

**Fifty-ninth Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 4, 2005**

SENATE BILL NO. 2227  
(Senators Erbele, Heitkamp, Wardner)  
(Representatives Brandenburg, Gulleason, Kretschmar)

AN ACT to amend and reenact sections 23-11-01, 23-11-03, 23-11-11, 23-11-14, 23-11-20, 23-11-21, 23-11-23, 23-11-24, and 23-11-29 of the North Dakota Century Code, relating to housing authority jurisdiction.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 23-11-01 of the North Dakota Century Code is amended and reenacted as follows:

**23-11-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Area of operation" includes:
  - a. In the case of a housing authority of a city having a population of less than fifteen thousand inhabitants, ~~such the~~ city and the area within five miles [8.05 kilometers] of the territorial boundaries ~~thereof of the city~~, but does not include any area ~~which lies that is~~ within the territorial boundaries of another city.
  - b. In the case of a housing authority of a city having a population of fifteen thousand inhabitants or more, ~~such the~~ city and an area within ten miles [16.10 kilometers] of ~~such the~~ territorial boundaries ~~thereof of the city~~, but does not include any area ~~which lies that is~~ within the territorial boundaries of another city.
  - c. In the case of a housing authority of a county, all of the county except that portion ~~which lies that is~~ within the territorial boundaries of any city.
2. "Auditor" means the city auditor or the county auditor, as ~~the case may be~~ appropriate.
3. "Authority" or "housing authority" means any of the public corporations created by section 23-11-02.
4. "Bonds" means any bonds, notes, certificates, debentures, or other obligations issued by an authority ~~pursuant to any provision of~~ under this chapter.
5. "City" means any city having a population of more than five thousand inhabitants according to the last federal census and "the city" means the particular city for which a particular housing authority is created, except that it does not mean a city ~~which that~~ has agreed to or will so elect to participate in a county housing authority pursuant to section 54-40-08, provided that any city with less than five thousand population which has an activated city housing authority prior to July 1, 1971, or a city with less than five thousand population which has determined a shortage of safe or sanitary dwelling accommodations in the city pursuant to section 23-11-03, must be included within this definition.
6. "County" means any county in this state and "the county" means the particular county for which a particular housing authority is created.
7. "Federal government" includes the United States of America and any agency or instrumentality, corporate or otherwise, of the United States of America.

8. "Governing body" means, in the case of a city, the city council; or the board of city commissioners, as ~~the case may be~~ appropriate, and in the case of a county, the board of county commissioners.
9. "Housing project" may be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration, and repair of the improvements, and all other work in connection ~~therewith~~ with the same and means any work or undertaking:
  - a. To demolish, clear, or remove buildings from any slum area, and ~~such~~ the work or undertaking may embrace the adaption of ~~such~~ the area to public purposes, including parks or other recreational or community purposes;
  - b. To provide or assist in providing decent, safe, and sanitary urban or rural housing dwellings, apartments, or other living accommodations and related facilities for persons of low or moderate income, ~~and in need of housing, including single-family and multifamily residential units designed and financed under this chapter. This work or undertaking may include the planning of buildings and improvements, land, equipment, facilities, and other the acquisition of real or personal property that may be needed immediately or in the future for housing purposes, the construction, reconstruction, alteration and repair of new or existing buildings, and the provisions of all equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances, streets, sewers, water service, parks, site preparations, landscaping, gardening, administrative, community, health, recreational, educational, welfare, or other purposes;~~ or
  - c. To accomplish a combination of any of the foregoing projects.
10. "Mayor" means the mayor of the city or the president of the board of city commissioners, as ~~the case may be~~ appropriate.
11. "Obligee of the authority" or "obligee" includes any bondholder, trustee for any bondholders, or lessor demising to the authority property used in connection with a housing project, or any assignee of ~~such a~~ lessor's interest, or of any part ~~thereof~~ of an interest, and the federal government when it is a party to any contract with the authority.
12. "Persons of low income" means ~~persons~~ individuals or families who lack the amount of income which is necessary, as determined by the authority undertaking the housing project, to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings without overcrowding.
13. "Persons of moderate income" means individuals or families whose income is not adequate without governmental assistance to cause private enterprise to provide a substantial supply of decent, safe, and sanitary housing at rents or prices within their financial means.
14. "Real property" includes ~~all~~ lands land, including improvements and fixtures ~~thereon~~ on the land and property of any nature appurtenant ~~thereto~~ to the land or used in connection ~~therewith~~ with the land, and every estate, interest, and right, legal or equitable, ~~therein~~ in the land, including terms for years and liens by way of judgment, mortgage, or otherwise and the indebtedness secured by ~~such~~ the liens.
44. 15. "Slum" means any area where dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light, or sanitary facilities, or by reason of any combination of these factors, are detrimental to safety, health, and morals.

