

MUNICIPAL GOVERNMENT

CHAPTER 285

S. B. No. 318

(Lashkowitz, Jurgensen, Redlin)

MODERN COUNCIL FORM OF GOVERNMENT

AN ACT

Providing for a modern council form of government for cities and to amend and reenact sections 40-03-01, 40-03-04, 40-04-08, and 40-12-01 of the North Dakota Century Code and section 40-04-10 of the 1963 Supplement to the North Dakota Century Code, relating to the adoption thereof.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. City Council—Who Constitutes—Terms.) The governing body of a city operating under the modern council form of government shall be the city council, which shall be composed of five members one of whom shall be the mayor all elected at large or a city council composed of seven members, four of whom shall be elected by wards, and three of whom, including the one serving as mayor shall be elected at large. Candidates for the council shall run for either mayor or councilman but not both at the same time. The mayor shall be elected at large or, a city council composed of eleven members, seven of whom shall be elected by wards and four of whom, including the one serving as mayor, shall be elected at large. Candidates for the council shall run for either mayor or councilman but not both at the same time. The mayor shall be elected at large. When a city first adopts a modern council form of government in cities electing five council members, the candidates having the three highest number of votes shall be elected for a four-year term and the other two for a two-year term. In cities electing seven or eleven council members, the candidates, by means of their nominating petitions, must announce their intentions to seek a ward seat or an at-large seat, or the mayor's seat. A candidate seeking a ward seat shall be a resident of such ward. When a city first adopts a modern council form of government in cities electing seven members, the elected mayor candidate and the elected candidates from the four wards shall be elected for a four-year term and the three at-large elected candidates for a two-year term. When a city first adopts a modern council form of government in cities electing

eleven members, the elected mayor candidate and the elected candidates from the seven wards shall be elected for a four-year term and the three at-large elected candidates for a two-year term. Thereafter the terms of members of the council shall be four years, or until their successors are elected and qualified.

§ 2. Compensation of Councilmen.) The members of the council shall receive such compensation for their services as shall be fixed by ordinance, but not more than the maximum provided for the members of the governing board under any other form of city government, except in the cities adopting the eleven member modern council the maximum compensation shall be eighty-five dollars per month.

§ 3. Vacancies on City Council—How Filled.) If a vacancy occurs in the office of councilman by death, resignation or otherwise, the city may call a special election to fill such vacancy for the unexpired term or may after fifteen days of the date of such vacancy appoint a person from the ward or city at large by which the councilman previously holding was elected or appointed to fill such vacancy until the next city election, at which election the unexpired term shall be filled.

§ 4. Restrictions on Council Member.) No city councilman shall be eligible to any other office the salary of which is payable out of the city treasury, nor shall he hold any other office under the city government.

§ 5. Meetings — Regular, Special, and for Organization.) The city council shall hold its regular meetings on the first Monday of each and every month, and may prescribe by ordinance the manner in which special meetings may be called. The first meeting for the organization of the city council shall be held on the third Tuesday in April of each even numbered year.

§ 6. Mayor.) The mayor shall preside at meetings of the council, and be the recognized head of the city for all ceremonial purposes and by the governor for purposes of military law. He shall continue to have all the rights and privileges as a member of the council. If a vacancy occurs in the office of mayor or if the incumbent is absent or disabled, a mayor pro tempore shall be selected by the council from among their number to act for the unexpired term or during continuance of the absence or disability.

§ 7. Council—Duties and Powers.) The council shall perform all duties prescribed by law or by city ordinances and shall see that the laws and ordinances are faithfully executed.

§ 8. **Amendment.)** Section 40-03-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-03-01. Organization.) Any city or village in this state having a population of not less than two hundred inhabitants may become incorporated as a city under the council form of government or the modern council form of government in the following manner: upon a petition signed by one-fifth of the electors of such city or village, based upon the votes cast for the office of governor at the last preceding general election, the governing body of the city or village shall submit to the electors thereof the question whether such city or village shall be incorporated as a city under the council form of government or the modern council form of government. Such governing body shall appoint a time when and a place or places where the election shall be held and shall designate the clerks and judges at such election. Such question shall not be submitted more than once in every four years.

