

MUNICIPAL GOVERNMENT

CHAPTER 454

HOUSE BILL NO. 1064
(Legislative Council)
(Interim Political Subdivisions Committee)

FEDERAL ANTITRUST LAW

AN ACT relating to extending state immunity from federal antitrust law to cities and city governing bodies exercising powers delegated to them by state law; and to declare an emergency.

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

SECTION 1. Antitrust immunity of cities and city governing bodies. All immunity of the state from the provisions of the Sherman Antitrust Act [Act July 2, 1890, c.647; 26 Stat. 209; 15 U.S.C. 1 et seq.] is hereby extended to any city or city governing body acting within the scope of the grants of authority contained in sections 40-05-01, 40-05-02, and 40-05.1-06. When acting within the scope of the grants of authority contained in sections 40-05-01, 40-05-02, and 40-05.1-06, a city or city governing body shall be presumed to be acting in furtherance of state policy.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 10, 1983

CHAPTER 455

HOUSE BILL NO. 1366
(Gunsch)

DOG REGULATION AUTHORITY

AN ACT to amend and reenact subsection 22 of section 40-05-02 of the North Dakota Century Code, relating to the power of a city to regulate the keeping of dogs.

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

SECTION 1. AMENDMENT. Subsection 22 of section 40-05-02 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

22. Dogs. To license dogs, and to regulate ~~or prohibit their running at large, and to authorize their destruction when at large contrary to any prohibition or regulation the~~ keeping of dogs including authorization for their disposition or destruction in order to protect the health, safety, and general welfare of the public.

Approved March 15, 1983

CHAPTER 456

HOUSE BILL NO. 1674
(Mushik, Gerl)

PREPONDERANCE DEFINED

AN ACT to amend and reenact section 40-05-17 of the North Dakota Century Code, relating to a definition of preponderance; and to declare an emergency.

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

SECTION 1. AMENDMENT. Section 40-05-17 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-05-17. City restriction of adult establishments - Definitions.

1. As used in this section, unless the context otherwise requires:
 - a. "Adult bookstore" means a bookstore having as a preponderance of its publications, books, magazines, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined in this subsection.
 - b. "Adult establishment" means either an adult bookstore, an adult motion picture theater, an adult mini-motion picture theater, or a massage business, all as defined in this subsection.
 - c. "Adult mini-motion picture theater" means an enclosed building with a capacity for less than fifty persons used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined in this subsection, for observation by patrons of the theater.

- d. "Adult motion picture theater" means an enclosed building with a capacity of fifty or more persons used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined in this subsection, for observation by patrons of the theater.
- e. "Massage" means the manipulation of body muscle or tissue by rubbing, stroking, kneading, or tapping, by hand or mechanical device.
- f. "Massage business" means any establishment or business wherein massage is practiced, including establishments commonly known as health clubs, physical culture studios, massage studios, or massage parlors.
- g. "Sexually oriented devices" means without limitation any artificial or simulated specified anatomical area or any other device or paraphernalia that is designed in whole or in part for specified sexual activities.
- h. "Specified anatomical areas" means:
- (1) Less than completely and opaquely covered human genitals and pubic regions, buttocks, or female breasts below a point immediately above the top of the areola.
 - (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.
- i. "Specified sexual activities" means:
- (1) Human genitals in a state of sexual stimulation or arousal;
 - (2) Acts of human masturbation, sexual intercourse, or sodomy; or
 - (3) Fondling or other erotic touchings of human genitals and pubic regions, buttocks, or female breasts.
2. A determination of preponderance need not be based on whether or not a numerical majority or plurality of the materials are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas. When making a determination as to whether an establishment displays, sells, distributes, or exhibits a preponderance of materials which are so distinguished or characterized the governing body or factfinder shall consider the

totality of the circumstances and may consider, among other factors deemed relevant, any of the following:

- a. Dominant theme of the establishment.
- b. Total impression of the emphasis placed on such materials by the establishment.
- c. Externalities of the establishment including but not limited to the manner of packaging or display and advertising which demonstrates the dominant theme or emphasis being placed on such materials by the establishment.
- d. Obtrusive characteristics of the materials which tend to distract from and dominate the other classes of materials.
- e. Manner of display of the materials.
- f. Advertising emphasis.
- g. Whether the establishment prohibits minors from entering the premises or any portion thereof.

