

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

HOUSE BILL NO. 1266
(Representatives Klemin, Mueller)
(Senators Cook, Krebsbach)

AN ACT to amend and reenact subsection 2 of section 40-57-02, subsection 11 of section 40-57-03, sections 40-57-04, 40-57-05, 40-57-07, and 40-57-14, and subsection 1 of section 40-57-19.1 of the North Dakota Century Code, relating to municipal industrial development bonds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 40-57-02 of the North Dakota Century Code is amended and reenacted as follows:

2. "Project" means any real property, buildings, and improvements on real property or the buildings thereon, and any equipment located on ~~such the~~ the real property or in ~~such the~~ the buildings, or elsewhere, or personal property, including working capital, which is used or useful in connection with a revenue-producing enterprise, or any combination of two or more ~~such revenue-producing~~ enterprises, engaged or to be engaged in:
 - a. Assembling, fabricating, manufacturing, mixing, or processing of any agricultural, mineral, or manufactured products, or any combination thereof.
 - b. Storing, warehousing, distributing, or selling any products of agriculture, mining, or manufacture.
 - c. Providing child care facilities or hospital, nursing home, or other health care facilities and service.
 - d. Improvements or equipment used or to be used for the abatement or control of environmental pollution in connection with any new or existing revenue-producing enterprise.
 - e. Public career and technical education.
 - f. Any other industry or business not prohibited by the constitution or laws of the state of North Dakota.

In no event, however, does the term "project" include those undertakings defined in chapter 40-35, with the exception of projects referred to in this subsection.

SECTION 2. AMENDMENT. Subsection 11 of section 40-57-03 of the North Dakota Century Code is amended and reenacted as follows:

11. Issue ~~said~~ revenue bonds to refund, in whole or in part, bonds previously issued ~~by such municipality~~ under authority of this chapter.

SECTION 3. AMENDMENT. Section 40-57-04 of the North Dakota Century Code is amended and reenacted as follows:

40-57-04. Resolution authorizing project and the issuance of revenue bonds - Public notice and hearing - No election required. The acquisition, construction, reconstruction, improvement, betterment, extension, or financing of any project, and the issue of bonds in anticipation of the collection of the revenues of ~~such the~~ the project to provide funds to pay for the cost ~~thereof of the~~ project, may be authorized by an ordinance or resolution of the governing body adopted at a regular or

special meeting ~~thereof~~ of the governing body by the affirmative vote of a majority of its members. ~~Prior to~~ Before the issuance of revenue bonds under ~~authority of~~ this chapter, the governing body shall give notice and hold a public hearing on the proposed bond issue. Notice of the hearing ~~shall~~ must be published in the official newspaper of the municipality once a week for two successive weeks ~~prior to~~ before the time set for the hearing. The notice ~~shall~~ must specify the time and place of the hearing, and the amount and purpose of the proposed bond issue. The governing body ~~shall~~ may not approve the bond issue unless it appears, after the public hearing, that ~~such~~ approval is in the public interest of the municipality. Except as provided in section 40-57-19, no election ~~shall be~~ is required to authorize the use of any of the powers conferred by this chapter. No public hearing is required ~~prior to~~ before the issuance of refunding bonds issued ~~pursuant to~~ under section 40-57-19.1.

SECTION 4. AMENDMENT. Section 40-57-05 of the North Dakota Century Code is amended and reenacted as follows:

40-57-05. ~~Notice to securities commissioner~~ Approval of public officer not required. ~~Upon the issuance of bonds under this chapter, the contracting party shall furnish the state securities commissioner the following information concerning the project:~~

- ~~1. The name of the contracting party.~~
- ~~2. The location and nature of the project.~~
- ~~3. The amount and nature of the bonds issued.~~
- ~~4. The general terms and nature of the financing arrangement.~~
- ~~5. A copy of the official statement of the offering, if one was prepared.~~

The consent of any governmental body or public officer of the state ~~shall~~ is not ~~be~~ required to authorize the issuance or sale of bonds or the making of any mortgage in connection therewith.