§ 9. **Amendment.)** Section 40-03-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-03-04. Form of Ballots.) The ballots to be used at an election for the organization of a city under this chapter shall be in substantially the following form:

Shall the village of.....(name the village).....
be incorporated as a city under the council form of
government?

YES.....

NO

Shall the (city) or (village) of (name the city or village)
be incorporated as a city under the modern council form
of government with a five man council?

YES.....

NO

Shall the (city) or (village) of (name the city or village)
be incorporated as a city under the modern council form
of government with a seven man council?

YES.....

NO

Shall the (city) or (village) of (name the city or village) be incorporated as a city under the modern council form of government with an eleven man council?

YES.....

NO

§ 10. Amendment.) 40-04-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-04-08. Change from Commission System of Government—Petition Required.) Any city which shall have operated for more than six years under the city commission system of government may change its organization thereunder and adopt the city council form of government or the modern council form of government. The proceeding to change shall be initiated by a petition asking for such change signed by not less than forty percent of the electors of the city. For the purpose of this section the term “qualified electors of the city” shall mean the total number of electors voting at the preceding general election. The signatures to such petition need not be appended to a single paper, but one of the signers upon each paper shall make oath before an officer competent to administer oaths that each signature appearing upon such paper is the genuine signature of the person whose name it purports to be. Each petition, in addition to the names of the signers, shall contain the name of the street upon and the number of the house in which each petitioner resides, and the length of his residence in the city. Any petitioner shall be permitted to withdraw his name from a petition within five days after the petition is filed.

§ 11. Amendment.) Section 40-12-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-12-01. Initiative and Referendum Apply Only in Commission and Modern Council Cities.) The provisions of this chapter relative to the initiating and referring of municipal ordinances shall apply only in cities operating under the commission and modern council system of government except those cities adopting the eleven member council.

§ 12. Amendment.) Section 40-04-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-04-10. Procedure When Petition to Change from Commission System of Government Is Filed—Special Election—Ballot.) When a petition to change from the commission sys-

tem of government, together with the city auditor's certificate of sufficiency, is filed with the governing body of a municipality, the governing body shall call a special election at which only the question of changing from the commission system of government will be submitted. The date of such election shall not be less than thirty days nor more than ninety days after the date of the auditor's certificate that a sufficient petition has been filed. The election shall be conducted, returns thereof made, and the result thereof declared in all respects as are other city elections. Notice of such election shall be given by the publication of the proposition to be voted upon, the places where the election will be held, and the date of the election, in each newspaper published in the city, not more than twenty days and not less than five days before the date of such election. The ballot to be used at the election provided for in this section shall be in substantially the following form:

Shall the city of.....change from its organization under the commission system of government and become a city under the council form of government?

YES.....

NO

Shall the city of.....change from its organization under the commission system of government and become a city under the modern council form of government with a five man council?

YES.....

NO

Shall the city of.....change from its organization under the commission system of government and become a city under the modern council form of government with a seven man council?

YES.....

NO

Shall the city of.....change from its organization under the commission system of government and become a city under the modern council form of government with an eleven man council?

YES.....

NO

Approved March 15, 1965.

CHAPTER 286

H. B. No. 870

(Meschke, Whittlesey, Stenhjem, Unruh, Schaffer, Loerch)

MUNICIPAL JUDGES

AN ACT

To amend and reenact sections 40-18-01, 40-18-03, and 40-18-11 of the 1963 Supplement to the North Dakota Century Code and sections 40-18-04, 40-18-05, 40-18-06, 40-18-07, 40-18-08, 40-18-09, 40-18-10, 40-18-13, 40-18-14, 40-18-15, 40-18-16, 40-18-17, 40-18-18, 40-18-19, 40-15-02, subsection 3 of section 40-15-01, and subsection 4 of section 40-14-01 of the North Dakota Century Code, relating to the jurisdiction, selection, qualifications, compensation, duties and powers of police magistrates, and changing the name thereof to municipal judges.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.)** Section 40-18-01 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-01. Jurisdiction of Municipal Judge.) The municipal judge within a city or village having a population of 3000 or more shall be an attorney licensed to practice law in this state, unless no person so licensed is available in the city or village and shall have exclusive jurisdiction of, and shall hear, try and determine, all offenses against the ordinances of the city or village, as the case may be. The offices of county justice and municipal judge may not be held by the same person.

