CHAPTER 40-33.1
MUNICIPAL STEAM HEATING AUTHORITIES

40-33.1-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Authority" means any corporation created under the authority of this chapter.
2. "Board" means the members of the authority.
3. "City" means any city with a municipal steam heating authority.
4. "Project" means any area or place operated or to be operated by an authority for the making or producing of steam, and includes, without being limited to, all real and personal property, boilers, furnaces, storage vessels, meters, mechanical equipment, and all appurtenances and facilities either on, above, or under the ground which are used in connection with the making or transporting of steam.
5. "Projects" means more than one project.
6. "Property owner" means either a real estate owner or the beneficial owner of a leasehold on a building constructed on railroad property.
7. "Real property" means lands, structures, franchises, and interest in lands, and any and all things usually included within the said term, and includes not only fees simple absolute but also any and all lesser interests, such as easements, rights of way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest, or right, legal or equitable, including terms of years.

40-33.1-02. Municipal steam heating authorities.

Any city may create a board to be known as a "municipal steam heating authority". Such board shall be a body corporate, constituting a public benefit corporation, and its existence shall commence upon the appointment of the members as herein provided. It shall consist of a chairman and four other members, who shall be appointed by the governing body of the city. Three members of the board shall be property owners within the benefited areas and two members shall be appointed at large. Of the members first appointed, one shall be appointed for a period of one year, one for a period of two years, one for a period of three years, one for a period of four years, and one for a period of five years. At the expiration of such terms, the terms of office of their successors shall be five years. Each member shall continue to serve until the appointment and qualification of the member's successor. Vacancies in such board occurring otherwise than by the expiration of a term shall be filled for the unexpired term. The members of the board shall choose from their number a chairman and a vice chairman. The governing body of the city may remove any member of the board for inefficiency, neglect of duty, or misconduct in office, giving that member a copy of the charges against that member and an opportunity of being heard in person, or by counsel, in that member's defense upon not less than ten days' notice. The members of the board shall be entitled to no compensation for their services but shall be entitled to reimbursement for their actual and necessary expenses incurred in the performance of their official duties. The powers of the authority shall be vested in and exercised by a majority of the members of the board then in office. Such board may delegate to one or more of its members or to its officers, agents, and employees such powers and duties as it may deem proper. Such board and the corporate existence of the authority shall continue until all its liabilities have been met and until the existence of the authority is terminated by official action of the governing body of the city. Upon its ceasing to exist, all its rights and properties shall pass to the city.

40-33.1-03. Purpose and powers of an authority.

The purpose of an authority shall be to construct, operate, acquire, or maintain one or more projects in the city and to promote and acquire municipal steam heating facilities in accordance with the provisions of this chapter. To carry out such purpose, an authority shall have power:

1. To sue and be sued.
2. To acquire, hold, and dispose of personal property for its corporate purposes.
3. To acquire necessary real property in the name of the city by purchase.

4. To make bylaws for the management and regulation of its affairs for the regulation of the project.
5. To appoint officers, agents, and employees, to prescribe their qualifications, and to fix their compensation; provided, however, the officers, agents, and employees shall not be subject to the civil service laws or ordinances.
6. To appoint an attorney to represent the board, who may be the city attorney, and to fix that person's compensation.
7. To make contracts and leases and to execute all instruments necessary or convenient.
8. To construct such buildings, structures, and facilities as may be necessary.
9. To reconstruct, improve, maintain, and operate the projects.
10. To accept grants, loans, or contributions from the United States, the state of North Dakota, or any agency or instrumentality of either of them, or the city, or an individual, by bequest or otherwise, and to expend the proceeds for any purposes of the authority.
11. To fix and collect user fees, and other charges for the use and sale of steam.
12. To construct, operate, or maintain in the projects all facilities necessary or convenient in connection therewith and to contract for the construction, operation, or maintenance of any parts thereof or for services to be performed.
13. To borrow money on such terms as it may deem most convenient, and to sign notes and pledge any portion of revenues derived from user fees and charges, in connection with such borrowing.
14. To mortgage all or any part of its real or personal property then owned or thereafter acquired.

40-33.1-04. Financing projects and facilities.

