

CHAPTER 40-35 REVENUE BOND LAW

40-35-01. Short title.

This chapter may be cited as the revenue bond law.

40-35-02. Undertaking defined.

The term "undertaking", as used in this chapter, unless a different meaning clearly appears from the context:

1. Means systems, plants, works, instrumentalities, and properties used in revenue-producing undertakings, or any combination of two or more of such undertakings, which are used or useful in connection with:
 - a. The obtaining of a water supply and the conservation, treatment, distribution, and disposal of water for public and private uses;
 - b. The collection, treatment, and disposal of sewage, waste, and storm water;
 - c. The generation, production, transmission, and distribution of natural, artificial, or mixed gas, or electric energy, for lighting, heating, and power for public and private uses;
 - d. The operation of parking lots, trailer courts, and facilities for motor vehicles and house trailers;
 - e. The purchase, acquisition, or establishment, maintenance, and operation of a public transportation system;
 - f. The purchase, acquisition, construction, establishment, maintenance, and operation of an airport and the facilities and services in connection therewith; and
 - g. The purchase, acquisition, construction, maintenance, and operation of a hospital; and
2. Includes all parts of any such undertaking and all appurtenances to the undertakings, including lands, easements, rights in land, water rights, contract rights, franchises, approaches, dams, reservoirs, generating stations, sewage disposal plants, intercepting sewers, trunk connections, other sewer and water mains, filtration works, pumping stations, and equipment, and facilities in and upon such buildings and lands.

40-35-03. Powers of municipality.

Any municipality, in addition to the powers prescribed elsewhere by the laws of this state, shall have the power to:

1. Acquire by gift, purchase, or, subject to chapter 32-15, the exercise of the right of eminent domain, property required to construct, reconstruct, improve, better, or extend any undertaking, whether wholly within or wholly without the municipality, or partially within and partially without the municipality, and easements, rights in lands, and water rights in connection therewith.
2. Operate and maintain any undertaking for its own use and for the use of public and private consumers and users within and without the territorial boundaries of the municipality.
3. Prescribe, revise, and collect rates, fees, tolls, or charges for the services, facilities, or commodities furnished by such undertaking, and in anticipation of the collection of the revenues of such undertaking, issue revenue bonds to finance in whole or in part the cost of the acquisition, construction, reconstruction, improvement, betterment, or extension of any undertaking.
4. Pledge to the punctual payment of said bonds and the interest thereon all or any part of the revenues of such undertaking, including the revenues of improvements, betterments, or extensions thereof which may be constructed or acquired subsequent to the issuance of such bonds as well as the revenues of existing systems, plants, works, instrumentalities, and properties of the undertaking so improved, bettered, or extended, or of any part of such undertaking.

5. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants or duties or in order to secure the payment of its bonds, but no encumbrance, mortgage, or other pledge of property of the municipality shall be created by any such contract or instrument.
6. Enter into and perform contracts, whether long-term or short-term, with any industrial establishment for the provision and operation by the municipality of sewerage facilities, when the governing body of the municipality determines such action to be in the public interest and necessary for the protection of the public health, in order to abate or reduce the pollution of waters caused by discharges of industrial wastes by the industrial establishment, and for the payment periodically by the industrial establishment to the municipality of amounts at least sufficient, in the determination of such governing body, to compensate the municipality for the cost of providing, including payment of principal and interest charges, if any, and of operating and maintaining the sewerage facilities serving such industrial establishment.
7. Enter into and perform such contracts and agreement with other municipalities, political subdivisions, and state institutions, as the respective governing bodies of the same may deem proper and feasible for or concerning the planning, construction, lease, or other acquisition and the financing of sewerage facilities and the maintenance and operation thereof. Any such municipalities so contracting with each other may also provide in any contract or agreement for a board, commission, or such other body as their governing bodies may deem proper for the supervision and general management of the sewerage facilities and for the operation thereof, and may prescribe its powers and duties and fix the compensation of the members thereof.
8. Accept from any authorized agency of the federal government loans or grants for the planning, construction, acquisition, lease, or other provision of any undertaking, and to enter into agreements with such agency respecting such loan or grants.

