proper understanding and audit of any claim or account and it may require the filing of a sworn statement in such form as it may prescribe or as noted below:

CERTIFICATE

I do hereby certify that the within bill, claim, account, or demand is just and true; that the money therein charged was actually paid for the purposes therein stated; that the services therein charged were actually rendered and of the value therein charged; and that no part of such bill, claim, account, or demand, has been paid; and that the goods therein charged were actually delivered and were of the value charged.

Sign here -----  
-----

If signed for a firm or company,  
show authority on this line.

Approved March 27, 1987  
Filed March 30, 1987

## CHAPTER 500

HOUSE BILL NO. 1671  
(Representatives Strinden, Hoffner)  
(Senators Lips, Satrom)  
(Approved by the Committee on Delayed Bills)

### PARK DISTRICT USER FEES

AN ACT to provide for collection of user fees by park districts and issuance of evidences of indebtedness in anticipation of user fee revenues.

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

SECTION 1. Park district authorized to collect user fees and issue evidences of indebtedness in anticipation of user fee revenues.

1. A board of park commissioners may prescribe and collect user fees for facilities or activities furnished by the park district and in anticipation of the collection of such revenues may issue evidences of indebtedness for the purpose of acquiring, constructing, improving and equipping parks and park and recreational buildings and facilities, and for the purpose of acquiring land for those purposes.
2. Evidences of indebtedness issued under this section are payable, as to principal and interest, solely from all or part of the revenues referred to in this section and pledged for such payment.
3. Notwithstanding any other provision of law, evidences of indebtedness issued under this section are fully negotiable, do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and together with interest thereon and income therefrom, are not subject to taxation by the state of North Dakota or any political subdivision of the state.
4. Evidences of indebtedness issued under this section must be authorized by resolution of the board of park commissioners and, notwithstanding any other provision of law, may be issued and sold in such manner and amounts, at such times, in such form, and upon such terms, bearing interest at such rate or rates, as may be determined in the resolution.

Approved March 27, 1987  
Filed March 30, 1987

## CHAPTER 501

HOUSE BILL NO. 1342  
(Representative Shaft)  
(Senator Holmberg)

## PLATTING TOWNSITES

AN ACT to provide for the platting of townsites; to amend and reenact sections 24-07-03 and 40-51.2-04 of the North Dakota Century Code, relating to references to platting laws; to repeal chapter 40-50 of the North Dakota Century Code, relating to the platting of townsites and the correction and vacation of plats; and to provide a penalty.

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

SECTION 1. Laying out townsites, additions, and subdivisions - Survey and plat required - Contents of plat. Any person desiring to lay out a townsite, an addition to a townsite, or a subdivision of land shall cause the land to be surveyed and a plat made of the land. The written plat must comply with the following:

1. The plat must describe particularly and set forth all the streets, alleys, and public grounds, and all outlots or fractional lots within or adjoining the townsite or jurisdiction, together with the names, widths, courses, boundaries, and extent of all such streets, alleys, and public grounds, and giving the dimensions of all lots, streets, alleys, and public grounds.
2. All lots and blocks, however designated, must be numbered in progressive numbers and their precise length, width, and area be stated on the map or plat. The streets, alleys, or roads which divide or border the lots must be shown on the map or plat.
3. The plat must indicate that all outside boundary monuments have been set, and indicate those interior monuments that have been set. There must be shown on the plat all survey and mathematical information, including bearings and distances, and data necessary to locate all monuments and to locate and retrace all interior and exterior boundary lines appearing on the plat. All interior lot lines and exterior boundary lines of the plat must be correctly

designated on the plat and show bearings on all straight lines, or angles at all angle points, and central angle, radius, and arc length for all curves. All distances must be shown between all monuments as measured to the hundredth of a foot [0.3048 centimeters]. All lot distances must be shown on the plat to the nearest hundredth of a foot [0.3048 centimeters] and all curved lines within the plat must show central angles, radii, and arc distances. A north arrow and the scale of the plat must be shown on the plat. The scale must be of a dimension that the plat may be easily interpreted. If a curved line constitutes the line of more than one lot in any block of a plat, the central angle for that part of each lot on the curved line must be shown.