**SECTION 2. AMENDMENT.** Section 23-11-03 of the North Dakota Century Code is amended and reenacted as follows:

**23-11-03. When resolution declaring housing authority to be necessary shall be adopted.**

1. The governing body of the city or county, as ~~the case may be~~ appropriate, shall adopt a resolution declaring that there is need for a housing authority in the city or county if ~~it~~ the governing body finds:
  1. ~~That~~ that unsanitary or unsafe inhabited dwelling accommodations exist in the city or county; or
  2. ~~That~~ that there is a shortage of safe or sanitary dwelling accommodations in ~~such~~ the city or county available to persons of low or moderate income at rentals they can afford to pay.
2. In determining whether dwelling accommodations are unsafe or unsanitary, ~~said~~ the governing body may take into consideration the degree of overcrowding, the percentage of land coverage, the light, air, space, and access available to the inhabitants of ~~such~~ the dwelling accommodations, the size and arrangement of the rooms, the sanitary facilities, and the extent to which conditions which endanger life or property by fire or other causes exist in ~~such~~ the buildings.

**SECTION 3. AMENDMENT.** Section 23-11-11 of the North Dakota Century Code is amended and reenacted as follows:

**23-11-11. Powers of authority.** An authority has the following powers and duties:

1. To exercise public and essential governmental functions.
2. To sue and be sued.
3. ~~Repealed by S.L. 1973, ch. 80, § 21.~~
4. To have perpetual succession.
5. ~~4.~~ 4. To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority.
6. ~~5.~~ 5. To make, amend, and repeal such bylaws, rules, and regulations, not inconsistent with ~~the provisions of~~ this chapter, as are necessary to carry into effect the powers and purposes of the authority.
7. ~~6.~~ 6. To prepare, carry out, acquire, lease, and operate housing projects within its area of operation.
8. ~~7.~~ 7. To provide for the construction, reconstruction, improvement, alteration, or repair of any housing project, or any part ~~thereof~~ of a housing project, within ~~its~~ the authority's area of operation.
9. ~~8.~~ 8. To arrange or contract for the furnishing by any person or any public or private agency of services, privileges, works, or facilities for, or in connection with, a housing project or the occupants ~~thereof~~ of a housing project.
10. ~~9.~~ 9. To include, in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractor ~~shall~~ comply with requirements as to minimum wages and maximum hours of labor and any conditions ~~which~~ that the federal government may have attached to ~~its~~ the financial aid ~~of~~ for the project.