§ 2. **Amendment.)** Section 40-18-03 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-03. Vacancy in Office of Municipal Judge—Temporary Absence of Municipal Judge.) If a vacancy exists in the office of municipal judge by death, resignation, or otherwise, it shall be filled by appointment by the executive officer, subject to confirmation by the governing body of the city. An appointee shall qualify, and he shall hold office until the next city election, and until his successor is elected and qualified. During the temporary absence, interest, disqualification, or disability of the municipal judge, any county justice designated by the executive officer shall act as municipal judge until the municipal judge is available in the trial of causes triable before the municipal judge. In any city within a county having

a court of increased jurisdiction, the governing body may appoint an alternate municipal judge to serve when the municipal judge is unable to serve due to temporary absence or disability or interest. Such alternate shall be compensated on a per diem basis at a rate set by the governing body, and shall possess, as nearly as is practicable, the qualifications of the regular municipal judge.

§ 3. Amendment.) Section 40-18-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-04. Office Hours of Municipal Judge.) The municipal judge shall be in attendance at his office for the transaction of business at such reasonable hours as the governing body of the city may prescribe. Complaints may be made to, and writs and process issued by, him at all times in court or otherwise.

§ 4. Amendment.) Section 40-18-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-05. Municipal Judge Is Conservator of the Peace — Powers on Sunday Restricted.) The municipal judge within his city and within his village shall be a conservator of the peace, and he shall have power to bring persons before him forthwith for trial. His court shall be open every day except Sunday to hear and determine cases cognizable before him. He shall perform no official act on Sunday except that he may receive complaints, issue process, take bail, and receive verdicts.

§ 5. Amendment.) Section 40-18-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-06. Municipal Judge Who Is Paid Salary to Turn Fees Into City Treasury.) When the municipal judge is paid a salary by the city, he shall not receive fees of any kind or in any amount from the city. In all criminal actions and in all actions instituted under any ordinance of the city, however, he shall collect the same fees as are allowed by section 33-01-23, and such fees shall be paid by him into the city treasury at the end of each month. At the end of each month, the municipal judge shall make and file with the city auditor a written report under oath showing an account of all fees collected by him in such actions during the preceding month and showing the actions in which such fees were collected. His salary shall not be paid to him until he has complied with the provisions of this section.

§ 6. **Amendment.)** Section 40-18-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-07. Warrants of Arrest Issued by Municipal Judge—Service of Warrant.) Whenever any person competent to testify against the accused makes a complaint to a municipal judge upon oath or affirmation that an offense against a city ordinance or village ordinance or bylaw, as the case may be, has been committed, the municipal judge shall issue a warrant for the arrest of the offender. The warrant shall be served by the chief of police, marshal, sheriff, any constable of the county, or by some person appointed specially by the municipal judge for that purpose.

§ 7. **Amendment.)** Section 40-18-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-08. Warrants Issued by Municipal Judge to Run to Whom.) All warrants issued by a municipal judge for the violation of any general law of this state shall run to the sheriff, or any constable of the county or to the chief of police, marshal, or any policeman of the municipality.

§ 8. **Amendment.)** Section 40-18-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-09. Subpoena of Witnesses—Continuance of Trial—Verbal Notice to Witnesses to Attend.) A municipal judge shall subpoena all persons whose testimony may be material as witnesses on a trial before him, and if necessary, he shall enforce their attendance by attachment. On continuance of a trial, the municipal judge verbally may notify the witnesses present to attend before him at the time to which the action is continued. Such verbal notice shall be as valid as a subpoena.

§ 9. **Amendment.)** Section 40-18-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-10. Trials for Misdemeanors Before Municipal Judge Governed by Justice Court Procedure.) All trials before a municipal judge for misdemeanors arising under the laws of this state shall be governed by the criminal procedure applicable to justices' courts in like cases.

§ 10. **Amendment.)** Section 40-18-11 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-11. How Proceedings in Criminal Cases Not Provided for in This Chapter To Be Governed.) In all cases not specifically provided for in this chapter, the process and proceedings in the court of a municipal judge shall be governed by the provisions of the laws of this state regulating proceedings in justices' courts in either civil or criminal cases.