4. Ditto marks may not be used on the plat for any purposes.
5. If a river, stream, creek, or lake constitutes a boundary line within or of the plat, a survey line must be shown with bearings or angles and distances between all angle points and their relation to a waterline, and all distances measured on the survey line between lot lines must be shown, and the survey line shown as a dashed line.
6. The unadjusted outside boundary survey and the plat survey data must close by latitude and departure with an error that does not exceed one part in ten thousand parts.
7. All rivers, streams, creeks, lakes, and all public highways, streets, and alleys of record must be correctly located and plainly shown and designated on the plat.
8. The names and adjacent boundary lines of any adjoining platted lands must be dotted on the plat.
9. The scale must be shown graphically and the basis of bearings must be shown. The plat must be dated as to the completion of the survey and preparation of the plat.
10. The purpose of any easement shown on the plat must be clearly stated. Building setbacks may not be shown on the plat.
11. Any plat which includes lands abutting upon any lake or stream must show, for the purpose of information only, a contour line denoting the present shoreline, water elevation, and the date of survey. If any part of a plat lies within the one hundred year floodplain of a river or stream as designated by the state water commission or federal emergency management agency, the mean sea level elevation of that one hundred year flood must be denoted on the plat by numerals. Topographic contours at a two-foot [60.96-centimeter] contour interval referenced to mean sea level must be shown for the portion of the plat

lying within the floodplain. All elevations must be referenced to a durable bench mark described on the plat together with its location and elevation to the nearest hundredth of a foot [0.3048 centimeters], which must be given in mean sea level datum.

SECTION 2. Monuments required for survey - Destruction. Durable ferromagnetic monuments must be set at all angle and curve points on the outside boundary lines of the plat. The monuments must be at least eighteen inches [45.72 centimeters] in length and at least one-half inch [1.27 centimeters] in sectional dimension. Any monument of the survey must bear the registration number of the land surveyor making the survey. Any person who disturbs, removes, or destroys any survey or reference monument or landmark evidencing a property line or cornerpost is guilty of a class B misdemeanor.

SECTION 3. Instruments of dedication - Certifying and recording plat. The plat must contain a written instrument of dedication, which is signed and acknowledged by the owner of the land. When there is divided ownership, there must be indicated under each signature the lot or parts of lots in which each party claims an interest. All signatures on the plat must be written with black ink, not ball point. The instrument of dedication must contain a full and accurate description of the land platted. The registered land surveyor shall certify on the plat that the plat is a correct representation of the survey, that all distances are correct and monuments are placed in the ground as shown, and that the outside boundary lines are correctly designated on the plat. The dedication and certificate must be sworn to before an officer authorized to administer an oath. The plat must be presented for approval to the governing body affected by the plat, if right-of-way dedication is required, together with an attorney's opinion of title stating the name of the owner of record.

SECTION 4. Recording plat. Upon final approval of a plat under section 11-33.2-11 or 40-48-21, the subdivider shall record the plat in the office of the register of deeds of the county where the plat is located. Whenever plat approval is required by a jurisdiction, the register of deeds may not accept any plat for recording unless the plat officially notes the final approval of the governing body of the jurisdiction and acknowledgement of the planning and zoning commission.

SECTION 5. Conveyance of land by noting or marking map or plat - Status as general warranty - Land for public use. When the plat has been made out and certified, acknowledged, and recorded as required by sections 1, 3, and 4, every donation or grant to the public, or to any individual, religious society, or corporation, marked or noted as such on the plat or map is a sufficient conveyance to vest the fee simple title in the parcel of land as designated on the plat. The mark or note made on a plat or map is for all intents and purposes a general warranty against the donors, their heirs and representatives, to the donees or grantees for the expressed and intended uses and purposes named in the plat and for



no other use or purpose. The land intended to be used for the streets, alleys, ways, or other public uses in any jurisdiction or addition thereto must be held in the corporate name of the jurisdiction in trust for the uses and purposes set forth and expressed and intended.

SECTION 6. Correction of plats - Declaration of necessity by resolution - Publication. If any part of any platted addition, outlot, or parcel of ground, in any jurisdiction, is found to be inadequately or erroneously described in the plat, or if the plat is in error or is deficient as to marked or scaled distances, angles, or descriptions, or has other defects which make it incorrect or deficient, the governing body of the jurisdiction, by resolution, may declare it necessary to correct the plat or plats or to replat the property. In that case, the resolution must be published in the official newspaper of the jurisdiction at least ten days before the meeting of the governing body to consider objections to the procedure.

SECTION 7. Resolution declaring necessity for correcting plat - Contents. The resolution mentioned in section 6 must set forth:

1. The description of the property affected.
2. The nature of the errors or defects.
3. An outline of the proposed corrections.
4. An estimate of the probable cost of having the corrections made.
5. Notice that any interested owner may file objections to the proposed work or to its cost and that the objections will be heard and considered at a meeting designated for that purpose.
6. The time the governing body of the jurisdiction will meet to consider all the objections.

SECTION 8. Governing body to order work done after hearing objections. After all the objections filed before the meeting have been heard and considered, the governing body of the jurisdiction, if it deems the work advisable and if the owners of the majority of the property affected have not filed a protest, shall order a land surveyor registered in this state to do the work in accordance with the resolution. If no interested owner has demanded the resurvey, the jurisdiction shall pay for the resurvey.

