

**2021 HOUSE POLITICAL SUBDIVISIONS**

**HB 1485**

# 2021 HOUSE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee Room JW327B, State Capitol

HB1485  
1/28/2021  
House Political Subdivisions

<b>Relating to the North Dakota building authority</b>
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**Chairman Dockter: (10:00)** Opened the hearing.

Representatives	
Representative Jason Dockter	P
Representative Brandy Pyle	P
Representative Mary Adams	P
Representative Claire Cory	P
Representative Sebastian Ertelt	P
Representative Clayton Fegley	P
Representative Patrick Hatlestad	P
Representative Mary Johnson	P
Representative Lawrence R. Klemin	P
Representative Donald Longmuir	P
Representative Dave Nehring	P
Representative Marvin E. Nelson	P
Representative Luke Simons	P
Representative Nathan Toman	P

### Discussion Topics:

- Repealing building authority
- Approval of indirect funding methods
- School board not enter into agreements

**Rep. Christensen:** Introduced the bill. (Testimony #4050).

**John Ertelt:** In favor. (Testimony #4020, 4021).

**Arvid Winkler:** In favor.

**Karlene Fine, ND Industrial Commission: (10:22).** In opposition, (testimony #4052).

**Chairman Dockter: ( 10:26).** Closed the hearing.

*Carmen Hickie, Committee Clerk*

HB 1485

Mr. chairman and members of the committee, my name is Cole Christensen Representative from district 24.

HB 1485 is a bill that will repeal section 54-17.2 which relates to Building Authority

This was brought to my attention after a lengthy battle to build a new school in my district. The school board used parts of building authority to complete this multi million dollar school project. Members in this school board formed a building authority corporation and built the new school despite being voted down 3 times. This was a slap in the face to the qualified voters in that county.

The other thing this bill does is clean up the language of "Building authority" as you can see in the text.

This does not eliminate the counties ability to get projects built, but rather brings it to an avenue where the qualified electors have a say in how their money gets spent.

The people who will testify after me will be able to go into far greater detail, and answer specific questions that I may not be able to. You can find the section that this eliminates in laws under the tab "repeals"

Thank you Mr. Chairman, I will stand for any questions.

# COUNTY FINANCING OPTIONS - CORRECTION CENTER

## 1. General Obligation Bonds

NDCC §21-03-06(1)(a)

Levy No. 1231

- requires 60% public vote
- unlimited excess mill levy
- 20 year maturity
- bond amount limited only by 5% of assessed valuation debt limit
- \$808,338,308 assessed valuation x 5% = \$40,416,915 debt limit (2018 figures)

*Generally speaking,  
can't prepay until  
around the 7-year  
mark.*

## 2. Limited General Obligation Bonds

NDCC §21-03-07(6), §57-15-06.6

Levy No. 1208

- 10 mill capital projects levy (20 mills with vote)
- no vote, but subject to protest by owners of taxable property (5% of assessed valuation threshold to block the bond issue)
- bond amount limited to amount that 10 mills can support
- 20 year maturity

## 3. Limited Tax Bonds

NDCC Chapter 57-47

Levy No. 1201

- borrow against general fund mills for primary governmental functions
- term is limited to 5 years
- County used this method for \$500,000 Bridge Bonds (Nov. 1, 2018)

## 4. Sales Tax Bonds

NDCC Chapter 11-09.1

- need home rule charter / voter approval
- bond amount limited to level of sales tax collections
- no maturity limit

## 5. Lease Purchase

NDCC §11-11-14(20)

- acquire real & personal property by lease-purchase agreement
- ground lease and lease purchase agreement with Trustee (bank)
- bank sells certificates of participation in the lease purchase agreement
- annual rental payments budgeted by County Commission
- sources for payment – 10 mill capital projects levy & 60 mill general fund
- does not count against debt limit; bond amount limited by available mills
- 30 year maturity is an option (no set limit on maturity)

*THERE IS THE  
SECURITY  
FOR LOAN  
REPAYMENT.  
THE GENERAL  
FUND*

## BUILDING AUTHORITY FINANCING OF PUBLIC BUILDINGS FOR POLITICAL SUBDIVISION USE

If a political subdivision has decided to build a public building and the construction cost cannot be covered by existing funds, the question becomes whether to incur indebtedness through voter approval and issuance of bonds of the political subdivision or find an alternative means of financing the project. An alternative method of financing public building construction which has been used in North Dakota is establishment of a building authority.

