

MUNICIPAL GOVERNMENT

CHAPTER 387

HOUSE BILL NO. 1362
(Representatives Clayburgh, Glasheim)

CITY OFFICER SALARIES

AN ACT to amend and reenact section 40-13-04 of the North Dakota Century Code, relating to salaries of city officers and employees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-13-04 of the North Dakota Century Code is amended and reenacted as follows:

40-13-04. Salaries of officers and employees fixed by ordinance - Diminution of officers' salaries during term prohibited. Except where otherwise provided ~~in this code by law~~, any officer or employee of a ~~municipality shall~~ city is entitled to receive the salary, fees, or other compensation fixed by ordinance or resolution; ~~and after~~. After having been once fixed, the ~~same shall~~ salary of an officer may not be diminished to take effect during the term for which the officer was elected or appointed.

Approved April 11, 1995
Filed April 12, 1995

CHAPTER 388**HOUSE BILL NO. 1483**
(Representatives Kelsch, Mahoney)**MUNICIPAL COURT CASE TRANSFER TO DISTRICT COURT**

AN ACT to amend and reenact section 40-18-15.1 of the North Dakota Century Code, relating to the transfer of municipal court cases to district court.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁹⁴ SECTION 1. AMENDMENT. Section 40-18-15.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-18-15.1. Transfer to district court ~~if jury trial not waived~~ - Expenses of prosecution - Division of funds between city, county, and state. If a matter may be transferred to district court for trial only if within twenty-eight days after arraignment a the defendant has not waived requested in writing to transfer the case to district court and to exercise the defendant's right to a jury trial in a case where it otherwise exists, the matter must be transferred to the district court for trial. The city shall provide a prosecuting attorney and, in the case of any indigent defendant, a defense attorney. The city may contract with the county, state, or any individual or entity for prosecution or defense services. In the contract, the city, county, and state may agree to a division of all fees, fines, costs, forfeitures, and any other monetary consideration collected from cases transferred under this section, which must be paid to the city and county treasury at least once each quarter. At the time of payment, the district court shall account under oath to the city auditor and county for all money collected.

Approved March 7, 1995
Filed March 7, 1995

¹⁹⁴ Section 40-18-15.1 was also amended by section 1 of Senate Bill No. 2115, chapter 389.

CHAPTER 389**SENATE BILL NO. 2115**

(Judiciary Committee)

(At the request of the Supreme Court)

**MUNICIPAL COURT CASES TRANSFERRED TO
DISTRICT COURT**

AN ACT to amend and reenact section 40-18-15.1 of the North Dakota Century Code, relating to transfer of municipal court cases to district court when a jury trial is not waived.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁹⁵ **SECTION 1. AMENDMENT.** Section 40-18-15.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-18-15.1. Transfer to district court if jury trial not waived - Expenses of prosecution - Division of funds and expenses between city, county, and state. If within twenty-eight days after arraignment a defendant has not waived in writing the defendant's right to a jury trial in a case where it otherwise exists, the matter must be transferred to the district court for trial. The city shall provide a prosecuting attorney and, in the case of any indigent defendant, a defense attorney. The city may contract with the county, state, or any individual or entity for prosecution or defense services. In the contract, the city, county, and state may agree to a division of all fees, fines, costs, forfeitures, and any other monetary consideration collected from cases transferred under this section, which must be paid to the city and county treasury and state general fund at least once each quarter. At the time of payment, the clerk of district court shall account under oath to the city auditor ~~and~~, county, and state treasurer for all money collected. In the contract the city, county, and state may also agree to a division of expenses, including jury and witness expenses, related to cases transferred under this section. In the absence of a contract all fees, fines, costs, forfeitures, and any other monetary consideration collected from transferred cases must be deposited in the state general fund.

Approved April 13, 1995

Filed April 18, 1995

¹⁹⁵ Section 40-18-15.1 was also amended by section 1 of House Bill No. 1483, chapter 388.