SECTION 9. Requirements governing land surveyor in correcting plat or in replatting - Affidavit and certification. The land surveyor designated to make the correction or to do the replatting shall follow the original hubs, stakes, monuments, and lines, and, by actual survey and measurements on the ground, shall make the plat conform to the divisions, subdivisions, blocks, lots, outlots,

pieces, and parcels of land as originally laid out. All lost or disputed points, lines, and angles must be determined by actual survey and made to conform with the original survey and must be marked on the ground in a manner customary and as is provided in sections 1 through 17. All numbers, letterings, and names of references to blocks, lots, outlots, additions, streets, avenues, and alleys, must be the same as on the original plat, and the revised and corrected plat must be a true plat of the survey as made originally. The registered land surveyor shall make an affidavit and certificate that the plat has been made to the best of the land surveyor's ability. The registered land surveyor shall affix that affidavit and certificate to the plat.

SECTION 10. Filing completed plat - Publication of notice of completed plat. The completed plat must be filed with the chief administrative officer of the jurisdiction, who shall publish a notice of the filing. The notice must stipulate that all interested parties may view the plat. The notice must set the date the governing body of the jurisdiction will meet to hear and consider objections to the survey as made and must be published at least ten days before the hearing.

SECTION 11. Resurveys to determine merits of objections. After hearing objections to the corrected plat, the governing body may order surveys and resurveys to determine the merit of any claim or objection. The governing body may adjourn the hearing until the necessary information is available.

SECTION 12. Acceptance or rejection of corrected plat - Recording - Effect of corrected plat. After completing the hearing, the governing body shall affirm or reject the corrected plat by resolution. If the plat is affirmed by a majority vote of the governing body, the plat must be recorded in the office of the register of deeds within sixty days and a blueprint of the plat must be filed in the office of the chief administrative officer. The plat so recorded and filed is the true and correct plat of the property described and supersedes all previous plats.

SECTION 13. Assessment of costs of new plat - Publication of assessments - Approval of assessments. The chief administrative officer shall assess the cost of making the plat against the properties benefited proportionally to the benefits received. The assessments are subject to the approval of the governing body of the jurisdiction after due consideration and hearing of all objections at a meeting designated for that purpose. At least ten days before the hearing, the assessments must be published in full by the chief administrative officer of the jurisdiction in the official newspaper of the jurisdiction. The chief administrative officer shall certify the assessments, when approved by the governing body.

SECTION 14. Notice of errors on recorded plat - Certificate by original surveyor. Notwithstanding section 6, if a plat, or what purports to be a plat, has been signed and filed in the office of the register of deeds of the county where the land is situated, and

the plat fails to identify or correctly describe the land to be so platted or subdivided, or to show correctly on its face the tract of land intended or purported to be platted or subdivided, or is defective because the plat or subdivision and the description of land purported to be so platted or subdivided is inconsistent or incorrect, the registered land surveyor who prepared the plat may sign a certificate stating the nature of the error, omission, or defect and stating the information that surveyor believes corrects the error, supplies the omission, or cures the defect, referring, by correct book and page, to the plat or subdivision and designating its name, if it has a name. The registered land surveyor shall date and sign the certificate.

**SECTION 15. Filing and recording of surveyor's certificate.**  
The register of deeds of the county in which the land platted or subdivided is located shall accept each certificate for filing and recording upon payment of a fee commensurate with the length of the certificate. Neither witnesses nor an acknowledgment is required on any such certificate, but it must be signed by the registered land surveyor and must include a statement that the signing surveyor holds valid registration in this state. The register of deeds shall make suitable notations on the record of the plat or subdivision to which the certificate refers to direct the attention of anyone examining the plat or subdivision to the record of that certificate. No such certificate has the effect of destroying or changing vested rights acquired based on an existing plat or subdivision despite errors, defects, or omissions.

**SECTION 16. Vacation of plat - Before and after sale of lots - Effect.**

1. Before the sale of lots, a plat, any part of a plat, a subdivision of land, or a townsite may be vacated by the proprietors by a written instrument declaring the plat to be vacated. The instrument must be signed, acknowledged or approved, and recorded in the office in which is recorded the instrument to be vacated. The signing and recording of that instrument destroys the force and effect of the recording of the plat which is so vacated and divests all public rights in the streets, alleys, easements, and public grounds laid out as described in the plat.
2. If lots have been sold, a plat or any part of a plat may be vacated by all owners of the lots in the plat joining in the signing of the instrument declaring the vacation. Vacation of streets and public rights is not effective without endorsement by the governing body that has the power to approve the plat. The endorsement must indicate the public rights to be vacated.

**SECTION 17. Action by register of deeds.** The register of deeds shall write in plain, legible letters, in black ink that is not ballpoint ink, across that part of a plat which has been vacated

the word "vacated" and shall make a reference on the plat to the volume and page in which the instrument of vacation is recorded.