No property of the municipality shall be liable to be forfeited or taken in payment of any bonds issued under this chapter, and no debt on the general credit of the municipality shall be incurred in any manner for any purpose under any provision of this chapter.

40-35-04. Resolution authorizing undertaking and the issuance of revenue bonds.

The acquisition, construction, reconstruction, improvement, betterment, or extension of any undertaking, and the issuance of bonds in anticipation of the collection of the revenues of such undertaking to provide funds to pay the cost thereof, may be authorized by an ordinance or resolution of the governing body adopted at any meeting thereof, after appropriate notice, by the affirmative vote of a majority of its members. The amount of such bonds so authorized, however, shall not exceed the amount authorized by the electors of the municipality as provided in this chapter. Unless otherwise provided in the ordinance or resolution, such ordinance or resolution shall take effect immediately and need not be laid over, published, or posted.

40-35-05. Cost of undertaking - How determined.

In determining the cost of an undertaking, the governing body may include all cost and estimated cost of the issuance of the revenue bonds, all engineering, inspection, fiscal, and legal expenses, any bond reserves, and the interest which it is estimated will accrue during the construction period and for six months thereafter on money borrowed or which it is estimated will be borrowed pursuant to this chapter.

40-35-06. Issuance of bonds for electric light and power plant - When approval of electors required.

No bonds shall be issued by any municipality for the purpose of financing the construction of a new electric light and power plant or distribution system, for the purchase or acquisition of an existing electric light and power plant or distribution system, or for the construction of extensions to any electric light and power plant or distribution system in excess of twenty percent of the book value thereof as shown by its books, unless the question of issuing such

bonds has been submitted to a vote of the qualified electors of the municipality as provided in section 40-35-07 and has been approved by a majority of such electors voting on such question.

40-35-07. Form of ballot - When question submitted.

The question provided for in section 40-35-06 shall be submitted to the electors on a ballot separate from all other ballots and in substantially the following form:

Shall the _____ (name of municipality) issue revenue bonds in the amount of not to exceed \$ _____ (maximum amount of bonds) for the purpose of _____ (purpose of issue)?

Yes

No

Such question may be submitted to the qualified electors at any general or municipal election or at any special election called, held, and conducted upon the notice and in the manner specified by law for the election of the governing body of the municipality.

40-35-08. Provisions governing revenue bonds.

The resolution or ordinance authorizing the issuance of revenue bonds under this chapter, or ordinances or resolutions adopted subsequent to the adoption of the original resolution or ordinance, shall prescribe:

1. The rate or rates of interest, payable semiannually.
2. Whether the bonds shall be in one or more series.
3. The date or dates which such bonds shall bear.
4. The time or times, not exceeding forty years from their respective dates, when such bonds shall mature.
5. The medium in which such bonds shall be payable.
6. The place or places where such bonds shall be payable.
7. Whether or not such bonds shall carry registration privileges, and what such privileges, if any, shall be.
8. The terms of redemption, if any, to which such bonds shall be subject.
9. The manner in which such bonds shall be executed.
10. The terms, covenants, and conditions which such bonds shall contain.
11. The form, either coupon or registered, in which such bonds shall be issued.

40-35-09. Sale of revenue bonds - When private sale authorized - Public sale and notice thereof.

Revenue bonds shall be sold at not less than ninety-eight percent of par. The bonds may be sold at private sale without notice or at public sale after notice of the sale has been published once at least five days prior to the sale in a newspaper circulating in the municipality. Bonds sold at private sale shall bear interest at a rate or rates and be sold at a price resulting in an average net interest cost not exceeding twelve percent per annum. There is no interest rate ceiling on issues sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. As to any series or issue of bonds for which a notice of sale was published but for which no bids were received or all bids received were rejected, the governing body may, without readvertising the bonds for sale, negotiate the sale of all of the bonds to any person upon terms complying with those specified in the notice of sale theretofore published and, if bids were rejected, more favorable to the municipality than those specified in the rejected bid.

40-35-10. Bonds and receipts or certificates issued pending preparation of bonds - Negotiability.

Pending the preparation of the definitive bonds, interim receipts or certificates, in the form and with the provisions the governing body may determine, may be issued to the purchaser or purchasers of bonds sold pursuant to this chapter. Said bonds and interim receipts or certificates shall be negotiable within the meaning of and for all the purposes specified in title 41.