An authority may provide funds for its purposes by using the following methods or any combination thereof:

1. Charging a fee for the sale or use of steam produced by the authority.
2. Issuing notes of an authority as authorized by this chapter.
3. In cooperation with cities whereby cities may agree to assist in financing projects and facilities through the issuance of municipal bonds or other obligations, budgeting of current funds, the levy of taxes or special assessments, or by any combination of these means pursuant to or in accordance with the provisions of chapters 21-03, 40-22 to 40-27, 40-35, 40-40, and 40-57, and all other applicable laws now in force or hereafter enacted.
4. Making a special assessment against any property directly benefited by the steam produced by the authority, as provided in section 40-33.1-15.

40-33.1-05. Officers and employees.

Municipal steam heating authorities shall not be subject to civil service or merit system laws, veterans' preference laws, or other laws, ordinances, and regulations pertaining to the status of municipal employees. Employees of an authority shall have the same position as employees of a private corporation and the board of directors of an authority shall manage their employee relationships in the same manner as private corporations.

40-33.1-06. Conveyance of property by a city to an authority - Acquisition of property by a city or by an authority.

1. A city may, by resolution or resolutions of the governing body or by instruments authorized by such resolutions, convey, with or without consideration, to an authority real and personal property owned by the city for use by an authority as a project or projects or a part thereof.
2. A city may acquire in the name of the city by purchase or condemnation real property in the city for any of the projects.
3. Contracts may be entered into between a city and an authority providing for the property to be conveyed by a city to an authority, the additional property to be acquired

by a city and so conveyed, and the amounts, terms, and conditions of payment to be made by an authority. Any such contracts between a city and an authority and any real property belonging to an authority may be pledged by the authority to secure its notes and may not be modified thereafter except as provided by the terms of the pledge. The governing body of a city may authorize such contracts between a city and an authority and no other authorization on the part of a city for such contracts shall be necessary.

4. An authority may itself acquire real property for a project in the name of the city at the cost and expense of the authority by purchase. An authority shall have the use and occupancy of such real property so long as its corporate existence shall continue.
5. In case an authority shall have the use and occupancy of any real property which it shall determine is no longer required for a project, then, if such real property was acquired at the cost and expense of the city, the authority shall have power to surrender its use and occupancy thereof to the city, or, if such real property was acquired at the cost and expense of an authority, then the authority shall have power to sell, lease, or otherwise dispose of said real property at public or private sale, and shall retain and have the power to use the proceeds of sales, rentals, or other moneys derived from the disposition thereof for its purposes.

40-33.1-07. Construction contracts.

An authority shall let contracts for construction in the same manner, so far as practicable, as is provided by law for contracts of cities except that if the estimated expense of a contract does not exceed five hundred dollars, such contract may be entered into without public letting. Nothing in this section shall be construed to limit the power of an authority to do any construction directly by the officers, agents, and employees of the authority.

40-33.1-08. Moneys of the authority.

All moneys of an authority shall be paid to the city auditor as agent of the authority, who shall not commingle such moneys with any other moneys. Such moneys shall be deposited in a separate bank account or accounts. The moneys in such accounts shall be paid out by the auditor on requisition of the chairman of the authority or of such other person or persons as the authority may authorize to make such requisitions after audit by the auditor. All deposits of such moneys shall, if required by the auditor or the authority, be secured by obligations of the United States or of the state of North Dakota of a market value equal at all times to the amount of the deposit, and all banks and trust companies are authorized to give such security for such deposits. The auditor and the auditor's legally authorized representatives are authorized and empowered from time to time to examine the accounts and books of the authority, including its receipts, disbursements, contracts, leases, sinking funds, investments, and any other records and papers relating to its financial standing. An authority shall have power, notwithstanding the provisions of this section, to contract with the holders of any of its notes as to the custody, collection, securing, investment, and payment of any moneys of the authority, or any moneys held in trust or otherwise for the payment of notes or in any way to secure notes, and to carry out any such contract notwithstanding that such contract may be inconsistent with the previous provisions of this section. Moneys held in trust or otherwise for the payment of notes or in any way to secure notes and deposits of such moneys may be acquired in the same manner as moneys of the authority, and all banks and trust companies are authorized to give such security for such deposits.

40-33.1-09. Notes of an authority.