**SECTION 18. AMENDMENT.** Section 24-07-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**24-07-03.** Section lines considered public roads - Closing same under certain conditions. In all townships in this state, outside the limits of incorporated cities, and outside platted townsites, additions, or subdivisions recorded pursuant to sections 1 through 17 of this Act or recorded prior to July 1, 1987, under former chapter 40-50, the congressional section lines shall be considered are public roads, to be opened open to the width of two rods thirty-three feet [10.06 meters] on each side of such section lines; where the same have not been opened already upon the order of the board having jurisdiction, without any survey being had, except where it may be necessary on account of variations caused by natural obstacles, subject, however, to all the provisions of this chapter in relation to assessments of damages.

The board of county commissioners, if petitioned by a person having an interest in the adjoining land or a portion thereof, are is authorized, after public hearing and a finding by the commissioners of public benefit, to close section line roads or portions thereof which are not used for ten years, are not traveled due to natural obstacles or difficulty of terrain, are not required due to readily accessible alternate routes of travel, or are intersected by interstate highways causing such section line road to be a dead end, providing the closing of such dead end section line road does not deprive adjacent landowner access to his property. After such section line roads are closed, they may be leveled and farmed by the adjacent landowners or tenants, only if the leveling or farming does not disturb, remove, or destroy any survey or property reference monument. However, if drainage is interfered with due to the farming operations, alternate means of drainage must be provided for by the landowners or tenants farming such lands.

**SECTION 19. AMENDMENT.** Section 40-51.2-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**40-51.2-04.** Exclusion by petition of owners and electors. Upon a petition signed by not less than three-fourths of the qualified electors and by the owners of not less than three-fourths in assessed value of the property in any territory within the limits of an incorporated municipality and contiguous or adjacent to such limits, the governing body of the municipality, by ordinance, may in its discretion, disconnect and exclude such territory from the municipality. The provisions of this This section, however, shall apply applies only to lands which that have not been platted under the provisions of either chapter 40-50 sections 1 through 17 of this Act or section 57-02-39, and where no municipal improvements have been made or constructed therein or adjacent thereto. Further, in the event any property for which exclusion is petitioned has been within the limits of an incorporated municipality for more than ten years prior thereto and, as of the time of filing the petition, is not platted and has no municipal improvements thereon, the governing body of the municipality shall may disconnect and exclude such territory by ordinance from the municipality.

**SECTION 20. REPEAL.** Chapter 40-50 of the North Dakota Century Code is hereby repealed.

Approved April 1, 1987  
Filed April 2, 1987

## CHAPTER 502

HOUSE BILL NO. 1071  
(Mertens)

### ANNEXATION NOTICE

AN ACT to amend and reenact sections 40-51.2-05, 40-51.2-07, and 40-51.2-11 of the North Dakota Century Code, relating to a requirement that all landowners in territory to be annexed or excluded by a city be notified by mail of the proceedings.

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

**SECTION 1. AMENDMENT.** Section 40-51.2-05 of the 1985 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 qualified electors until the petitioners have given notice of presentation of their petition by one publication in the official newspaper of the city as provided by section 40-01-09 and the governing body has caused notice of the time and place of consideration of the petition to be mailed to the owner of each parcel of real property within the area described in the petition at the person's last known mailing address. Said notice is not required to be sent to any owner of real property who signed a petition pursuant to section 40-51.2-03 or 40-51.2-04.

**SECTION 2. AMENDMENT.** Section 40-51.2-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**40-51.2-07. Annexation by resolution of municipal corporation.** The governing body of any municipality may adopt a resolution to annex contiguous or adjacent territory as follows:

1. The governing body of the municipality shall adopt a resolution describing the property to be annexed.
2. The governing body of the municipality shall cause said resolution together with a notice of the time and place it will meet to hear and determine the sufficiency of any written protests against such proposed annexation to be

published in the official newspaper once each week for two consecutive weeks. The governing body of the municipality shall cause notice to be mailed to the owner of each parcel of real property within the area to be annexed at the person's last known mailing address. The notice must inform landowners of the resolution, the time and place of hearing, and the requirement that protests must be filed in writing. The owners of any real property within the territory proposed to be annexed within thirty days of the first publication of such resolution may file written protests with the city auditor protesting against the proposed annexation. No state-owned property shall be annexed without the written consent of the state agency or department having control thereof. The governing body of the municipality, at its next meeting after the expiration of the time for filing such protests, shall hear and determine the sufficiency thereof.

3. In the absence of protests filed by the owners of more than one-fourth of the territory proposed to be annexed as of the date of the adoption of the resolution, the territory described in the resolution shall be included within and shall become a part of the city, and a copy of the resolution with an accurate map of the annexed area, certified by the executive officer of the municipality, shall be filed and recorded with the county register of deeds, whereupon annexation shall become effective. Annexation shall be effective for the purpose of general taxation on and after the first day of February next ensuing; provided, however, the municipal corporation shall continue to classify as agricultural lands for tax purposes all lands in the annexed area which were classified as agricultural lands immediately prior to such annexation proceedings until such lands are put to another use.