- 41: 10. To lease or rent any dwellings, houses, accommodations, lands, buildings, structures, or facilities embraced in any housing project and, subject to the limitations contained in this chapter, to establish and revise the rents or charges ~~therefor~~ in the housing project.
- 42: 11. To own, hold, and improve ~~real or personal~~ property.
- 43: 12. To purchase, lease, obtain options upon, or acquire, by gift, grant, bequest, devise, or otherwise, any ~~real or personal~~ property or any interest ~~therein~~ in property.
- 44: 13. To acquire real property by the exercise of the power of eminent domain.
- 45: 14. To sell, lease, exchange, transfer, assign, pledge, or dispose of any ~~real or personal~~ property, or any interest ~~therein~~ in property.
- 46: 15. To insure, or provide for the insurance of, any ~~real or personal~~ property, or any operation of the authority, against any risks or hazards.
- 47: 16. To procure insurance or guaranties from the federal government of the payment of any debts, or parts ~~thereof~~ of debts, secured by mortgages on any property included in any of ~~its~~ the authority's housing projects, whether the debts were incurred by the authority or not.
- 48: 17. To invest any funds held by ~~it~~ the authority in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to ~~their~~ a savings bank's control.
- 49: 18. To purchase its bonds at a price not more than the principal amount ~~thereof~~ of the bonds and accrued interest, ~~and all bonds a bond~~ so purchased ~~shall be~~ is canceled.
- 20: 19. To investigate, in ~~its~~ the authority's area of operation, living, dwelling, and housing conditions and the means and methods of improving the same.
- 21: 20. To determine, within ~~its~~ the authority's area of operation, where slum areas exist or where there is a shortage of decent, safe, and sanitary dwelling accommodations for persons of low or moderate income.
- 22: 21. To make studies and recommendations relating to the problem of clearing, replanning, and reconstructing the slum areas within ~~its~~ the authority's area of operation and the problem of providing dwelling accommodations for the persons of low or moderate income, and to cooperate with the city, county, or state, or any political subdivision ~~thereof~~, in any action taken in connection with ~~such~~ these problems.
- 23: 22. To engage in research, studies, and experimentation on the subject of housing within ~~its~~ the authority's area of operation.
- 24: 23. To conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for ~~its~~ the authority's information.
- 25: 24. To administer oaths, issue subpoenas requiring the attendance of witnesses or the production of books and papers, and to issue commissions for the examinations of witnesses who are outside of the state or unable to attend before the authority or who are excused from attendance.
- 26: 25. To make available to appropriate agencies, including those charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or unsanitary structures within ~~its~~ the authority's area of operation, ~~its~~ the authority's findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety, or welfare.
- 27: 26. To issue bonds from time to time for any of its corporate purposes.

- ~~28.~~ 27. To issue refunding bonds for the purpose of paying or retiring bonds previously issued by ~~it~~ the authority.
- ~~29.~~ 28. To borrow money or accept grants or other financial assistance from the federal government for, or in aid of, any housing project within ~~its~~ the authority's area of operation.
- ~~30.~~ 29. To take over or lease or manage any housing project or undertaking constructed or owned by the federal government.
- ~~31.~~ 30. To comply with ~~such~~ conditions and to enter into ~~such~~ mortgages, trust indentures, leases, or agreements as may be necessary, convenient, or desirable to carry out ~~the provisions of this subsection and the preceding subsection~~ section.
- ~~32.~~ 31. To do any and all things necessary or desirable to secure the financial aid or cooperation of the federal government in the undertaking, construction, maintenance, or operation of any housing project.
- ~~33.~~ 32. To exercise all or any part or combination of powers ~~herein~~ granted.
- ~~34.~~ 33. To exercise within ~~its~~ the authority's area of operation the authority granted to the industrial commission under section 54-17-07.6.
34. To exercise the power to provide operation and maintenance expenses under subdivision a of subsection 23 of section 23-11-24.
35. To exercise the power to issue general obligation bonds in accordance with chapter 21-03.
36. To develop a plan identifying the public purposes of the authority's ownership, conditions that would make the authority's ownership no longer necessary for accomplishing those public purposes, and a plan to divest the authority's ownership interest as soon as economically prudent once those conditions occur and to effectuate the plan.
- ~~35.~~ 37. To exercise ~~such~~ other powers and duties as may be necessary to carry out the purposes and provisions of this chapter.

