

CHAPTER 40-38 PUBLIC LIBRARIES

40-38-01. Public library and reading room - Establishment - Election.

The governing body of any city or county upon petition of not less than fifty-one percent of the qualified electors of the city or county as determined by the total number of votes cast at the last general election or upon a majority vote of the qualified electors thereof voting on the question shall establish and maintain public library service within its geographic limits by means of a public library and reading room or other public library service, either singly or in cooperation with the state library, or with one or more cities or counties, or by participation in an approved state plan for rendering public library service under the Library Services and Construction Act [20 U.S.C. 351-358], and acts amendatory thereof. Such question shall be submitted to the qualified electors upon resolution of the governing body or upon the petition of not less than twenty-five percent of that number of qualified electors of the city or county that voted at the last general election, filed with the governing body not less than ninety days before the next regular election. Library service may be discontinued within any city or county by any of the methods by which library services may be established, except that once established, such service shall not be discontinued until after it has been in operation for at least five years from the date of establishment.

40-38-02. Library fund - Financial report - Levy - Kept separate - Exemption for city levying tax - Increasing levy.

1. For the purpose of establishing and maintaining public library service, the governing body of a municipality or county authorizing the same shall establish a library fund. The library fund shall consist of annually levying and causing to be collected as other taxes are collected a municipal or county tax not exceeding the limitations in subsection 6 of section 57-15-06.7 and subsection 4 of section 57-15-10 and any other moneys received for library purposes from federal, state, county, municipal, or private sources. In the year for which the levy is sought, a library board seeking approval of a property tax levy under this chapter must file with the auditor of each participating municipality or county, at a time and in a format prescribed by the auditors, a financial report for the preceding calendar year showing the ending balances of each fund held for the library board during that year.
2. The city auditor or county treasurer shall establish and maintain the fund to account for library revenues and shall make payments from the fund for invoices that have been submitted and approved by the governing body of the library. In the case of a contract with another library for service delivery, the city auditor or county treasurer shall promptly transmit all funds received to the established library fund of the agency delivering service. On request of the city auditor or county treasurer and during an audit, the governing board of the library shall supply its records. The records must be provided on a timely basis. The fund may not revert to the governing body of the city or county at the end of any fiscal year. The fund must be used exclusively for the establishment and maintenance of public library service.
3. The governing board of the library may request annually from the governing body of a city or county a tax not exceeding the limitation in subsection 5 of section 57-15-10. Such tax may be levied by the governing body of a city or county.
4. If a county levies for county library service and a city levies a tax for public library service under this section the county tax levy within that city must be reduced so the total levy in that city does not exceed four mills. If the city has been totally exempted from a county library service levy under this section, the phrase "not less than fifty-one percent of the qualified electors of the city or county as determined by the total number of votes cast at the last general election" as stated in section 40-38-01 shall mean fifty-one percent of the total number of votes cast at the last general election in the county less the total number of votes cast at the last general election in the city. If an election on the question is held, the qualified electors of any city so exempted from the

county library tax shall not be entitled to vote on the establishment or discontinuance of the county library service.

5. Upon motion of the governing body or upon petition of not less than twenty-five percent of the qualified electors in the last general election of any city, school district, township, or county, filed not less than sixty days before the next election, the governing body shall submit to the qualified electors at the next election the question of whether the governing body shall increase the mill levy a specified amount for public library service above the mill levy limitation set out in this section. The governing body may call a special election at any time for the purpose of voting on the question, and the election shall be called, conducted, and certified as are other elections in that political subdivision. Upon approval by sixty percent of the qualified electors voting in the election, the governing body shall increase the levy for public library service in the amount approved by the qualified electors.

40-38-03. Board of directors - Appointment - Term of office - Compensation - Filling vacancies - Organization.