CHAPTER 390

SENATE BILL NO. 2425

(Senator Grindberg)
(Representatives Austin, Carlson)

CITY ELECTIONS

AN ACT to amend and reenact sections 40-21-02 and 40-21-07 of the North Dakota Century Code, relating to biennial city elections; and to repeal section 40-21-03 of the North Dakota Century Code, relating to biennial municipal elections in council cities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-21-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-21-02. Elections in commission cities City elections - When held - Notice - Polls - Agreements with counties - Judges and inspectors. Biennial municipal elections ~~in cities operating under the commission system of government~~ must be held on the second Tuesday in June in each even-numbered year. Ten days' notice of the time and place of the election and of the offices to be filled at such election must be given by the city auditor by publication in the official newspaper of the city as provided by section 40-01-09. ~~The board governing body of a city commissioners~~ shall enter into an agreement with the governing body of the county or counties in which the city lies concerning the use of a single canvassing board, the sharing of election personnel, the printing of election materials, and the apportioning of election expenses. For ~~special~~ city elections ~~that are not held under an agreement with any county~~ the board governing body of the city ~~commissioners~~ shall appoint one inspector, two clerks, and two judges of election for each precinct in the city at least ten days before the election is held and the polls must be opened and closed as provided for the opening and closing of polls at statewide elections. For a ~~special~~ city election ~~that is not held under an agreement with any county~~ in a precinct in which ~~seventy-five or fewer~~ votes were cast in the last city election, the board governing body of the city ~~commissioners~~ may appoint one inspector and one judge. ~~Each precinct election judge, in a special city election, shall appoint a poll clerk who is a qualified elector of the precinct in which the poll clerk is to serve.~~

SECTION 2. AMENDMENT. Section 40-21-07 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-21-07. Petition for nomination of elective official in cities - Signatures required - Contents. A candidate for any public office in an incorporated city may be nominated by filing with the city auditor, at least sixty days and before ~~five~~ four p.m. on the sixtieth day before the holding of the election, a petition signed by not less than ten percent of the number of qualified electors who voted for that office in the last city election. If multiple candidates were elected to the office at the preceding city election at which the office was voted upon, the number of signatures must equal at least ten percent of the total votes cast for all candidates divided by the number of candidates that were to be elected to that office at that election. Qualified electors who sign a petition must reside within the ward or precinct in and for which that officer is to be elected, if the election is by wards, or within the corporate limits of the city if the officer is elected at large. In cities operating under

the commission system of government the required petition may be signed by the qualified electors at large residing within the city. If a petition is mailed, it must be in the possession of the city auditor before ~~five~~ four p.m. on the sixtieth day prior to the holding of the election. However, no more than three hundred signatures may be required, and the signatures may be on separate sheets of paper. Each qualified elector who signs a petition shall add to the petition the petitioner's mailing address. If a city election is not held in conjunction with a state or county election, a candidate may be nominated by filing the required petition with the city auditor at least thirty-three days and before ~~five~~ four p.m. on the thirty-third day before the holding of the election.

SECTION 3. REPEAL. Section 40-21-03 of the 1993 Supplement to the North Dakota Century Code is repealed.

Approved April 12, 1995

Filed April 13, 1995

CHAPTER 391

HOUSE BILL NO. 1122
(Representative Sandvig)

CITY ELECTION BALLOT STATEMENTS

AN ACT to amend and reenact sections 40-21-06 and 40-21-08 of the North Dakota Century Code, relating to statements of principles on city election ballots.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-21-06 of the North Dakota Century Code is amended and reenacted as follows:

40-21-06. Reference to party ballot or affiliation in petition of candidate for municipal office prohibited - ~~Principles stated.~~ No reference ~~shall~~ may be made to a party ballot nor to the party affiliation of a candidate in a petition to be filed by or in behalf of a candidate for nomination to a public office in any incorporated city in this state. ~~Such candidate may state or have stated after his name in any such petition; in not more than twenty words; any particular principle or principles of local administrative policy or policies he stands for and seeks election to promote.~~

SECTION 2. AMENDMENT. Section 40-21-08 of the North Dakota Century Code is amended and reenacted as follows:

40-21-08. Ballots in municipalities - ~~Make-up Arrangement.~~ The auditor of the city shall place only the names of the persons nominated upon the ballot. ~~Opposite or immediately below the name of each candidate on the ballot shall be placed the statement; in not more than twenty words; of the principle or principles which he seeks to promote. Such statement shall be set forth in the manner in which it appeared in the petition or petitions filed by or on behalf of such candidate, and in such manner as readily to inform the voter of the policy or policies upon which such candidate seeks election.~~ The auditor shall arrange the offices upon the ballot in the order in which they are named in the statutes. The auditor shall determine the arrangement of the names of the candidates upon the ballot shall be determined by lot by such auditor in the presence of the candidates or their representatives at noon on the day following the last day for the filing of the nomination papers.

Approved March 6, 1995
Filed March 6, 1995

CHAPTER 392**HOUSE BILL NO. 1359**

(Representatives Poolman, Clayburgh, Glassheim)
(Senators Holmberg, St. Aubyn)

SPECIAL ASSESSMENT DEPRECIATION SCHEDULES

AN ACT to amend and reenact section 40-23-19 of the North Dakota Century Code, relating to a depreciation schedule for special assessments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-23-19 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-23-19. Assessments on annexed property for previous benefits. Any property that was outside the corporate limits of the municipality at the time of contracting for an improvement, which is benefited by the improvement and is subsequently annexed to the municipality, may be assessed for the improvement subject to the same conditions and by the same procedure as provided in section 40-23-18. The property that is benefited may also be assessed for any improvement, within or outside the corporate limits, which is determined by the governing body and the special assessment commission to benefit property that was outside the corporate limits at the time of contracting for the improvement, whether or not an improvement district was previously created for the improvement. For this purpose the governing body may create one or more improvement districts comprising all or part of the annexed territory. The governing body may provide for the levy of special assessments upon such property in the manner provided in this title, but may dispense with the requirements of this title as to the adoption of a resolution of necessity and the advertisement and award of a contract for the improvement. Assessment proceedings under this section are valid notwithstanding any failure of the previous proceedings to comply with the provisions of law regarding improvements to be financed by special assessments. The cost of any street improvement project that is subsequently special assessed may be the sinking fund depreciated cost based on the applicable life cycle for the type of street improvement as determined by the city engineer governing body may use a reasonable depreciation schedule for the improvement in determining the amount of any special assessment subsequently levied under this section.

Approved March 10, 1995
Filed March 13, 1995

CHAPTER 393**HOUSE BILL NO. 1275**

(Representatives Berg, Keiser)

PAYMENTS IN LIEU OF TAXES ALLOCATION

AN ACT to amend and reenact section 40-57.1-03 of the North Dakota Century Code, relating to the distribution of payments in lieu of taxes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁹⁶ **SECTION 1. AMENDMENT.** Section 40-57.1-03 of the 1994 Special Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-57.1-03. Municipality's authority to grant tax exemption or payments in lieu of taxes - Notice to competitors - Limitations. After negotiation with a potential project operator, a municipality may grant a partial or complete exemption from ad valorem taxation on all buildings, structures, fixtures, and improvements used in or necessary to the operation of a project for a period not exceeding five years from the date of commencement of project operations. A municipality may also grant a partial or complete exemption from ad valorem taxation on buildings, structures, fixtures, and improvements used in or necessary to the operation of a project that produces or manufactures a product from agricultural commodities for all or part of the sixth year through the tenth year from the date of commencement of project operations.

In addition to, or in lieu of, a property tax exemption granted under this section, a municipality may establish an amount due as payments in lieu of ad valorem taxes on buildings, structures, fixtures, and improvements used in the operation of a project upon which initial construction is begun after June 30, 1994. The governing body of the municipality shall designate the amount of the payments for each year and the beginning year and the concluding year for payments in lieu of taxes, but the option to make payments in lieu of taxes under this section may not extend beyond the twentieth year from the date of commencement of project operations. To establish the amount of payments in lieu of taxes, the governing body of the municipality may use actual or estimated levels of assessment and taxation or may establish payment amounts based on other factors. The governing body of the municipality may designate different amounts of payments in lieu of taxes in different years to recognize future project expansion plans or other considerations.