40-35-11. Validity of bonds.

Revenue bonds bearing the signatures of the appropriate officers who are in office on the date of the signing thereof shall be valid and binding obligations notwithstanding that before the delivery thereof and payment therefor any or all of the persons whose signatures appear thereon shall have ceased to be officers of the municipality issuing the same. The validity of said bonds shall not be dependent on nor be affected by the validity or regularity of any proceedings relating to the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of the undertaking for which said bonds are issued. The ordinance or resolution authorizing said bonds may provide that the bonds shall contain a recital that they are issued pursuant to this chapter, and such recital shall be conclusive evidence of their validity and of the regularity of their issuance.

40-35-12. Bonds exempt from taxation - Exception.

Bonds issued under the provisions of this chapter and the income therefrom shall be exempt from any taxes, except inheritance, estate, and transfer taxes.

40-35-13. Covenants that may be inserted in ordinance or resolution authorizing bonds.

Any ordinance or resolution authorizing the issuance of bonds under this chapter to finance, in whole or in part, the acquisition, construction, reconstruction, improvement, betterment, or extension of an undertaking may contain covenants, notwithstanding that such covenants may limit the exercise of powers conferred by this chapter, as to:

1. The rates, fees, tolls, or charges to be charged for the services, facilities, and commodities of said undertaking.
2. The use and disposition of the revenues of said undertaking.
3. The creation and maintenance of reserves or sinking funds and the regulation, use, and disposition thereof.
4. The purpose or purposes to which the proceeds of the sale of said bonds may be applied and the use and disposition of such proceeds.
5. The events of default and the rights and liabilities arising thereon and the terms and conditions upon which the holders of bonds issued under this chapter may bring any suit or action on said bonds or on the coupons thereof.
6. The payment by the municipality to the account of said undertaking of a fair and reasonable amount for the services, facilities, or commodities furnished said municipality or any of its departments by said undertaking.
7. The issuance of other or additional bonds or instruments payable from or constituting a charge against the revenue of such undertaking.
8. The insurance to be carried upon the undertaking and the use and disposition of insurance moneys.
9. The keeping of books of account and the inspection and audit thereof.
10. The terms and conditions upon which any or all of the bonds shall become or may be declared due before maturity and the terms and conditions upon which such declaration and its consequences may be waived.
11. The rights, liabilities, powers, and duties arising upon the breach by the municipality of any covenants, conditions, or obligations.
12. The vesting in a trustee or trustees of the right to enforce any covenants made to secure, to pay, or in relation to, the bonds, the powers and duties of such trustee or trustees, and the limitation of liabilities thereof.
13. The terms and conditions upon which the holders of the bonds, or the holders of any proportion or percentage of them, may enforce any covenants made under this chapter or any duties imposed thereby.
14. A procedure by which the terms of any ordinance or resolution authorizing bonds or of any other contract with bondholders, including, but not limited to, an indenture of trust or similar instrument, may be amended or abrogated, and the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given.

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

Nothing in this section or in any other section of this chapter, however, shall authorize any municipality to do anything in any manner or for any purpose which would result in the creation or incurring of a debt or indebtedness or the issuance of any instrument, which would constitute a bond or debt within the meaning of any provision, limitation, or restriction of the Constitution of North Dakota relating to the creation or incurring of a debt or indebtedness or the issuance of an instrument constituting a bond or a debt.

40-35-14. Liability of municipality for bonds - Taxing power prohibited - Bond not a lien.

Revenue bonds issued under this chapter shall not be payable from nor charged upon any funds other than the revenue pledged to the payment thereof, nor shall the municipality issuing the same be subject to any pecuniary liability thereon. No holder or holders of any such bonds shall ever have the right to compel any exercise of the taxing power of the municipality to pay any such bonds or the interest thereon, nor to enforce payment thereof against any property of the municipality. Such bonds shall not constitute a charge, lien, nor encumbrance, legal or equitable, upon any property of the municipality. Each bond issued under this chapter shall recite in substance that the bond, including interest thereon, is payable solely from the revenue pledged to the payment thereof, and that the bond does not constitute a debt of the municipality within the meaning of any constitutional or statutory limitation.