If the owners of one-fourth or more of the territory proposed to be annexed protest, the city may seek annexation by petition to the annexation review commission as hereinafter provided.

**SECTION 3. AMENDMENT.** Section 40-51.2-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**40-51.2-11. Notice required.** At the time he sets the time and place of hearing, the chairman of such commission shall direct the annexing municipality to cause a notice of such hearing and a copy of its petition to be published at least once a week for two successive weeks in the official newspaper of such municipal corporation, to mail a notice of the hearing and a copy of its petition to the owner of each parcel of real property in the area to be annexed at the person's last known mailing address, and to serve a copy of such notice and petition upon the chairman of the governing body of the county and township, if organized, wherein the territory to be annexed lies. Such hearing shall be held not less than thirty days after the first publication of such notice. Proof of publication and service of the notice and petition as required herein shall be filed with the chairman of such commission prior to the time of such hearing.

## CHAPTER 503

HOUSE BILL NO. 1637  
(Representative Strinden)  
(Senator Olson)

## NEW INDUSTRY TAX EXEMPTIONS

AN ACT to amend and reenact sections 40-57.1-02 and 40-57.1-04.1 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. Section 40-57.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-57.1-02. "Project" and "municipality" defined. As used in this chapter, unless a different meaning clearly appears from the context, the term "municipality" includes counties as well as municipalities of the types listed in subsection 4 of section 40-01-01, and the term "project" means 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 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" does not include the sale of any service except storing, warehousing, and distributing or as provided in subsection 1 nor does it include the sale at retail of any product except as provided in subsection 1.

SECTION 2. AMENDMENT. Section 40-57.1-04.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-57.1-04.1. Ad valorem and income tax exemption for existing structures - Requirements. Notwithstanding any other provision of this chapter, a project operator who otherwise qualifies under this chapter may, upon application consistent with the provisions of this chapter, receive a partial or complete exemption from income taxation and ad valorem taxation on any existing structure used in or necessary to the operation of the project for a period not exceeding five years from the date of commencement of project operations in the structure, which date shall be determined by the tax commissioner. No structure shall qualify for this exemption unless it has been vacant for at least the ~~three consecutive years~~ twelve months prior to the commencement of project operations.

Approved March 20, 1987  
Filed March 23, 1987



## CHAPTER 504

SENATE BILL NO. 2476  
 (Senators Satrom, Nething, Waldera)  
 (Representatives A. Hausauer, Goetz, Halmrast)

## CITY LODGING AND RESTAURANT TAX

AN ACT to create and enact a new section to chapter 40-57.3 of the North Dakota Century Code, relating to a city lodging and restaurant tax; and to amend and reenact sections 40-57.3-01, 40-57.3-02, 40-57.3-03, and 40-57.3-04 of the North Dakota Century Code, relating to a city lodging and restaurant tax.

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

SECTION 1. AMENDMENT. Section 40-57.3-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-57.3-01. City lodging tax - Imposition - Amount - Disposition. The governing body of any city may, by ~~resolution~~ ordinance, impose a city tax, not to exceed two percent, upon the gross receipts of retailers on the leasing or renting of hotel, motel, or tourist court accommodations within the city for periods of less than thirty consecutive calendar days or one month. The tax imposed by this ~~chapter~~ section shall be in addition to the state sales tax on rental accommodations provided in chapter 57-39.2 and any city which imposes the tax upon gross receipts described in this section shall deposit all proceeds in the city visitors' promotion fund. Moneys deposited in the city visitors' promotion fund shall be spent only as provided in this chapter. This chapter ~~shall not apply~~ applies to ~~home rule all cities~~ ~~and does not~~ limit the authority of a home rule city to levy any taxes authorized by other provisions of law.

SECTION 2. A new section to chapter 40-57.3 of the North Dakota Century Code is hereby created and enacted to read as follows:

City lodging and restaurant tax - Imposition - Amount - Disposition - Referral. In addition to the tax under section 40-57.3-01, the governing body of any city may, by ordinance, impose a city tax, at a rate not to exceed one percent, upon the gross receipts of retailers on the leasing or renting of hotel, motel, or