By November first of each year, the municipality that granted the option to make payments in lieu of taxes shall certify to the county auditor the amount of payments in lieu of taxes due under this section in the following year. After receiving the statement from the municipality, the county auditor shall certify the payments in lieu of taxes to the county treasurer for collection at the time when, and

¹⁹⁶ Section 40-57.1-03 was also amended by section 1 of Senate Bill No. 2322, chapter 394.

in the manner in which, ad valorem taxes must be certified. Upon receipt by the county treasurer of the amount of payments in lieu of taxes under this section, the county treasurer shall apportion and distribute that amount to taxing districts on the basis on which the general real estate tax levy is apportioned and distributed. The municipality may enter into a written agreement with the local school district and any other local taxing districts that wish to enter the agreement for an alternate method of apportionment and distribution. If such an agreement is entered into, the county treasurer shall apportion and distribute the money according to the written agreement. All provisions of law relating to enforcement, administration, collection, penalties, and delinquency proceedings for ad valorem taxes apply to payments in lieu of taxes under this section. However, the discount for early payment of taxes under section 57-20-09 does not apply to payments in lieu of taxes under this section. The buildings, structures, fixtures, and improvements comprising a project for which payments in lieu of taxes are allowed under this section must be excluded from the valuation of property in the taxing district for purposes of determining the mill rate for the taxing district.

Negotiations with potential project operators for tax exemption or payments in lieu of taxes must be carried on by the city council or commission if the project is proposed to be located within the boundaries of a city, and by the board of county commissioners if the project is proposed to be located outside the corporate limits of any city. A partial exemption must be stated as a percentage of the total ad valorem taxes assessed against the property. Unless the governing body of the municipality determines that there is no existing business within the municipality for which the potential project would be a competitor, the potential project operator shall publish two notices to competitors, the form of which must be prescribed by the tax commissioner, of the application for tax exemption or payments in lieu of taxes in the official newspaper of the municipality at least one week apart. The publications must be completed not less than fifteen nor more than thirty days before the governing body of the municipality is to consider the application. The municipality shall determine whether the granting of the exemption or payments in lieu of taxes, or both, is in the best interest of the municipality, and if it so determines, shall give its approval.

Approved March 14, 1995
Filed March 14, 1995

CHAPTER 394**SENATE BILL NO. 2322**

(Senators Heinrich, Thane)

**TAX EXEMPTION DECISION PARTICIPATION BY
POLITICAL SUBDIVISIONS**

AN ACT to amend and reenact section 40-57.1-03 of the North Dakota Century Code, relating to inclusion of school board and township representatives in deliberations on granting property tax exemptions or payments in lieu of taxes for new industries; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁹⁷ **SECTION 1. AMENDMENT.** Section 40-57.1-03 of the 1994 Special Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-57.1-03. Municipality's authority to grant tax exemption or payments in lieu of taxes - Notice to competitors - Limitations. After negotiation with a potential project operator, a municipality may grant a partial or complete exemption from ad valorem taxation on all buildings, structures, fixtures, and improvements used in or necessary to the operation of a project for a period not exceeding five years from the date of commencement of project operations. A municipality may also grant a partial or complete exemption from ad valorem taxation on buildings, structures, fixtures, and improvements used in or necessary to the operation of a project that produces or manufactures a product from agricultural commodities for all or part of the sixth year through the tenth year from the date of commencement of project operations.