§ 11. **Amendment.)** Section 40-18-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-13. Suspension of Sentence.) A municipal judge may suspend any sentence imposed by him during the good behavior of the person so sentenced or for other reasonable cause.

§ 12. **Amendment.)** Section 40-18-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-14. Municipal Judge May Enforce Orders and Judgments.) A municipal judge shall have the power to enforce due obedience to his orders and judgments. He may fine or imprison for contempt offered to him while holding court, or to process issued, or orders made by him, in the same manner and to the same extent as is provided by the laws of this state in the case of a county justice.

§ 13. **Amendment.)** Section 40-18-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-15. Jury Trials in Cases Arising Under the Ordinances of a City or Village.) An action for the violation of a city ordinance or of a village ordinance shall be tried and determined by the municipal judge, without the intervention of a jury except as is provided in this section. If the defendant is charged with the violation of an ordinance of the city under the provisions of which imprisonment for more than ten days or a fine of more than twenty dollars is made a part of the penalty, such defendant before the commencement of the trial, may demand a trial by jury. A defendant who is charged with the violation of a village ordinance, before the commencement of the trial, may demand a trial by jury regardless of the penalty specified in the village ordinance for the offense.

§ 14. **Amendment.)** Section 40-18-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-16. Procedure When Jury Demanded in Court of Municipal Judge.) When a jury has been demanded in accordance with the provisions of section 40-18-15, the muni-

cipal judge shall prepare a list of the names of eighteen residents of the city or village having the qualification of jurors in the district court. The defendant and the attorney for the city or village, or the chief of police or the village marshal, if the city or village is not represented by an attorney, shall strike names from such list alternately until each has stricken three names therefrom. If the defendant shall refuse to strike names from such list, the municipal judge shall strike three names therefrom. The municipal judge then shall issue his venire to the chief of police or to the village constable, as the case may be, commanding him to summon the twelve persons whose names remain upon the list as jurors.

§ 15. **Amendment.)** Section 40-18-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-17. Challenges for Cause to Jurors in Court of Municipal Judge.) In all trials by the jury in a municipal judge's court, challenges shall be allowed in the same manner and for the same causes as in the district court in cases of misdemeanor, but no peremptory challenges shall be permitted. If either party objects to the competency of a juror, the question on the challenge shall be tried in a summary manner by the municipal judge, who may examine the juror or other witnesses under oath. If the number of jurors is reduced below twelve by challenges for cause or because of the failure to appear of any juror named on the venire, the chief of police of the city or the village marshal shall summon a sufficient number of talesmen having the qualifications of jurors to complete the panel which, in all cases, shall consist of twelve jurors.

§ 16. **Amendment.)** Section 40-18-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-18. Fee of Juror in Court of Municipal Judge.) Each person summoned as a juror in any case in the court of a municipal judge shall be entitled to a fee of four dollars. If the defendant is convicted, the fees of all jurors shall be taxed against him as a part of the costs of the case.

§ 17. **Amendment.)** Section 40-18-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-19. Appeals from Determinations of Municipal Judge.) An appeal may be taken to the district court from any judgment in a municipal judge's court in the same form and manner as appeals are taken and perfected from a judgment of

conviction of a defendant in justice court, and in accordance with sections 33-12-34, 33-12-35 and 33-12-39, and shall be tried in the district court in accordance with sections 33-12-40 and 33-12-41, and bail shall be taken in accordance with sections 33-12-36 and 33-12-37, and witnesses may be placed under bond as provided for in section 33-12-38. On all appeals from a determination in a municipal judge's court the district court shall take judicial notice of all of the ordinances of the city or of the village, as the case may be.

§ 18. Amendment.) Section 40-15-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-15-02. Terms of Elective Officers.) The terms of office of the president of the board of city commissioners and of each commissioner shall be as provided in chapter 40-09. The municipal judge shall hold office for four years and until his successor is elected and qualified.

§ 19. Amendment.) Subsection 3 of section 40-15-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. A municipal judge.

§ 20. Amendment.) Subsection 4 of section 40-14-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. A municipal judge.

Approved March 10, 1965.