tourist court accommodations within the city for periods of less than thirty consecutive calendar days or one month and upon the gross receipts of a restaurant from any sales of prepared food or beverages, not including alcoholic beverages for consumption off the premises where purchased, which are subject to state sales taxes. For purposes of this section, "restaurant" means any place where food is prepared and intended for individual portion service for consumption on or off the premises and "prepared" includes heating prepackaged food. Accommodations, food, and beverages may all, each, or in any combination be subjected to the tax under this section, if all items in any category which are taxable under state law are taxable, except as otherwise provided in this section. The tax imposed under this section is in addition to state sales taxes on rental accommodations and restaurant sales and any city which imposes the tax under this section shall deposit all proceeds in the city visitors' promotion capital construction fund. Moneys deposited in the city visitors' promotion capital construction fund shall be spent only as provided in this chapter. An ordinance adopted under this section may not become effective sooner than sixty days after it is adopted by the governing body of the city. The provisions of chapter 40-12 with regard to referral of ordinances apply to an ordinance adopted under this section except that a petition to refer an ordinance adopted under this section must be presented to the governing body of the municipality before four p.m. on the sixtieth day after the ordinance described in the petition was adopted by the governing body of the municipality. Revenues from a tax imposed under this section may not be pledged under section 40-57.3-03 to payment of bonds or evidences of indebtedness until after the time has passed for filing a referral petition against an ordinance under this section or, if a referral petition is filed, until after the referral petition has been submitted to the vote of the electors of the municipality.

**SECTION 3. AMENDMENT.** Section 40-57.3-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-57.3-02. City visitors' promotion fund - City visitors' promotion capital construction fund - Visitors' committee - Establishment - Purpose. The governing body of any city which imposes a city tax pursuant to section 40-57.3-01 or section 2 of this Act shall, as appropriate, establish a city visitors' promotion fund, a city visitors' promotion capital construction fund, and a visitors' committee ~~which~~. The visitors' committee shall serve as an advisory committee to the city governing body in administering the proceeds from the ~~tax~~ taxes available to the city under this chapter. The moneys in the visitors' promotion fund shall be used generally to promote, encourage, and attract visitors to come to the city and use the travel and tourism facilities within the city. The moneys in the visitors' promotion capital construction fund shall be used generally for the purchase, equipping, improving, construction, maintenance, repair, and acquisition of buildings or property consistent with visitor attraction or promotion. The committee shall consist of five members appointed by the governing body of the

city. These appointees shall serve without compensation, except for reimbursement for necessary expenses. Committee members shall serve for a term of four years, except that two of those initially appointed shall be appointed for an initial term of two years. Vacancies shall be filled in the same manner as the initial appointment. The committee shall elect a chairperson and vice chairperson from among its members to serve for a term of two years.

**SECTION 4. AMENDMENT.** Section 40-57.3-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**40-57.3-03. Budget - Contracts - Bonds - Capital construction** ~~prohibited.~~ The governing body of the city shall annually set the budget, if any, under which the committee shall operate. The governing body of the city may contract with any person, firm, association, or corporation to carry out the purposes of the city visitors' promotion fund or the city visitors' promotion capital construction fund created by under section 40-57.3-02. The governing body of the city may irrevocably dedicate any portion of revenues from the tax authorized under section 2 of this Act and may authorize and issue bonds or other evidences of indebtedness in the manner prescribed by section 40-35-08 to be paid by those revenues for any purpose that moneys in the city visitors' promotion capital construction fund may be used; and such tax upon being pledged to payment of bonds or evidences of indebtedness issued pursuant to this section shall not be reduced or repealed by the governing body or by the electors of the municipality by any initiated amendment to or referendum of the ordinance referred to in section 2 of this Act, so long as any of such bonds or evidences of indebtedness remain outstanding. The proceeds from ~~this tax~~ the tax imposed under section 40-57.3-01 shall not be used for any type of capital construction or purchase of real property. The proceeds from the tax imposed under section 2 of this Act may be used only for payment of bonds issued, and the costs of issuance related thereto, under this section or capital construction, maintenance, and repair or acquisition of property consistent with the purposes of this chapter.

**SECTION 5. AMENDMENT.** Section 40-57.3-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

**40-57.3-04. Payment of tax - Collection by tax commissioner - Administrative expenses allowed - Rules.** ~~The tax taxes imposed by under this chapter is are~~ due and payable monthly and shall be collected monthly and administered by the state tax commissioner in accordance with the relevant provisions of chapter 57-39.2. The amount the tax commissioner ~~shall remit~~ remits monthly to each city as taxes collected for that city's visitors' promotion fund and visitors' promotion capital construction fund shall be reduced by three percent as an administrative fee necessary to defray the cost of collecting the ~~tax~~ taxes and the expenses incident to ~~such~~ collection. The administrative fee shall be deposited in the general fund in the state treasury. The tax commissioner shall adopt rules necessary for the administration of this chapter. The penalties and liabilities provided in sections 57-39.2-18 and 57-39.2-18.1 shall specifically apply to the filing of returns and administration of the ~~tax~~ taxes imposed ~~by~~ under this chapter.