SECTION 5. AMENDMENT. Section 40-57-07 of the North Dakota Century Code is amended and reenacted as follows:

40-57-07. Cost of project - How determined. In determining the cost of a project, the governing body may include all costs and estimated costs of the issuance of the revenue bonds; all engineering, inspection, fiscal, and legal expenses; any bond reserves and the interest that 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~~ under this chapter; and ~~with respect to any hospital, nursing home, or other health care facilities comprising a project,~~ the cost of retiring any existing indebtedness ~~in connection with the project which~~ that the governing body of the municipality determines to be necessary or desirable and in furtherance of the public health or welfare, regardless of whether or not such the existing indebtedness constitutes all or a portion of the cost being financed by the issuance of the bonds.

SECTION 6. AMENDMENT. Section 40-57-14 of the North Dakota Century Code is amended and reenacted as follows:

40-57-14. Covenants that may be inserted in ordinance or resolution authorizing bonds.

1. Any ordinance or resolution authorizing the issuance of bonds under this chapter to finance, in whole or in part, the cost of any project may contain covenants, notwithstanding that ~~such~~ the covenants may limit the exercise of powers conferred by this chapter, as to:
 - a. The rents or payments to be charged with respect to the project.
 2. b. The use and disposition of the revenues of ~~said~~ the projects.

- ~~3.~~ c. The creation and maintenance of sinking funds and the regulation, use, and disposition thereof.
- 4. d. The creation and maintenance of funds to provide for maintaining the project and replacement of those properties ~~which~~ that are subject to depreciation.
- ~~5.~~ e. The purpose, or purposes, to which the proceeds of this sale of ~~said~~ bonds may be applied and the use and disposition of ~~said~~ the proceeds.
- ~~6.~~ f. The nature of mortgages or other encumbrances on the project made in favor of the holder ~~or holders~~ of ~~such~~ the bonds, or a trustee therefor.
- ~~7.~~ g. 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~~ the bonds or on any coupons thereof.
- ~~8.~~ h. The issuance of other or additional bonds or instruments payable from or constituting a charge against the revenue of ~~said~~ the project.
- ~~9.~~ i. The insurance to be carried upon the project and the use and disposition of insurance moneys.
- ~~10.~~ j. The keeping of books of account and the inspection and audit thereof.
- ~~11.~~ k. 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~~ the declaration and its consequences may be waived.
- ~~12.~~ l. The rights, liabilities, powers, and duties arising upon the breach by the municipality of any covenants, conditions, or obligations.
- ~~13.~~ m. The vesting in a trustee ~~or trustees~~ of the rights to enforce any covenants made to secure, to pay, or in relation to, the bonds and the powers and duties of ~~such~~ the trustee ~~or trustees~~ and the limitation of liabilities thereof.
- ~~14.~~ n. The terms and conditions upon which the holder ~~or 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.
- ~~15.~~ o. A procedure by which the terms of any ordinance or resolution authorizing bonds or of any other contract with bondholders, including 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.
- ~~16.~~ p. The subordination of the security of any bonds issued ~~hereunder~~ and the payment of principal and interest thereof, to the extent deemed feasible and desirable by the governing body, to other bonds or obligations of ~~the~~ a municipality issued to finance the project or that may be outstanding when the bonds thus subordinated are issued and delivered.
- 2. Nothing in this ~~section, or in this~~ chapter, except as provided in section 40-57-19, ~~shall authorize~~ authorizes any municipality to do anything or for any purpose ~~which that~~ would result in the creation or incurring of a debt or indebtedness or the issuance of any instrument ~~which that~~ would constitute a bond or debt within the meaning of any provisions, 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 debt.

SECTION 7. AMENDMENT. Subsection 1 of section 40-57-19.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Any municipality is authorized to provide for the issuance of refunding bonds to refund, in whole or in part, bonds previously issued ~~by such municipality under the authority of this chapter~~ for any of the following purposes:
 - a. To extend the maturities of the outstanding bonds.
 - b. To consolidate or restructure or reduce the debt service of the outstanding bonds.
 - c. To remove covenants made with respect to the issuance of the outstanding bonds.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1266.

House Vote: Yeas 90 Nays 0 Absent 4

Senate Vote: Yeas 46 Nays 0 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

Governor

Filed in this office this _____ day of _____, 2009,
at _____ o'clock _____ M.

Secretary of State