Use of a building authority to construct a public building is similar in many respects to financing through a bond issue of the political subdivision, but differs in several significant respects. To be viable, bonds issued by the building authority must be eligible for the federal income tax exemption for bondholders to make the bonds attractive to purchasers. To qualify for the federal income tax exemption status, a building authority must be established as a nonprofit corporation and under Internal Revenue Service Ruling 63-20:

1. The corporation must engage in activities that are essentially public in nature;
2. The corporation must be one that is not organized for profit;
3. The corporate income must not inure to any private person;
4. The state or a political subdivision must have a beneficial interest in the corporation while the indebtedness remains outstanding and, when the indebtedness is retired, the state or political subdivision must obtain full legal title to the property of the corporation for which the indebtedness was incurred; and
5. The corporation must have been approved by the state or a political subdivision, either of which must also have approved the specific obligations issued by the corporation.

A political subdivision lacks the power to form a nonprofit corporation building authority (see Attorney General Letter Opinion 2008-L-05). Individuals, including employees or elected officials of the political subdivision, may form a nonprofit corporation building authority. The building authority issues tax-exempt bonds for construction of a building to be leased to the political subdivision. The political subdivision makes lease payments from the building fund or other sources of the political subdivision. If lease rental payments are budgeted from available funds of the political subdivision, no indebtedness is incurred in the constitutional sense. However, because the revenue and appropriations of the political subdivision are an annual decision (school boards are limited to one-year leases by North Dakota Century Code Section 15.1-09-33(7)) and not an indebtedness backed by the property within the political subdivision, the bondholders run the risk of the political subdivision not appropriating funds to pay the lease rentals. The bondholders have no recourse against the political subdivision in the event of default.

One aspect of building authority financing of public buildings that has drawn criticism from some taxpayers is that use of a building authority avoids the requirement of voter approval, while bonding for construction of a public building generally requires 60 percent voter approval under Section 21-03-07. In addition, in the case of school buildings, construction of a new school building must be approved by the Superintendent of Public Instruction under Section 15.1-36-01, but that does not apply if a school building is to be constructed by a building authority.

### USE OF BUILDING AUTHORITIES

The committee requested information on the extent of use of building authorities. There is no central source of information on building authority bonding of projects or leasing arrangements. The Secretary of State has the following 28 building authorities registered as corporations:

- City of Devils Lake Building Authority.
- Cass County Building Authority.
- Fargo School District Building Authority.
- Law Enforcement Center Building Authority.
- Minot School District Building Authority.
- Rugby Building Authority.
- West Fargo Park District Building Authority.
- Dickinson Recreation Building Authority.
- Grand Forks Public School District Building Authority.
- Glenburn Building Authority.
- South Heart Golf Course Building Authority.
- Morton County Building Authority.
- Devils Lake Public School District Building Authority.
- Enderlin Building Authority.
- Hankinson Public School District Building Authority.
- Nedrose School District Building Authority.
- Fort Yates Public School District Building Authority.
- Berthold School District Building Authority.
- Napoleon Public School District Building Authority.
- West Fargo Public School District Building Authority.
- Bismarck Park District Building Authority.
- South Prairie School District Building Authority.
- Grand Forks County Building Authority.
- Griggs County Central School District Building Authority.
- City of Fargo Building Authority.
- Central Cass Public School District Building Authority.
- Kindred Public School District Building Authority.
- Northern Cass Public School District Building Authority.