1. The governing body of a municipality that has established a public library and reading room, or the board of county commissioners for a county library, shall appoint a board of five directors who must be residents of the municipality or county, as the case may be, to govern the library and reading room. One member of the governing body of the municipality or designated representative must be a member of the board of directors of a municipal library, and must be a resident of the municipality that establishes and maintains the municipal library; and one member of the board of county commissioners or designated representative must be a member of the county board of directors.
2. The terms of office of the members of the first board of directors must be established so one member holds office for one year, two members hold office for two years, and two members hold office for three years. The members, at their first meeting, shall determine the length of their respective terms by lot. Thereafter, the number of directors required to fill expired terms must be appointed each year, and each director may hold office for a term of three years from the first day of July in the year of appointment and until a successor has been appointed. No member of the board may serve for more than two consecutive terms, after which an interval of one year must elapse before the same member may be reappointed. All vacancies on the board of directors must be reported by the board to the governing body of the municipality or the board of county commissioners, as the case may be, and must be filled thereby. An appointment to fill an unexpired term may be for the residue of the term only.
3. The appointing authority shall establish the rate of compensation for directors and actual expenses incurred by directors may be reimbursed at the official reimbursement rates of the appointing authority.
4. Immediately after the appointment of its members, the board of directors shall meet and organize by electing a president. The governing board of a municipality or county establishing public library service may, in lieu of appointing a library board, contract directly with a library board established by another governing body of a municipality or county for the purpose of extending public library service.

40-38-04. General powers and duties of board of directors.

The board of directors shall have the following powers and duties:

1. To make and adopt such bylaws, rules, and regulations relating to the duties of the officers of the board as may be expedient and not inconsistent with the provisions of this chapter.
2. To make and adopt such bylaws, rules, and regulations for the management of the library and reading room as are expedient and not inconsistent with the provisions of this chapter.
3. To control, exclusively, the expenditures of all moneys collected for or contributed to the library fund.

4. To have the supervision, care, and custody of the library property, and of the rooms or buildings constructed, leased, or set apart for use of library purposes.
5. To contract to furnish library service and to receive library service from other counties, school districts, and cities of the state of North Dakota and adjoining states, and the state library.
6. To employ qualified personnel to administer the public library and dispense library services.

40-38-05. Board of directors may purchase, build, or lease building for library - Library building fund - Public hearing required.

The board of directors, with the approval of the city or county governing body, may build, lease, lease-purchase, or purchase an appropriate building for a library and purchase a site therefor. Such lease, purchase, or contract shall not be valid without the approval of the governing body of the city or county. Prior to any actions on such proposals, the governing body shall hold a public hearing on the proposals. Notice of the hearing shall be published at least once, not less than six days prior to the hearing, in a newspaper of general circulation within the city or county. The governing body shall seek the advice and comment of the state library and the general public at the hearing. After such hearing, the governing body of a city or county may establish by resolution a library building fund for the purpose of construction, enlargement, or alteration of a building or for the purchase of an existing building to be used as a public library. The city auditor or county treasurer shall place in the library building fund all moneys for such purposes as may be appropriated by the governing body or received for such purposes from federal, state, county, city, or private sources. The library building fund shall not revert to the library general fund or the general fund of the city or county without authorization by formal resolution from both the library's board of directors and the governing body of the city or county.

40-38-06. Vouchers - How drawn.

The duly bonded secretary or treasurer of the board of directors may draw money from the library fund upon vouchers of the board of directors without any other audit.

40-38-07. Library free to inhabitants of political subdivision - Subject to rules published by board of directors.

Every library and reading room established under this chapter shall be free for the use of inhabitants of the political subdivision where it is located subject to such reasonable rules and regulations as the board of directors may deem necessary to adopt and publish to render the use of the library and reading room of the greatest benefit. The board may exclude from the use of the library and reading room any and all persons who willfully shall violate such rules.

40-38-08. Donations - How accepted - Board of directors as trustee.