2- 3. The governing body of any city may, by ordinance, provide that:

- a. No building, premises, structure, or other facility that contains any adult establishment, as defined in subsection 1, shall contain any other kind of adult establishment.
- b. No building, premises, structure, or other facility in which sexually oriented devices, as defined in subsection 1, are sold, distributed, exhibited, or contained shall contain any adult establishment, as defined in subsection 1.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved April 5, 1983

CHAPTER 457

SENATE BILL NO. 2426
(Lodoen)

REPORT PREPARED BY CITY AUDITOR

AN ACT to amend and reenact section 40-16-04 of the North Dakota Century Code, relating to reports prepared by city auditors.

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

SECTION 1. AMENDMENT. Section 40-16-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-16-04. Reports of city auditor. The city auditor of each city shall prepare and submit to the governing body of the city reports as follows:

1. Monthly report financial statement. A written report each month showing the condition of the several funds of the city and of all outstanding contracts and claims which may be payable out of any such funds; monthly financial statement shall be prepared showing the revenues, expenditures, transfers and fund balances; and
2. Quarterly report. A report in July, October, January, and April of each year showing a full, clear, and complete statement of all the taxes and other revenues collected and expended for the preceding three months, and indicating the respective sources from which the moneys are derived and the disposition made thereof; Annual financial statement. An annual financial statement shall be prepared, on or before February first, showing the revenues, expenditures, transfers and fund balances of the city for the year ended December thirty-first. This financial statement shall be retained in the office of the city auditor as a permanent public record.
- 3- Semiannual report. A report, on or before January tenth and July tenth of each year, showing the receipts and expenses of the city for the six-month periods ending December thirty-first and June thirtieth, respectively. Such report shall include a statement of the financial

condition of all municipal funds as of the date for which it is given, and shall be kept on file in the office of the city auditor as a permanent public record. Certified copies of the report shall be forwarded to and kept on file in the offices of the county auditor and county treasurer and shall be open to public inspection and examination, and

4. Annual statement. A detailed statement, on or before the tenth day of July in each year, showing the expenses of the city during the last fiscal year and an estimate of the expenses for the ensuing fiscal year and the income for that year from sources other than taxes.

Approved March 17, 1983

CHAPTER 458

HOUSE BILL NO. 1552
(Representatives Lang, Schindler)
(Senator Leibhan)

CITY ELECTION OFFICIALS

AN ACT to amend and reenact sections 40-21-02 and 40-21-03 of the North Dakota Century Code, relating to city election officials.

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

SECTION 1. AMENDMENT. Section 40-21-02 of the 1981 Supplement to 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 as provided by section 40-01-09. 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 city elections, the board of city commissioners shall appoint one inspector for each precinct at least twenty-one days before the election is held, and two judges of election for each precinct at least ten days before the election is held. For special city elections the board of city commissioners shall appoint one inspector and two judges of election for each precinct in the city at least ten days before the election is held. For any city election in a precinct in which seventy-five or fewer votes were cast in the last city election, the board of city commissioners may appoint one inspector and one judge. Each precinct election judge, in either a general or a special city election, shall appoint a poll clerk who shall be a qualified elector of the precinct in which he is to serve.

SECTION 2. AMENDMENT. Section 40-21-03 of the 1981 Supplement to 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 - Judges, clerks, and inspectors. 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. For all general city elections the city council shall appoint one inspector for each precinct at least twenty-one days before the election is held, and two judges and two clerks of election for each precinct at least ten days before the election is held. For special city elections the city council shall appoint one inspector, two clerks, and two judges of election for each precinct in the city at least ten days before the election is held. For any city election in a precinct in which seventy-five or fewer votes were cast in the last city election, the city council may appoint one inspector, one clerk, and one judge.

Approved March 10, 1983

CHAPTER 459

HOUSE BILL NO. 1156
(Committee on Political Subdivisions)
(At the request of the Bank of North Dakota)

MUNICIPAL IMPROVEMENTS BY SPECIAL ASSESSMENTS

AN ACT to amend and reenact section 40-22-17 of the North Dakota Century Code, relating to protests against municipal improvements by special assessments.

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

SECTION 1. AMENDMENT. Section 40-22-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-22-17. Protest against resolution of necessity - Meeting to hear protest. If, within thirty days after the first publication of the resolution declaring the necessity of an improvement project of the type specified in any one of the subsections of section 40-22-01, the owners of any property within the improvement district file written protests describing the property which is the subject of the protest with the city auditor protesting against the adoption of said resolution, the governing body of the municipality, at its next meeting after the expiration of the time for filing such protests, shall hear and determine the sufficiency thereof.

