

PROPERTY TAX MEASURE REVIEW COMMITTEE
NORTH DAKOTA POLITICAL SUBDIVISION BONDING
AUGUST 15, 2011

DEBT

Article X, Section 15 of the ND Constitution limits the debt of political subdivisions to 5% of their assessed valuation. Cities can increase their debt limit to 8%, and school district can increase the debt limit to 10%. A home rule city may establish debt and mill levy limitations in excess of those set by the constitution or legislature for non-home rule cities. All bonds in excess of the amount of indebtedness permitted by the constitution are void.

Article X, Section 16 provides that a political subdivision must impose a tax before it is allowed to incur debt. At or before the time of incurring debt, the political subdivision shall provide for the collection of an annual tax sufficient to pay the principal and interest on such debt, and all laws or ordinances providing for the payment of bonds are irrevocable until such debt is paid. Mill levy limitations do not apply to taxes levied to pay bonded indebtedness under Article X, Section 16. This section applies to financing transactions where there is a pledge of the taxing power. Initiated constitutional measure No. 2 would not impact bonds issued prior to the measure's effective date where the political subdivision has irrevocably pledged property taxes.

GENERAL OBLIGATION BONDS

Most political subdivisions are authorized to issue general obligation (GO) bonds for building projects, infrastructure and equipment. Most, but not all, GO bonds require approval by 60% of the voters voting on the question. GO bonds can have up to a twenty year maturity and are limited in amount only by the entity's constitutional debt limit. Debt service on GO bonds is paid from an excess mill levy on all taxable property in the particular jurisdiction. At the time GO bonds are issued, Article X, Section 16 requires an irrevocable tax levy until the bonds are paid.

LIMITED TAX BONDS

Limited tax bonds are payable from property tax, like GO bonds, but are limited to a certain number of mills. For example, a school district with a building fund is authorized to issue bonds against the building fund levy, which is limited to 20 mills. Limited tax bonds count against the constitutional debt limit.

CERTIFICATES OF INDEBTEDNESS

For the financing of current budgets and cash-flow needs, North Dakota law permits political subdivisions to issue certificates of indebtedness against anticipated revenues in the form of levied but uncollected taxes and distributions of state and federal money. A certificate of indebtedness issued against uncollected taxes may not exceed the amount of uncollected taxes which have been levied during the year in which the borrowing is made, plus uncollected taxes remaining upon the tax lists of the four preceding years. A certificate issued wholly or in part against levied and uncollected taxes is constitutional debt of the political subdivision to the extent of the levied and uncollected taxes.

SPECIAL ASSESSMENT BONDS

Cities, counties and a few other political subdivisions are authorized to finance improvements through special assessments. Public school districts do not have special assessment authority. Most often, cities use special assessments to finance street, water and sewer projects. The cost of the improvements is assessed against the benefited properties and made payable over a period of up to thirty years. Special assessment bonds are backed by a deficiency levy. If special assessment collections are ever insufficient to pay the bonds, the political subdivision is required to certify an excess mill levy without limit on all taxable property to pay the bonds. Special assessment bonds are not considered debt and are not subject to the constitutional debt limit.

Special assessments are not property taxes. While specials are spread on real property, they are based on "benefit" not on valuation. Under measure No. 2, special assessments should continue as a financing option, but there would be many questions. Currently, one political subdivision can assess another for improvements. For example, a city might assess a school district for street improvements. The school district is then authorized to pass on the assessment through a special excess mill levy. Measure No. 2 likely prohibits use of this special levy. Second, use of the deficiency levy would be questionable, as that levy works like a property tax.

REVENUE BONDS

Several political subdivisions, including cities, park districts, water districts and water resource districts are authorized to issue revenue bonds. Revenue bonds are payable solely from user revenues generated by a particular enterprise, such as a water or sewer system. In addition to traditional water and sewer revenue bonds, some cities and counties have issued sales tax revenue bonds. Revenue bonds are payable over a period of up to forty years. Revenue bonds are not considered debt and are not subject to the constitutional debt limit.

TAX INCREMENT BONDS

The legislature authorizes cities to finance public improvements for slum and blighted areas through the issuance of tax increment financing (TIF) revenue or general obligation bonds. Public improvements include demolition, repair, and reconstruction of buildings, construction of new buildings, road and street improvements, street lighting, sidewalk, storm water and sanitary sewers, utilities, parks and similar infrastructure facilities. TIF revenue bonds are payable solely from the tax increment which is derived from the property tax differential between the original taxable value of property in a development or renewal area compared to each subsequent year's taxable value for that property. The applicable mill rate is applied to the difference in taxable values to arrive at the tax increment.

LEASE FINANCING

In the context of public finance, lease financing includes various types of agreements, such as installment purchase contracts, installment sales contracts and purchase orders, in addition to leases. A "financing lease" is distinguished from a "true lease", which involves no acquisition of title to property by a political subdivision. Lease purchase financings result in the acquisition of the building or equipment at the end of the lease term. The North Dakota Century Code does not contain a lease financing chapter for cities or any other political subdivision, but there are various sections scattered throughout the NDCC that allow lease agreements.