An authority, in exercising the powers specified in subsections ~~24~~ 23, ~~25~~ 24, and ~~26~~ 25, may act through one or more of the commissioners or through other persons designated by ~~it~~ the authority. ~~No provision~~ Provisions of law with respect to the acquisition, operation, or disposition of property by other public bodies ~~is~~ are not applicable to an authority unless there is specific provision to that effect by the legislative assembly. The construction of a housing project is a public improvement for which an authority is subject to the competitive bidding requirements of chapter 48-01.1.

**SECTION 4. AMENDMENT.** Section 23-11-14 of the North Dakota Century Code is amended and reenacted as follows:

**23-11-14. Rentals and tenant selection.** In the operation or management of housing projects, an authority at all times shall observe the following duties with respect to rentals and tenant selection:

1. ~~it~~ The authority may rent or lease the dwelling accommodations ~~therein only in the project~~ solely to persons of low or moderate income.
2. ~~it~~ The authority may rent or lease the dwelling accommodations ~~therein only in the project~~ solely at rentals within the financial reach of ~~such~~ persons of low or moderate income.
3. ~~it~~ The authority may rent or lease to a tenant dwelling accommodations consisting ~~only~~ solely of the number of rooms which ~~it deems the authority determines~~ the authority determines necessary to provide safe and sanitary accommodations to the proposed occupants ~~thereof~~, without overcrowding.

4. ~~‡~~ The authority may not accept ~~any person~~ persons of low income as a tenant in any housing project if the ~~person individual~~ or ~~persons family~~ who would occupy the dwelling accommodations ~~have~~ has an aggregate annual income in excess of five times the annual rental of the quarters to be furnished ~~such person~~ the individual or ~~persons family~~. In computing the rental for this purpose, there must be included in the rental the average annual cost to the occupant, as determined by the authority, of heat, water, electricity, gas, cooking, and other necessary services or facilities, whether ~~or not~~ the charge for ~~such~~ the services and facilities is in fact included in the rental.
5. ~~‡~~ The authority shall prohibit subletting by tenants.

**SECTION 5. AMENDMENT.** Section 23-11-20 of the North Dakota Century Code is amended and reenacted as follows:

**23-11-20. Bonds - Types which may be issued.**

1. An authority may issue ~~such types~~ any type of bonds ~~bond~~ as ~~it may determine~~ the authority determines necessary for the purpose of financing housing for persons of low or moderate income, including ~~bonds~~ a bond on which the interest and principal are payable:
  - 4- a. Exclusively from the income and revenues of the housing project financed with the proceeds of ~~such bonds~~ the bond or with ~~such~~ the proceeds together with a grant from the federal government in aid of ~~such~~ the project;
  - 2- b. Exclusively from the income and revenues of certain designated housing projects whether ~~or not they~~ the projects are financed in whole or in part with the proceeds of ~~such bonds~~ the bond; or
  - 3- c. From ~~its~~ the authority's revenues generally.
2. The bonds and other obligations of the authority are not payable out of any funds or properties other than those of the authority. ~~Any of such~~ These bonds, however, may be secured additionally by a pledge of any loan, grant, or contribution, or part of the same, from the federal government or other source of a pledge of any income or revenues or by a mortgage on any housing project, projects, or other property of the authority.

**SECTION 6. AMENDMENT.** Section 23-11-21 of the North Dakota Century Code is amended and reenacted as follows:

**23-11-21. Bonds - Liability - Tax exempt.** Neither the commissioners of an authority nor any person executing bonds of the authority is liable personally ~~thereon~~ on the bonds by reason of the issuance ~~thereof~~ of the bonds, nor is any city, county, or state, or political subdivision ~~thereof~~, liable ~~thereon~~ on the bonds. The bonds and other obligations of an authority are not a debt of the city, county, or state, nor of any political subdivision ~~thereof~~, and must so state on ~~their~~ the face of the bond. ~~They~~ The bonds do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. ~~Such~~ The bond obligations are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and the bonds, together with the interest ~~thereon~~ on the bonds and income ~~therefrom~~, from the bonds are exempt from taxation. The tax exemption provisions of this chapter are considered part of the contract for the security of the bond obligations authorized by this chapter and do not need to be restated in the bond obligations.