CHAPTER 287

H. B. No. 717

(Dornacker, Schaffer, Christopher, Winge)

DATES OF MUNICIPAL ELECTIONS

AN ACT

To amend and reenact sections 40-21-02, 40-21-03, and 40-07-03 of the North Dakota Century Code, relating to municipal elections.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Section 40-21-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-21-02. Elections in Commission Cities — When Held — Notice — Polls — Judges and Inspectors.) Biennial municipal elections in cities operating under the commission system of government shall be held on the first Tuesday in April in each even numbered year at such place or places as the board of city commissioners shall designate. Ten days' notice of the time and place of the election and of the offices to be filled at such election shall be given by the city auditor by publication in the official newspaper of the city and by posting written or printed notices in three public places in the city. The polls shall be opened and closed as provided by state law for the opening and closing of polls at primary, general and special elections. For all general and special city elections the board of city commissioners, at least ten days before any election is held, shall appoint one inspector and two judges of election in each precinct established in the city.

§ 2. Amendment.) Section 40-21-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-21-03. Elections in Council Cities—Polling Places—Polls Open—Notice.) Biennial municipal elections in cities operating under the council form of government shall be held on the first Tuesday in April in each even numbered year at such place or places as the city council shall designate. In cities where aldermen are elected at large, the council shall designate one polling place only. The polls shall be opened and closed as provided by state law for the opening and closing of polls at primary, general and special elections. Ten days' notice of the time and place of holding each election and of the offices to be filled thereat shall be given by the city auditor by publication in at least two newspapers published in said city if two are published therein. Publication in one such newspaper shall be sufficient if only one newspaper is published in the city.

§ 3. Amendment.) Section 40-07-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-07-03. Polls—Opening and Closing Hours.) In all village elections, the polls shall be opened and closed as provided by state law for the opening and closing of polls at primary, general and special elections.

Approved March 17, 1965.

CHAPTER 288

S. B. No. 156

(Lashkowitz, Sorlie, Jurgensen, Lips)

PUBLICATION OF ASSESSMENT LISTS

AN ACT

To amend and reenact section 40-23-10 of the North Dakota Century Code, so as to permit municipalities to file special assessment lists for public inspection, in lieu of publication, when more than five thousand lots or tracts are included within the list, and declaring an emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Section 40-23-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-23-10. Publication of Assessment List and Notice of Hearing of Objections to List.) The commission shall cause the assessment list, which list shall not include the amount each lot or tract is benefited by the improvement, to be published once each week for two consecutive weeks in the official newspaper of the municipality, together with a notice of the time when and the place where the commission will meet to hear objections made to any assessment by any interested party, his agent, or attorney; provided that in lieu of publication of an assessment list, if it includes more than five thousand lots or tracts, the commission may cause it to be filed and made available for public inspection at all times after the first publication of the notice, during reasonable business hours, at such place as shall be designated in the published notice. The date set for such hearing shall be not less than fifteen days after the first publication of the notice.

§ 2. Emergency.) This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 6, 1965.

CHAPTER 289

S. B. No. 237
(Kautzmann, Lips)

DUE DATES OF SPECIAL ASSESSMENTS

AN ACT

To amend and reenact sections 40-24-02, 40-24-03, 40-24-11, 40-24-12, 40-24-15, and 40-24-16 of the North Dakota Century Code, relating to special assessments levied by municipalities, the computation of interest thereon, the lien thereof as between vendor and vendee, the certification, collection, review and correction thereof, and the issuance of receipts therefor.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.)** Section 40-24-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-24-02. Special Assessments When Due and Payable — Interest.) All special assessments levied under the provisions of this title may be paid without interest within ten days after they have been approved by the governing body and thereafter shall bear interest at a rate of not exceeding seven percent per annum on the total amount thereof remaining from time to time unpaid.

§ 2. **Amendment.)** Section 40-24-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-24-03. Lien Between Vendor and Vendee of Special Assessments.) As between a vendor and vendee of real property, unless the purchase contract otherwise provides, the installments of all special assessments for local improvements which are required to be certified and returned to the county auditor in each year shall be and become a lien upon the real property upon which the same are assessed from and after the first day of December in such year.

§ 3. **Amendment.)** Section 40-24-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-24-11. Certification of Assessments to County Auditor.) Annually, at the time of certifying to the county auditor the amount of the municipal taxes to be levied for the current year, the city auditor or village clerk, as the case may be, shall certify to the county auditor all uncertified installments of

assessments which are to be extended upon the tax lists of the municipality for the current year, in the manner provided in section 40-24-12.