All persons desirous of making donations of money, books, personal property, or real estate for the benefit of the library may vest the same in the board of directors. The board shall hold and control all property accepted for the use of the library and reading room as a special trustee.

40-38-09. Annual report of board of directors - Contents - To whom made.

The board of directors shall make a report by July first of each year to the governing body of the city or board of county commissioners, as the case may be, stating:

1. The condition of the library and property.
2. The various sums of money received from all sources.
3. How much money has been expended and for what purpose.
4. The number of library materials on hand.
5. The number of library materials added, withdrawn or lost, and number of materials loaned out.
6. The type of library materials contained in the library.

7. Such other statistics, information, and suggestions as the board may deem of general interest or as may be required by the state library.

Copies of the report shall be filed with the governing body of the political subdivision and with the state library.

40-38-10. Contributions by political subdivision to establishment of library without election authorized.

Repealed by S.L. 2023, ch. 477, § 6.

40-38-11. Joint public library services by cities and counties.

1. Upon compliance with section 40-38-01 for the establishment of public library services, public library services may be jointly provided through a written agreement between the governing bodies of any city or county or both to establish and maintain joint library services with one or more cities or counties or both.
2. A party shall be bound to an agreement entered into under subsection 1 for an initial five-year term and subsequent five-year terms unless it provides other parties to the agreement with notice of intent to withdraw from the agreement at least two years before the proposed date of withdrawal.
3. The parties to the agreement shall appoint a single joint library board to govern public library services covered by the agreement. The method of representation on the joint library board and the establishment of the initial board with staggered terms shall be determined in the agreement. Provided, the joint library board shall consist of an equal number of appointees from each party to the agreement and, in any case, shall consist of not less than five members nor more than eleven members. No member of the board shall serve for more than two consecutive three-year terms, after which an interval of one year must elapse before the same member may be reappointed.
4. The joint library board shall have all power and duties provided in sections 40-38-04 through 40-38-09.
5. A joint library fund shall be established for the public library services covered by the agreement. Each city or county represented in the agreement shall provide its pro rata share of funds for the services, as specified in the agreement, from the funds received under section 40-38-02. Taxes within the service area covered by the written agreement under subsection 1 which is outside city limits may be levied within the limitations and according to the procedures provided by law for a county library fund levy and taxes within the service area that is within city limits may be levied within the limitations and according to the procedures provided by law for a city library fund levy.
6. The joint library board shall appoint, and may remove, a treasurer to administer the joint library fund. The treasurer may be a treasurer of one of the parties to the agreement or a member of the board or both. The city auditor and county treasurer of each city or county represented in the agreement and the state librarian shall promptly transmit all funds authorized under subsection 5 and chapter 54-24.2, respectively, directly to the treasurer of the joint library board. The treasurer shall pay out moneys belonging to the joint library board only upon properly drawn vouchers, pursuant to order of the joint library board. The funds received by the treasurer shall not revert to or be considered funds on hand by any governmental unit furnishing the same, at the end of any biennium or fiscal year. The treasurer shall be bonded in such amount as may be specified by resolution adopted by the joint library board.
7. The agreement shall include provisions for the dissolution of the joint library board and distribution of assets in the event the agreement is terminated.
8. Joint libraries established and operated under this section are eligible to receive financial aid under chapter 54-24.2 to the extent that each city and county represented in the agreement would be eligible for the aid.
9. Agreements for public library services between cities or counties or both may be provided under this section or other provisions of this chapter and may not be provided under chapter 54-40 or other provisions of law.

10. After July 1, 1981, the establishment of joint library services pursuant to this section shall not be permitted unless approved by the electors of each individual city or county considering the question.

40-38-12. Library records - Open records exception.

Any record maintained or received by a library receiving public funds, which provides a library patron's name or information sufficient to identify a patron together with the subject about which the patron requested information, is considered private and is excepted from the public records disclosure requirements of section 44-04-18. These records may be released when required pursuant to a court order or a subpoena.