**SECTION 7. AMENDMENT.** Section 23-11-23 of the North Dakota Century Code is amended and reenacted as follows:

**23-11-23. Bonds - Validity when officer who signs bond is no longer in office - Deemed issued for housing project.** If any of the commissioners or officers of an authority whose signatures appear on any bonds or coupons cease to be ~~such commissioners~~ a commissioner or ~~officers~~ officer before the delivery of the bonds, the signatures are valid and sufficient for all purposes the same as if

~~the commissioners commissioner or officers officer~~ had remained in office until the delivery had been completed. Any bonds issued pursuant to ~~the provisions of the~~ under this chapter must be fully negotiable. In an action, suit, or proceeding involving the validity or enforceability of any bond of an authority or of the security ~~therefor~~ for the bond, the bond must be deemed conclusively to have been issued for a housing project if the bond recites that it has been issued by the authority to aid in financing a housing project to provide dwelling accommodations for persons of low or moderate income. The project ~~conclusively must be deemed to have been~~ is planned, located, and constructed in accordance with ~~the purposes and provisions of this chapter if such a this~~ statement is contained in the bond.

**SECTION 8. AMENDMENT.** Section 23-11-24 of the North Dakota Century Code is amended and reenacted as follows:

**23-11-24. Provisions of bonds, trust indentures, and mortgages.** In connection with the issuance of bonds or the incurring of obligations under leases; and in order to secure the payment of ~~such~~ the bonds or obligations, an authority, in addition to ~~its~~ the authority's other powers, has power:

1. To pledge all or any part of ~~its~~ the authority's gross or net rents, fees, or revenues to which ~~its~~ the authority's right then exists or thereafter may come into existence.
2. To mortgage all or any part of ~~its real or personal~~ the authority's property then owned or thereafter acquired.
3. To covenant against pledging all or any part of ~~its~~ the authority's rents, fees, and revenues, or against mortgaging all or any part of ~~its real or personal~~ the authority's property, to which ~~its~~ the authority's right or title then exists or thereafter may come into existence, or against permitting or suffering any lien on any ~~such~~ revenues or property.
4. To covenant with respect to limitations on ~~its~~ the authority's right to sell, lease, or otherwise dispose of any housing projects or any part ~~thereof~~ of a housing project.
5. To covenant as to what other or additional debts or obligations may be incurred by ~~it~~ the authority.
6. To covenant as to the bonds to be issued and as to the issuance of ~~such~~ bonds in escrow or otherwise; and as to the use and disposition of the proceeds ~~thereof~~ of the bonds.
7. To provide for the replacement of lost, destroyed, or mutilated bonds.
8. To covenant against extending the time for the payment of ~~its~~ the authority's bonds or interest ~~thereon~~ on the bonds.
9. To redeem the bonds, to covenant for ~~their~~ the bonds' redemption, and to provide the terms and conditions ~~thereof~~ of redemption.
10. To covenant, subject to the limitations contained in this chapter, as to the rents and fees to be charged in the operation of a housing project or projects, the amount to be raised each year or other period of time by rents, fees, and other revenues, and as to the use and disposition to be made ~~thereof~~ of the same.
11. To create, or to authorize the creation of, special funds for moneys held for construction or operating costs, debt service, reserves, or other purposes, and to covenant as to the use and disposition of the moneys held in ~~such~~ these funds.
12. To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent ~~thereto~~, and the manner in which ~~such~~ consent may be given.
13. To covenant as to the use of any or all of ~~its real or personal~~ the authority's property.