Approved March 27, 1987  
Filed March 30, 1987

## CHAPTER 505

HOUSE BILL NO. 1594  
(Moore)

## SKYWAYS

AN ACT to amend and reenact sections 40-62-01, 40-62-02, 40-62-03, 40-62-04, 40-62-05, 40-62-06, and 40-62-07 of the North Dakota Century Code, relating to pedestrian malls and skyways.

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

SECTION 1. AMENDMENT. Section 40-62-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-62-01. Authority for pedestrian mall and skyway improvements. The governing body of any city may by resolutions create a special improvement district, order and approve plans and specifications, determine the necessity, advertise and enter into contracts, issue special improvement warrants and bonds, and levy special assessments for the improvement of one or more streets within its central business district to be regulated and maintained as a mall for primarily pedestrian use, or for the construction of skyways within its central business district, in the manner and upon the terms and conditions set forth in chapters 40-22 to 40-27, except as otherwise provided in this chapter. For the purposes of this chapter, "skyway" means an overhead walkway, whether open or enclosed, allowing pedestrian traffic between buildings separated by a street and all corridors, passageways, methods of ingress and egress, and other appurtenances necessary for an integrated and connected system.

SECTION 2. AMENDMENT. Section 40-62-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-62-02. Determination of necessity. The resolution determining the necessity of the improvement shall designate the portions of streets to be included within the mall or crossed by skyways and shall state the reason or reasons why such designation is deemed necessary. It is recognized by state policy that such necessity may exist in a city of substantial size for one or more of the following reasons:

1. Increases in population and in automobile usage and parking may create conditions of traffic congestion in the central business district during part or all of normal business hours which may be alleviated by a pedestrian mall or skyways.
2. Continued unlimited use of the designated street or streets may constitute a hazard to the safety of pedestrians and may impede necessary movement of police and fire equipment, ambulances, and other emergency vehicles.
3. Certain streets may be improved to their maximum width for sidewalk and roadway purposes, and may be incapable of further widening without taking buildings and improvements or substantially impeding the movements of pedestrians using the facilities of the central business district.
4. Orderly plans for urban renewal, rehabilitation, and redevelopment may require or may be facilitated by such an improvement.
5. Pedestrian use may be the highest and best use of such the designated streets, and the limitation of the use thereof by vehicles may be in the best interest of the city and of the optimum benefit to the properties in the improvement district, if:
  - a. Reasonably convenient alternate routes exist for vehicles going through the central business district to other parts of the city and the state;
  - b. The designated streets are not federal, state, or county highways, or, if they are, the making of the improvement is conditioned upon the relocation of such highways in the manner provided by law; and
  - c. Properties abutting on the designated streets can reasonably and adequately receive and deliver merchandise and materials either from other streets or alleys, or by providing for limited use of the designated streets for this purpose.
6. Construction of skyways may alleviate the conflict between pedestrian and motor vehicle traffic.

SECTION 3. AMENDMENT. Section 40-62-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-62-03. Plans and specifications. The plans and specifications shall provide for improvement of the designated streets or construction of skyways in a manner designed for use primarily for the free movement, safety, convenience, and enjoyment of pedestrians, whether or not part of the mall is made available for

emergency or other permitted vehicles. A mall improvement may provide for and include space for seating, cafe tables, shelters, trees, flower plantings, sculptures, newsstands, telephone booths, traffic signs, kiosks, fire hydrants, street lighting, ornamental lights, trash receptacles, display cases, marquees, awnings, canopies, overhead and underground radiant heating devices, walls, barriers, and all such other fixtures, equipment, facilities, and appurtenances as will in the governing body's judgment enhance the free movement, safety, convenience, and enjoyment of pedestrians and benefit the adjoining properties and the central business district and the city. Sidewalks may be constructed of concrete, bricks, asphalt tiles, blocks, granite sets, or such other materials or combinations of materials as the governing body may approve. The governing body may in its discretion narrow any roadway to be kept and maintained in the mall, may cause any street vaults to be reconstructed or removed, may construct crosswalks at any point within or at the ends of blocks, and may cause any roadway to curve and meander within the limits of the street, if deemed desirable to enhance the usefulness or appearance of the mall, regardless of any nonuniformity of street width or any curve or absence of curve in the centerline of the street. A skyway may be open or enclosed, heated or unheated, and may include any fixtures, equipment, facilities, and appurtenances the governing body determines will enhance the free movement, safety, convenience, and enjoyment of pedestrians and benefit the adjoining properties and the central business district and the city.