In addition to, or in lieu of, a property tax exemption granted under this section, a municipality may establish an amount due as payments in lieu of ad valorem taxes on buildings, structures, fixtures, and improvements used in the operation of a project upon which initial construction is begun after June 30, 1994. The governing body of the municipality shall designate the amount of the payments for each year and the beginning year and the concluding year for payments in lieu of taxes, but the option to make payments in lieu of taxes under this section may not extend beyond the twentieth year from the date of commencement of project operations. To establish the amount of payments in lieu of taxes, the governing body of the municipality may use actual or estimated levels of assessment and taxation or may establish payment amounts based on other factors. The governing body of the municipality may designate different amounts of payments in lieu of taxes in different years to recognize future project expansion plans or other considerations.

By November first of each year, the municipality that granted the option to make payments in lieu of taxes shall certify to the county auditor the amount of

¹⁹⁷ Section 40-57.1-03 was also amended by section 1 of House Bill No. 1275, chapter 393.

payments in lieu of taxes due under this section in the following year. After receiving the statement from the municipality, the county auditor shall certify the payments in lieu of taxes to the county treasurer for collection at the time when, and in the manner in which, ad valorem taxes must be certified. Upon receipt by the county treasurer of the amount of payments in lieu of taxes under this section, the county treasurer shall apportion and distribute that amount to taxing districts on the basis on which the general real estate tax levy is apportioned and distributed. All provisions of law relating to enforcement, administration, collection, penalties, and delinquency proceedings for ad valorem taxes apply to payments in lieu of taxes under this section. However, the discount for early payment of taxes under section 57-20-09 does not apply to payments in lieu of taxes under this section. The buildings, structures, fixtures, and improvements comprising a project for which payments in lieu of taxes are allowed under this section must be excluded from the valuation of property in the taxing district for purposes of determining the mill rate for the taxing district.

Negotiations with potential project operators for tax exemption or payments in lieu of taxes must be carried on by the city council or commission if the project is proposed to be located within the boundaries of a city, and by the board of county commissioners if the project is proposed to be located outside the corporate limits of any city. A partial exemption must be stated as a percentage of the total ad valorem taxes assessed against the property. Unless the governing body of the municipality determines that there is no existing business within the municipality for which the potential project would be a competitor, the potential project operator shall publish two notices to competitors, the form of which must be prescribed by the tax commissioner, of the application for tax exemption or payments in lieu of taxes in the official newspaper of the municipality at least one week apart. The publications must be completed not less than fifteen nor more than thirty days before the governing body of the municipality is to consider the application. The municipality shall determine whether the granting of the exemption or payments in lieu of taxes, or both, is in the best interest of the municipality, and if it so determines, shall give its approval.

During deliberation of a property tax exemption or the option to make payments in lieu of taxes under this chapter, a municipality must include, as nonvoting ex officio members of its governing body, a representative appointed by the school board of each school district affected by the proposed action and a representative appointed by the board of township supervisors of each township affected by the proposed action.

SECTION 2. EXPIRATION DATE. This Act is effective through July 31, 1997, and after that date is ineffective.

Approved March 10, 1995
Filed March 13, 1995

CHAPTER 395**SENATE BILL NO. 2353**

(Senators Nething, Robinson, Wanzek)
(Representatives Hanson, Kroeber, Sabby)

JOINT JOB DEVELOPMENT AUTHORITIES

AN ACT to create and enact a new section to chapter 40-57.4 of the North Dakota Century Code, relating to joint job development authorities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 40-57.4 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

Joint job development authority. The governing bodies of a city and one or more other political subdivisions, by resolution, may create a joint job development authority. If the authority is created, the governing bodies of the political subdivisions shall appoint a board of directors in the size and manner established in the resolution. The resolution must include provision for discontinuing the authority by the governing bodies. If the authority is created, the question of discontinuing the authority may be placed on the ballot at the next regular election by a petition signed by qualified electors of a political subdivision within the authority equal in number to ten percent of the votes cast in that political subdivision for the office of governor at the last general election. The question to discontinue the authority requires a majority of the electors voting on the question in that political subdivision for passage. If a majority of the electors voting on the question vote to discontinue the authority in a political subdivision creating the authority, the authority is discontinued. A joint job development authority in which a city is participating may exercise any of the functions and powers of a city job development authority under this chapter.

Approved April 4, 1995
Filed April 4, 1995