14. To covenant as to the maintenance of ~~its real and personal~~ the authority's property, the replacement ~~thereof of property~~, the insurance to be carried ~~thereon~~ on property, and the use and disposition of insurance moneys.
15. To covenant as to the rights, liabilities, powers, and duties arising upon the breach by ~~it~~ the authority of any covenant, condition, or obligation.
16. To covenant and prescribe as to events of default and terms and conditions upon which any or all of ~~its~~ the authority's bonds or obligations shall become, or may be declared, due before maturity, and as to the terms and conditions upon which ~~such~~ the declaration and ~~its~~ the declaration's consequences may be waived.
17. To vest in a trustee or trustees or in the holders of bonds, or any proportion of ~~them~~ trustees or holders, the right to enforce the payment of the bonds or any covenants securing or relating ~~thereto~~ to the bonds.
18. To vest in a trustee or trustees the right, in the event of a default by the authority, to take possession and to use, operate, and manage any housing project or part ~~thereof~~ of the housing project, to collect the rents and revenues arising ~~therefrom~~ from the housing project, and to dispose of ~~such~~ these moneys in accordance with the agreement of the authority with ~~said~~ the trustee.
19. To provide for the powers and duties of a trustee or trustees and to limit the liabilities ~~thereof~~ of the trustee.
20. To provide the terms and conditions upon which the trustee or trustees or the holders of bonds, or any proportion of ~~them~~ trustees or holders, may enforce any covenant or rights securing or relating to the bonds.
21. To exercise all or any part or combination of the powers ~~herein~~ granted in this section.
22. To make covenants ~~other than, and~~ in addition to, the covenants ~~herein~~ expressly authorized, of like or different character.
23. To make ~~such~~ covenants and to do any ~~and all such~~ acts and things as may be necessary, convenient, or desirable in order to secure ~~its~~ the authority's bonds, or, in the absolute discretion of ~~said~~ the authority, as will tend to make the bonds more marketable notwithstanding that ~~such~~ the covenants, acts, or things ~~may are~~ are not be enumerated ~~herein, including:~~
  - a. To the payment of the principal of and interest on bond obligations, when due, there may be pledged as a first charge and lien the gross revenues of the housing project financed in whole or in part by the obligations, and the governing city or county may covenant to provide additional funds for the benefit of that housing project to the extent that the gross revenues in excess of those debt service requirements are not also sufficient from time to time to pay the reasonable operating and maintenance expenses of that housing project.
  - b. The principal amount of the issue must be approved by the governing body of the city or county in which the housing project is located and whose general obligation is pledged. Public hearings must be held on issuance of the obligations by the city or county in which the housing project is located. The hearings must be held at least fifteen days, but not more than one hundred twenty days, before the sale of the obligations.

**SECTION 9. AMENDMENT.** Section 23-11-29 of the North Dakota Century Code is amended and reenacted as follows:

**23-11-29. Tax exemptions and payments in lieu of taxes.** The property of an authority used for low-income housing, including an authority created under Indian laws recognized by the federal government, is declared to be public property used for essential public and governmental purposes and is exempt from all taxes and special assessments of the ~~city, the county, the state,~~ or any political subdivision ~~thereof~~. In lieu of ~~such~~ taxes or special assessments, an authority may agree to make payments to the ~~city, county, state,~~ or any ~~such~~ political subdivision for improvements, services, and facilities furnished ~~thereby~~ by the state or political subdivision for the benefits of a housing project, ~~but in no event may such.~~ The payments may not exceed the estimated cost to such city, county, or political subdivision of the improvements, services, or facilities to be so furnished. Notwithstanding any other provision of law, the property of an authority used for moderate income housing is exempt from all taxes of the state or any political subdivision except special assessments unless specifically exempted from the special assessment by the political subdivision.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2227.

Senate Vote:    Yeas    34        Nays    11        Absent    2

House Vote:    Yeas    53        Nays    40        Absent    1

\_\_\_\_\_  
Secretary of the Senate

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2005.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2005.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2005,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State