# INDUSTRIAL COMMISSION OF NORTH DAKOTA

Doug Burgum  
Governor

Wayne Stenehjem  
Attorney General

Doug Goehring  
Agriculture Commissioner

Testimony  
House Bill 1485  
Karlene Fine  
North Dakota Industrial Commission  
January 28, 2021

Chairman Dockter and members of the Political Subdivisions Committee, for the record I am Karlene Fine, North Dakota Industrial Commission Executive Director/Secretary and an Authorized Officer for the North Dakota Building Authority. I am appearing today on behalf of the Industrial Commission in opposition to House Bill 1485, primarily Section 5 which repeals the North Dakota Building Authority. I will focus my comments on the North Dakota Building Authority. I have no comments on Sections 2 and 3.

The North Dakota Building Authority was created by the Legislature in 1985 to allow the State access to the capital markets for low cost, long-term financing of capital projects approved by the Legislature. The Building Authority provides the Legislature with another option as it considers how to fund the costs of projects declared by the Legislature to be in the public interest.

Since the Building Authority was created over \$250,000,000 of bonds have been issued for projects across the state—North Dakota University campuses, State Penitentiary, Heritage Center, James River Correctional Center, Developmental Center at Grafton, Job Service North Dakota, Veterans Home, Office of Management and Budget, Youth Correctional Center, etc. Currently we have bonds outstanding that have interest rates that range from 1.41% to 3.33%.

Regarding Section 1, the removal of the reference to the North Dakota Building Authority would limit the ability of the Authority to seek the services of the Public Finance Authority staff to assist in the issuance of North Dakota Building Authority bonds. The Public Finance Authority has expertise in the issuance of bonds, and it is important that we have access to this expertise.

For these reasons the Industrial Commission requests a do not pass on HB 1485 and the elimination of this low-cost financing tool for funding projects approved by the Legislature.

# 2021 HOUSE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee Room JW327B, State Capitol

HB 1485  
2/4/2021

<b>Relating to the North Dakota building authority</b>
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**Chairman Dockter: (11:51).** Opened hearing for committee work.

Representatives	Roll Call
Representative Jason Dockter	P
Representative Brandy Pyle	P
Representative Mary Adams	P
Representative Claire Cory	P
Representative Sebastian Ertelt	P
Representative Clayton Fegley	P
Representative Patrick Hatlestad	P
Representative Mary Johnson	P
Representative Lawrence R. Klemin	P
Representative Donald Longmuir	P
Representative Dave Nehring	P
Representative Marvin E. Nelson	P
Representative Luke Simons	P
Representative Nathan Toman	P

**Discussion Topics:**

- Lease purchase agreements
- Building Authority members
- Need for amendment

**Rep. Longmuir:** Do not pass

**Rep. M. Johnson:** Second the motion.

Representatives	Vote
Representative Jason Dockter	Y
Representative Brandy Pyle	Y
Representative Mary Adams	Y
Representative Claire Cory	Y
Representative Sebastian Ertelt	N
Representative Clayton Fegley	Y
Representative Patrick Hatlestad	Y
Representative Mary Johnson	Y
Representative Lawrence R. Klemin	Y
Representative Donald Longmuir	Y

Representative Dave Nehring	Y
Representative Marvin E. Nelson	N
Representative Luke Simons	N
Representative Nathan Toman	N

Motion carried on a Do Not Pass. 10-4-0

**Vice Chairman Pyle:** will carry the bill.

**Chairman Dockter:** Adjourned at 11:57 AM.

*Carmen Hickle, Committee Clerk by Donna Whetham*



**REPORT OF STANDING COMMITTEE**

**HB 1485: Political Subdivisions Committee (Rep. Dockter, Chairman)** recommends **DO NOT PASS** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1485 was placed on the Eleventh order on the calendar.