1. An authority shall have power from time to time to issue notes and from time to time to issue renewal notes, herein referred to as notes, maturing not later than five years from their respective original dates for any purpose mentioned in section 40-33.1-03, including the acquisition, construction, reconstruction, and repair of personal and real property of all kinds deemed by the board to be necessary or desirable to carry out such purpose, as well as to pay such expenses as may be deemed by the board necessary or desirable to the financing thereof and placing the project or projects in

operation, whenever an authority shall determine the payment thereof can be made in full from any moneys or revenues which an authority expects to receive from any source. Such notes may, among other things, be issued to provide funds to pay preliminary costs of surveys, plans, or other matters relating to any proposed or existing project.

2. An authority may pledge such moneys or revenues, subject to any other pledge thereof, for the payment of the notes and may in addition secure the notes by the guarantee of two or more property owners. It is the intention hereof that any pledge of revenues or other moneys made by an authority shall be valid and binding from the time when the pledge is made; that the revenues or other moneys so pledged and thereafter received by an authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act; and that the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against an authority irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.
3. Except as may otherwise be expressly provided by an authority, the notes shall be payable out of any moneys or revenues of an authority, subject only to any agreements with the holders of particular notes pledging any particular moneys or revenues. Notwithstanding the fact that the notes may be payable from a special fund, if they are otherwise of such form and character as to be negotiable instruments under article eight of the Uniform Commercial Code, the notes shall be and are hereby made negotiable instruments within the meaning of and for all the purposes of article eight of the Uniform Commercial Code.
4. An authority shall have power out of any funds available therefor to purchase its own notes. An authority may hold, cancel, or resell such notes, subject to and in accordance with agreements with noteholders.
5. In the discretion of an authority, the notes may be secured by a trust indenture by and between an authority and a corporate trustee, which may be any trust company or bank within or without the state of North Dakota. Such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the noteholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of an authority in relation to the construction, maintenance, operation, repair, and insurance of the project or projects and the custody, safeguarding, and application of all moneys, and may provide that the project or projects shall be constructed and paid for under the supervision and approval of consulting engineers. Notwithstanding the provisions of section 40-33.1-08, an authority may provide by such trust indenture for the payment of the proceeds of the notes and the revenues of the project or projects to the trustee under such trust indenture or other depository, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out such trust indenture may be treated as a part of the cost of maintenance, operation, and repairs of the project or projects. If the notes shall be secured by a trust indenture, the noteholders shall have no authority to appoint a separate trustee to represent them, and the trustee under such trust indenture shall have and possess all of the powers which are conferred by section 40-33.1-13 upon a trustee appointed by noteholders.

40-33.1-10. Agreement of a city.

1. Cities may pledge to and agree with the holders of the notes that the city will not limit or alter the rights hereby vested in the authority to acquire, construct, maintain, reconstruct, and operate the project or projects, to establish and collect rentals, fees, and other charges, and to fulfill the terms of any agreements made with the holders of the notes, or in any way impair the rights and remedies of the noteholders, until the notes, together with interest thereon, with interest on any unpaid installments of

interest and all costs and expenses in connection with any action or proceeding by or on behalf of the noteholders, are fully met and discharged.

2. Authorities are hereby authorized, in their discretion, for and on behalf of themselves and the city which authorized them, to covenant and agree with the holders of the notes, with such exceptions and limitations as it may deem in the public interest, that no public steam heating facilities except those acquired and operated by the authority will be constructed or operated in the city by the city, or by any public benefit or other corporation, the members or some of which are elected or are appointed by city officials, until either the notes, together with interest thereon, interest on any unpaid installments of interest and all costs and expenses in connection with any action or proceeding by or on behalf of the noteholders are fully met and discharged, or principal or interest of any of the notes shall be overdue and unpaid for a period of three years or more.

40-33.1-11. State and city not liable on notes - Exceptions as to cities.

The obligations of an authority shall not be a debt of the state of North Dakota and the state shall not be liable thereon. The obligations of an authority shall not be a debt of a city and a city shall not be liable thereon unless a city agrees to assist in financing projects and facilities through the issuance of municipal bonds or other obligations which are considered to be a part of the debt of the city as provided in section 40-33.1-04.

40-33.1-12. Tax exemptions.

1. It is hereby determined that the creation of an authority and the carrying out of its corporate purposes is in all respects for the benefit of the people of the city which has authorized it and its environs, and is a public purpose, and an authority shall be regarded as performing a governmental function in the exercise of the powers conferred upon it by this chapter and shall be required to pay no ad valorem taxes upon any of the property acquired by it or under its jurisdiction or control or supervision or upon its activities.
2. Any bonds or notes issued pursuant to this chapter, together with the income therefrom, as well as the property of an authority and income from any other source, shall be exempt from taxation, except for transfer and estate taxes.