40-35-15. Remedies of bondholders in general.

Subject to any contractual limitations binding upon the holders of any issue of revenue bonds, or a trustee therefor, including the restriction of the exercise of any remedy to a specified proportion or percentage of such holders, any holder of bonds, or any trustee therefor, for the equal benefit and protection of all bondholders similarly situated, may:

1. By mandamus or other suit, action, or proceeding at law or in equity, enforce such person's rights against the municipality and its governing body and any of its officers, agents, and employees and may require and compel such municipality or such governing body or any such officers, agents, or employees to perform and carry out its and their duties and obligations under this chapter and its and their covenants and agreements with bondholders.
2. By action or suit in equity, require the municipality and the governing body thereof to account as if they were the trustees of an express trust.
3. By action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders.
4. Bring suit upon the bonds.

No right or remedy conferred by this chapter upon any bondholder, or upon any trustee therefor, is intended to be exclusive of any other right or remedy, but each such right or remedy is cumulative and in addition to every other right or remedy and may be exercised without exhausting and without regard to any other remedy conferred by this chapter or by any other law of this state.

40-35-16. Receiver of undertaking - When appointed.

If the municipality shall default in the payment of the principal or interest on any of the revenue bonds 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 if the municipality or the governing body, or officers, agents, or employees of the municipality shall fail or refuse to comply with the provisions of this chapter, or shall default in any agreement made with the holders of the bonds, any bondholder or bondholders, or the trustee therefor, may apply to the district court of the county in which the undertaking is located for the appointment of a receiver

of the undertaking whether or not all of the bonds have been declared due and payable and whether or not such holder, or such trustee therefor, is seeking or has sought to enforce any other right or to exercise any other remedy in connection with such bonds. Upon such application, the court may appoint a receiver of the undertaking. If the application is made by the holders of twenty-five percent in principal amount of such bonds then outstanding, or by any trustee for holders of such bonds in such principal amount, the court shall appoint a receiver of the undertaking.

40-35-17. Powers and duties of receiver of undertaking.

A receiver appointed under the provisions of section 40-35-16, directly or by the receiver's agents and attorneys, shall enter into and upon and take possession of the undertaking and each and every part thereof immediately and may exclude therefrom the municipality, its governing body, officers, agents, and employees, and all persons claiming under them. The receiver shall have, hold, use, operate, manage, and control the undertaking, and each and every part thereof, in the name of the municipality or otherwise as the receiver may deem best. The receiver shall exercise all the rights and powers of the municipality with respect to the undertaking as the municipality itself might do. The receiver shall maintain the undertaking and restore and insure it and keep the same insured, and from time to time, the receiver shall make all repairs which the receiver deems necessary, proper, or expedient. The receiver shall establish, levy, maintain, and collect such fees, tolls, rentals, and other charges in connection with the undertaking as the receiver may deem necessary, proper, and reasonable, and the receiver shall collect and receive all revenues and shall deposit the same in a separate account and apply such revenues in such manner as the court shall direct.

40-35-18. Court may direct receiver to surrender possession of undertaking.

After all that is due upon the revenue bonds, including the interest thereon, and upon any other notes, bonds, or other obligations, including the interest thereon, which are a charge, lien, or encumbrance on the revenues of the undertaking under any of the terms of any covenants or agreements with bondholders, shall have been paid or deposited as provided therein, and all defaults shall have been cured and made good, the court, in its discretion and after such notice and hearing as it deems reasonable and proper, may direct the receiver to surrender the possession of the undertaking to the municipality. The holders of the bonds shall have the same right to secure the appointment of a receiver upon any subsequent default as is provided in this chapter in the case of an original default.

40-35-19. Receiver subject to jurisdiction of court - Jurisdiction of court.

In the exercise of the powers conferred upon a receiver by this chapter, a receiver shall act under the direction and supervision of the court by which the receiver was appointed and shall be subject at all times to the orders and decrees of such court and may be removed by it. Nothing contained in this chapter shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as it may deem necessary or appropriate for the exercise by the receiver of any functions specifically set forth in this chapter.

40-35-20. Construction.

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

of this state, the provisions of this chapter shall be controlling with reference to the issuance of revenue bonds.