**SECTION 4. AMENDMENT.** Section 40-62-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**40-62-04. Jurisdiction to improve and regulate.** Upon hearing of any protests made by the owners of property within the improvement district in the time and in the manner provided by law, if the governing body shall determine the protests to be insufficient, it may proceed with the improvement as in the case of other special improvements; provided, that before so proceeding a certified transcript of the resolution of necessity shall be recorded in the office of the register of deeds, and any person aggrieved thereby may appeal therefrom to the district court of the county within twenty days after such recording, but only on the ground that the establishment of the mall or construction of the skyway in accordance with the resolution will unreasonably and arbitrarily obstruct the public use of and interest in the designated street or streets, or that such resolution has been adopted in a manner contrary to law. Notwithstanding the establishment of a mall or skyway, or the improvement of any street or any portion thereof as a part of such mall or skyway, or any limitation of the use thereof by vehicles, the city and the governing body shall retain at all times their police powers and other powers and rights pertaining thereto, and no such action shall constitute a vacation, in whole or in part, of any portion of a city street.

**SECTION 5. AMENDMENT.** Section 40-62-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-62-05. Regulations Use of mall or skyways. The jurisdiction of the city to make a pedestrian mall improvement or to construct skyways, when established in the manner provided by law, shall include jurisdiction to establish by ordinance and from time to time amend reasonable regulations for the use of the mall or skyways, conforming to the following provisions:

1. Vehicles shall be permitted to cross the mall at all street intersections except those of two streets each forming part of the mall.
2. The owners and occupants of all properties abutting upon the mall which have access to no other street or alley for delivery or receipt of merchandise and materials shall be permitted to use the mall during such days and hours, which need not be ordinary business days or hours, and in such manner and over such distance, as the governing body shall find to be reasonably adequate for this purpose and to be possible without interfering with use by pedestrians and by emergency and other vehicles for which use is permitted.
3. The regulations may permit use for any purpose or activity which will enhance the freedom of movement, safety, convenience, or enjoyment of pedestrians, including but not limited to, seating, sidewalk cafes, displays of merchandise, exhibits, advertising, telephones, transit, transit stops and shelters, newsstands, plantings, ornaments, protection from the elements, emergency vehicles, and police and fire equipment.
4. The governing body may adopt a use plan prepared by city officers or consultants, providing for the location and distribution within the mall of furniture, sculpture, pedestrian traffic control devices, trees, flowers, lighting or heating facilities, and any other equipment or properties placed or installed in the mall, whether owned by the city or others, and may license and regulate the operation and maintenance thereof.
5. Any furniture, structure, facility, or use located or permitted pursuant to such a plan shall not, by reason of such location or use, be deemed a nuisance or unlawful obstruction or condition, and neither the city nor any user acting under permit shall be liable for any injury to person or property therefor unless directly caused by its own negligence or that of its employees in the construction, maintenance, or operation of such furniture, structure, facility, or use.
6. The regulations for skyways may establish reasonable hours for use, permit closure during hours of nonuse, prohibit use of the skyway for nonpublic purposes, and provide

methods necessary to prevent vandalism and other unauthorized use of the skyway.

**SECTION 6. AMENDMENT.** Section 40-62-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**40-62-06. Maintenance and improvement.** A pedestrian mall or skyway established pursuant to this chapter may be maintained and the cost of such maintenance may be paid by all means permitted by law for other streets. The governing body may also annually cause an estimate to be made of the probable cost of ~~such~~ the maintenance during the current fiscal year, in excess of the cost of maintenance of streets of similar length, width, and location not used as a mall, and may assess ~~such~~ the excess cost of maintenance on properties within the improvement district; provided, that ~~such~~ the assessments ~~shall~~ may not exceed the special benefits determined to be received by ~~said~~ the properties from ~~such~~ the maintenance. The assessment list approved by the governing body ~~shall~~ must be filed in the office of the city auditor, who ~~shall~~ must mail to the street address of each lot and parcel proposed to be assessed, and to ~~such~~ any other address as may be requested in writing by the owner or occupant of any ~~such~~ a lot or parcel, a notice stating the amount proposed to be assessed upon ~~such~~ the lot or parcel, and that any objection thereto may be made in writing filed with the city auditor on or before a specified date, not less than twenty days after ~~such~~ the mailing, on which date, at a time and place specified in the notice, the governing body will consider all objections. At this meeting, or any adjournment thereof, the governing body shall review all assessments and hear all persons desiring to be heard, and may amend the assessments in such manner as it ~~shall~~ determine determines to be just and reasonable, and may confirm the same and direct the assessment list to be filed with the county auditor, and the assessments made therein to be extended upon the tax lists of the city for the current year and collected with interest and penalties as general taxes are collected and paid over to the city auditor and placed by ~~him~~ the auditor in a special fund to be used only for the purpose of current, reasonable and necessary expenses of the operation and maintenance of the mall or skyway.

**SECTION 7. AMENDMENT.** Section 40-62-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**40-62-07. Additional improvements and extensions.** An established pedestrian mall or skyway may be subsequently improved or extended by proceedings taken in the same manner as for its establishment, and ~~such~~ the improvements or extensions may thereafter be regulated and maintained as provided above.

Approved March 20, 1987  
Filed March 23, 1987