§ 4. **Amendment.)** Section 40-24-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-24-12. City Auditor or Village Clerk to Insert Amount of Improvements in County Real Estate Assessment Book—Regulations Governing—Form.) The city auditor or the village clerk, as the case may be, shall notify the county auditor not later than July first in each year of any special assessments which were made in the municipality in addition to those reported in the previous year. The county auditor shall make and deliver to the city auditor or village clerk, as the case may be, on or before August tenth each year, a copy of the real estate assessment book for the current year covering all additions in which any special assessments have existed and where any will appear for the current year as advised by the city auditor or the village clerk. The city auditor or village clerk shall insert in the proper columns under the appropriate headings the amount of each of the installments of the assessments on the lots or subdivision of lots or tracts of land which are to be extended upon the tax lists of the municipality for the current year. In cases where a division of property has been made since the original assessment, the city auditor or village clerk shall make or cause to be made, with the assistance and advice of the special assessment commission, the proper division of the special assessments on the lots or tracts of land as the same are divided and assessed for the general taxes as furnished by the county auditor. The form to be used by the city auditor or village clerk shall be to add each column on each page and total it, and to cross add all items entered against each lot or tract of land and carry this total to a final column at the right-hand side of the page so that when the totals of each column are cross added, the total of the cross addition will equal the total of the final column, and to recapitulate the footings of the entire list, page by page, to show the total amount for each purpose, and a total of these added together shall equal the total amount of special assessments certified to the county auditor for the current year.

§ 5. **Amendment.)** Section 40-24-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-24-15. Special Assessment Record Book Kept by County Auditor—Assessments Certified for More Than One Year.) The county auditor shall keep in his office a special assess-

ment record. When any municipality causes the installments of special assessments for a period of more than one year to be certified, the county auditor shall cause the special assessments so certified to be recorded in such book for the respective years and in the amounts shown in the certificate of the city auditor or village clerk. In such event the certificate of the city auditor or village clerk shall include a list of all lots and tracts of land upon which such assessments are levied, designating the purpose of the assessment, the fund to which it belongs, and the installment of such assessment for each year against each lot or tract, including interest thereon.

§ 6. **Amendment.**) Section 40-24-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-24-16. County Treasurer to Certify and Receipt for Amount of Special Assessments Collected—Contents of Certificate—Procedure for Abatement.) Special assessments of any kind certified to the county auditor by the city auditor or village clerk shall be paid to the county treasurer and included in the receipt required by section 57-20-08. In the event that the county treasurer receives less than the full amount of taxes and special assessments due at any time on any lot or tract of real estate, he shall allocate the amount of such payment between taxes and special assessments in proportion to the respective amounts of taxes and special assessments which are then due. Special assessments shall not be subject to abatement or refund by proceedings under chapter 57-23, but shall be reviewed and corrected only in the manner and upon the conditions provided in chapter 40-26. The county treasurer, at the time set by law for the payment to the municipal treasurer of all the taxes and special assessments collected by him during the preceding month, shall certify in duplicate the amounts of special assessments collected. The certificate shall state specifically the lot or known subdivision thereof as it appears on the tax books of the county treasurer, and the block, addition, amount collected, and the amount credited to each lot or known subdivision thereof, and the year for which the sum was collected. One copy of such certificate shall be furnished to the municipal treasurer and one copy to the city auditor or village clerk.

Approved March 15, 1965.

CHAPTER 290

S. B. No. 158

(Lashkowitz, Sorlie, Mahoney, Urdahl, Lips, Jurgensen)

FINANCING OF MUNICIPAL UNDERTAKINGS

AN ACT

To amend and reenact section 40-35-02 of the 1963 Supplement to the North Dakota Century Code, relating to municipal undertakings which may be financed by the issuance of revenue bonds, and declaring an emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.)** Section 40-35-02 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-35-02. "Undertaking" Defined.) The term "undertaking", as used in this chapter, unless a different meaning clearly appears from the context, shall mean systems, plants, works, instrumentalities, and properties used in revenue producing undertakings, or any combination of two or more of such undertakings, which are used or useful in connection with:

1. The obtaining of a water supply and the conservation, treatment, distribution, and disposal of water for public and private uses;
2. The collection, treatment, and disposal of sewage, waste, and storm water;
3. The generation, production, transmission, and distribution of natural, artificial, or mixed gas, or electric energy, for lighting, heating, and power for public and private uses;
4. The operation of parking lots, trailer courts and facilities for motor vehicles and house trailers;
5. The purchase, acquisition or establishment, maintenance and operation of a public transportation system; and
6. The purchase, acquisition, construction, establishment, maintenance and operation of an airport and the facilities and services in connection therewith;

together with all parts of any such undertaking and all appurtenances thereto, including lands, easements, rights in land, water rights, contract rights, franchises, approaches,

dams, reservoirs, generating stations, sewage disposal plants, intercepting sewers, truck connections, other sewer and water mains, filtration works, pumping stations, and equipment, and facilities in and upon such buildings and lands.

§ 2. Emergency.) This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 19, 1965.

CHAPTER 291

H. B. No. 920
(Hardmeyer, Gietzen)

AUDITOR'S COPY OF MUNICIPAL BUDGET REPEALED

AN ACT

To repeal section 40-40-07 of the North Dakota Century Code, relating to preliminary budgets.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Repeal.) Section 40-40-07 of the North Dakota Century Code is hereby repealed.

Approved March 5, 1965.

CHAPTER 292

S. B. No. 200
(Lashkowitz, Lips)

POLICEMEN'S RETIREMENT DATE AND AMOUNT

AN ACT

To amend and reenact section 40-45-09 of the 1963 Supplement to the North Dakota Century Code, relating to when a policeman may retire on pension and the amount to be paid to such retiring policeman.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Section 40-45-09 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-45-09. Who May Be Retired on Pension—Amount Paid to Retiring Member—Retiring Member Not Paid.) Any member of the police department, including officers and police matrons, who shall have served twenty-two years or more in the department and shall have reached the age of sixty years, or who, while a member of such department, shall suffer permanent mental or physical disability so that he is unable to discharge his duties, shall be entitled to be retired. Upon retirement, he may be paid out of the pension fund of the department a monthly pension equal to sixty percent of the average monthly salary received during the highest paid consecutive thirty-six month period of his employment in the department. If any member shall have served twenty-two years in the department but shall not have reached the age of sixty years, he shall be entitled to retirement, but no pension shall be paid while he lives until he reaches the age of sixty years. Upon approval of the governing body of the municipality, and at the discretion of the board of trustees if it shall find that the actuarial soundness of the fund would not be materially impaired, any member otherwise qualifying in accordance with the provisions of this section may retire if he has reached the age of fifty-five years.

Approved March 15, 1965.

CHAPTER 293

S. B. No. 197
(Lashkowitz, Lips)

REFUND FROM POLICEMEN'S PENSION FUND

AN ACT

To amend and reenact section 40-45-21 of the North Dakota Century Code, relating to policemen obtaining refund from pension fund upon termination of employment.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.)** Section 40-45-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-45-21. Policemen Entitled to Refund from Fund Upon Termination of Employment with City.) Any employee of a police department who shall have contributed to the policemen's pension fund, and who voluntarily and while in good standing as a member of such police force leaves the employ-

ment of the city, shall be entitled upon application at the time of such termination, to a refund of all contributions made by him.

Approved March 6, 1965.

CHAPTER 294

S. B. No. 305

(Luick, Lashkowitz)

COUNTY PARTICIPATION IN MUNICIPAL INDUSTRIAL
DEVELOPMENT ACT

AN ACT

To amend and reenact section 40-57-02, subsection 11 of section 40-57-03, and section 40-57-10 of the North Dakota Century Code Supplement, and subsection 9 of section 40-57-03 of the North Dakota Century Code, relating to municipal industrial development and the issuance of municipal revenue bonds for industrial development projects, authorizing counties to engage in such projects, authorizing sale of a project to the lessee, authorizing construction of a project by the lessee, and authorizing private sale of such bonds at not less than ninety-five percent of par plus accrued interest and declaring an emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.**) Section 40-57-02 of the North Dakota Century Code Supplement is hereby amended and reenacted to read as follows:

40-57-02. "Projects" and "Municipalities" Defined.) As used in this chapter, unless a different meaning clearly appears from the context, the term "municipality" shall include counties as well as municipalities of the types listed in section 40-01-01, subsection 1, and the term "project" shall mean any real property, buildings and improvements on real property or the buildings thereon, and any equipment permanently located on such real property or in such buildings, which are used or useful in connection with revenue producing enterprises, or any combination of two or more such enterprises, engaged or to be engaged in:

1. Assembling, fabricating, manufacturing, mixing, or processing of any agricultural, mineral, or manufactured products, or any combination thereof;
2. Storing, warehousing, distributing, or selling any products of agriculture, mining, or manufacture.

3. Any other industry or business not prohibited by the constitution or laws of the state of North Dakota.

In no event, however, shall the term "project" include those undertakings defined in chapter 40-35.

§ 2. Amendment.) Subsection 9 of section 40-57-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. Sell and convey all properties acquired in connection with such projects, including without limitation the sale and conveyance thereof subject to such mortgage as herein provided, and the sale and conveyance thereof to the lessee under an option granted in the lease of the project, for such price, and at such time as the governing body of the municipality may determine, provided, however, that no sale or conveyance of such properties shall ever be made in such manner as to impair the rights or interests of the holder, or holders, of any bonds issued under the authority of this chapter; and

§ 3. Amendment.) Subsection 11 of section 40-57-03 of the North Dakota Century Code Supplement is hereby amended and reenacted to read as follows:

11. In any instance where the project consists of the construction, reconstruction, improvement, betterment of real property, buildings and improvements on real property and buildings, the provisions of chapter 48-02 of the North Dakota Century Code and other applicable statutes shall apply; except that the municipality, in the lease and resolution or mortgage defining the terms and conditions upon which the project is to be constructed, leased and financed, or in a preliminary agreement establishing the general terms of the lease and financing of the project when constructed, may permit the lessee, subject to such terms and conditions as the municipality shall find necessary or desirable and proper, to provide for the construction, acquisition and installation of the buildings, improvements and equipment to be included in the project by any means available to the lessee and in the manner determined by the lessee, whether or not the procedure followed by the lessee is in conformity with said chapter 48-02.

§ 4. Amendment.) Section 40-57-10 of the North Dakota Century Code Supplement is hereby amended and reenacted to read as follows:

40-57-10. Sale of Revenue Bonds.) Revenue bonds shall be sold at not less than ninety-five percent of par plus any accrued interest, provided that they shall not be sold at a price such that the interest cost to the municipality for the proceeds of the bonds computed to maturity according to standard tables of bond values will exceed five percent per annum. Such bonds may be sold at private sale, or such bonds may be sold at public sale after notice of such sale has been published once at least five days prior to such sale in a newspaper circulating in the municipality, and in at least two financial newspapers published in Chicago, Illinois, in New York, New York, in Minneapolis, Minnesota, or in San Francisco, California. Banks chartered in this state may purchase the revenue bonds issued under the provisions of this chapter in an amount not to exceed five percent of their capital.

§ 5. Emergency.) This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 19, 1965.

CHAPTER 295

H. B. No. 789

(Stallman, Haugen, Shorma, Larson (Richland), Jungroth)

TAX EXEMPTION OF MUNICIPAL INDUSTRIAL DEVELOPMENT PROJECTS

AN ACT

To amend and reenact section 40-57-17 of the North Dakota Century Code, relating to the taxation of projects under the Municipal Industrial Development Act.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Section 40-57-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-57-17. Exemptions from Taxation.) The leasehold granted by a municipality under this chapter is hereby classified as personal property and such leasehold and all other personal property used by the lessee in connection with the project and located on the premises of the leasehold shall be exempt from personal property taxation for a period of five

years from the granting of such leasehold and execution of any instrument evidencing said grant. Further, that any corporate lessee under such a leasehold referred to shall be exempt from the payment of corporate income taxes on any corporate income attributable to the business carried on by the lessee on such leasehold premises for a period of five years from the year in which the corporation lessee commenced business operations on the leased premises, provided, however, that this section shall not have the effect of exempting such corporation lessee from filing an annual income tax return.

Approved March 19, 1965.