40-33.1-13. Tax contract by the state.

The state of North Dakota covenants with the purchasers and with all subsequent holders and transferees of notes issued by an authority pursuant to this chapter, in consideration of the acceptance of and payment for the notes, that the notes of an authority issued pursuant to this chapter and the income therefrom, and all moneys, funds, and revenues pledged to pay or secure the payment of such notes shall at all times be free from taxation except for estate taxes and taxes on transfers by or in contemplation of death.

40-33.1-14. Remedies of noteholders.

1. In the event that an authority shall default in the payment of principal of or interest on any issue of the notes after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event that an authority shall fail or refuse to comply with the provisions of this chapter, or shall default in any agreement made with the holders of any issue of the notes, the holders of twenty-five percent in aggregate principal amount of the notes of such issue then outstanding, by instrument or instruments filed in the office of the recorder of the county in which the authority is located, unless the board of county commissioners designates a different official, and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such notes for the purposes herein provided.
2. Such trustee may, and upon written request of the holders of twenty-five percent in principal amount of such notes then outstanding shall, in the trustee's own name:

a. By action or special proceeding enforce all rights of the noteholders, including the right to require an authority to collect revenues adequate to carry out by any agreement as to, or pledge of, such revenues, and to require an authority to carry out any other agreements with the holders of such notes and to perform its duties under this chapter.
b. Bring suit upon such notes.
c. By action or suit in equity, require an authority to account as if it were the trustee of an express trust for the holders of such notes.
d. By action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such notes.
e. Declare all such notes due and payable, and if all defaults shall be made good then with the consent of the holders of twenty-five percent of the principal amount of such notes then outstanding, to annul such declaration and its consequences.

3. The district court shall have jurisdiction of any suit, action, or proceeding by the trustee on behalf of noteholders. The venue of any such suit, action, or proceeding shall be laid in the county in which the authority is located.
4. Before declaring the principal of all such notes due and payable, a trustee shall first give thirty days' notice in writing to an authority.
5. Any such trustee, whether or not the issue of notes represented by such trustee has been declared due and payable, shall be entitled as of right to the appointment of a receiver of any part or parts of the project, the revenues of which are pledged for the security of the notes of such issue, and such receiver may enter and take possession of such part or parts of the project and, subject to any pledge or agreement with noteholders, shall take possession of all moneys and other property derived from or applicable to the acquisition, construction, operation, maintenance, and reconstruction of such part or parts of the project and proceed with the acquisition of any necessary real property in connection with the project that an authority has covenanted to construct and with any construction which an authority is under obligation to do and to operate, maintain, and reconstruct such part or parts of the project and collect and receive all revenues thereafter arising therefrom subject to any pledge thereof or agreement with noteholders relating thereto and perform the public duties and carry out the agreements and obligations of an authority under the direction of the court. In any suit, action, or proceeding by the trustee, the fee, counsel fees, and expenses of the trustee and of the receiver, if any, shall constitute taxable disbursements and all costs and disbursements allowed by the court shall be a first charge on any revenues derived from such project.
6. Such trustee shall, in addition to the foregoing, have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incident to the general representation of noteholders on the enforcement and protection of their rights.

40-33.1-15. Authority may levy assessments against property to be benefited by project - Manner in which assessments to be made.

After making any contract to construct, reconstruct, repair, or purchase any real or personal property to be used in the production of steam, the authority may assess the cost of such contract, or any part thereof, against those property owners who are both purchasing or going to purchase steam from the authority and who will benefit from the completion of the contract. The determination, levy, manner of protest to, amendment of, and collection of the assessment shall be made by the authority, as near as is practicable, in the manner provided for water main and waterworks special assessments by municipalities.

40-33.1-16. Actions against an authority.

In every action against an authority for damages, for injuries to real or personal property, or for the destruction thereof, or for personal injuries or death, the complaint shall contain an allegation that at least thirty days have elapsed since the demand, claim, or claims upon which such action is founded were presented to a member of the authority, or to its secretary, or to its

chief executive officer and that the authority has neglected or refused to make an adjustment or payment thereof for thirty days after such presentment.