Approved March 3, 1983

CHAPTER 460

SENATE BILL NO. 2210
(Committee on Political Subdivisions)
(At the request of the Bank of North Dakota)

SPECIAL ASSESSMENT FUND, WARRANTS, AND BONDS

AN ACT to amend and reenact sections 40-24-04, 40-24-05, 40-24-06, 40-24-07, 40-24-08, 40-24-19, 40-24-21, 40-27-06, 40-27-07, 40-27-08, 40-27-09, 40-27-10, 40-27-11, and 40-27-12 of the North Dakota Century Code, relating to municipal government special assessment funds, definitive and temporary warrants or improvement bonds, and refunding special assessment warrants and bonds.

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

SECTION 1. AMENDMENT. Section 40-24-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-24-04. Sewer special assessments extended over a period of not more than thirty years. Special assessments for the payment of the cost of constructing any sewer shall be payable in equal annual amounts, or in such annual amounts as will permit the annual increase in payment of principal to approximate the annual decrease in the interest on amounts remaining unpaid, extending over a period of not exceeding thirty years as the governing body may fix by ordinance or resolution.

SECTION 2. AMENDMENT. Section 40-24-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-24-05. Water main and waterworks special assessments extended over a period of not more than thirty years. Special assessments for the payment of the cost of constructing or laying any water mains or constructing any waterworks shall be payable in equal annual amounts, or in such annual amounts as will permit the annual increase in payment of principal to approximate the annual decrease in the interest on amounts remaining unpaid, extending over a period of not more than thirty years as the governing body may fix by ordinance or resolution.

SECTION 3. AMENDMENT. Section 40-24-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-24-06. Paving and repaving special assessments extended over a period of not more than thirty years. Special assessments for the payment of the cost of paving or repaving shall be payable in equal annual amounts, or in such annual amounts as will permit the annual increase in payment of principal to approximate the annual decrease in the interest on amounts remaining unpaid, extending over a period of not more than thirty years.

SECTION 4. AMENDMENT. Section 40-24-07 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-24-07. Street improvement assessments extended over a period of not more than thirty years. Special assessments for the expense of opening, widening, grading, graveling, or extending streets shall be payable in equal annual amounts, or in such annual amounts as will permit the annual increase in payment of principal to approximate the annual decrease in the interest on amounts remaining unpaid, extending over a period of not more than thirty years.

SECTION 5. AMENDMENT. Section 40-24-08 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-24-08. Assessments for street beautification extended over a period of not more than ten years. Special assessments for maintaining grass plots or trees, or for parking or other improvements for the beautification of the streets of the municipality, shall be payable in equal annual installments, or in such annual amounts as will permit the annual increase in payment of principal to approximate the annual decrease in the interest on amounts remaining unpaid, extending over a period of not more than ten years as the governing body may fix by ordinance or resolution.

* SECTION 6. AMENDMENT. Section 40-24-19 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-24-19. Warrants and improvement bonds - Issuance - When payable - Amounts - Temporary warrants and temporary improvement bonds - Interest - Interest coupons - Negotiability - Eligibility as investments. The municipality, at any time after making a contract or otherwise providing in accordance with section 40-22-27 for the construction of any improvement to be financed in whole or in part by assessments, under authority of any chapter of this title, or prior thereto but after the period for filing protests against the making of such improvement has expired and the protests filed, if any, have been heard and determined to be insufficient, and in anticipation of the levy and collection of such assessments and of any taxes or revenues derived from service charges pledged to pay for such improvement, may issue warrants or improvement bonds on the fund created for such improvement. The municipality shall be is responsible to the holders of such the warrants or improvement bonds for the proper advertisement and award of a contract or contracts or

* NOTE: Section 40-24-19 was also amended by section 26 of House Bill No. 1055, chapter 319.

provision by other means for the completion of the improvement, for the acquisition of all land, easements, licenses, and permits required for such completion, and for the valid and final levy of special assessments upon all properties within the improvement district to be benefited by the improvement, in an aggregate principal amount equal to the total cost of the improvement as finally ascertained, less the portions thereof, if any, determined to be paid from taxes, service charges, and any other source. The issuance of the warrants shall ~~constitute~~ or improvement bonds constitutes a representation and covenant binding upon the municipality, that the aggregate benefits to be derived from the making of the improvement by the properties to be assessed therefor, are not less than the aggregate amount of the special assessments so required to be levied. The warrants or improvement bonds shall be issued and shall mature in such amounts as in the judgment of the governing body will be provided for, at or before the maturity dates specified, by the taxes and assessments to be levied and spread and the revenues pledged therefor. In lieu of issuing definitive warrants or improvement bonds on any such fund, the governing body may by resolution authorize the issuance and sale of temporary warrants or temporary improvement bonds maturing in not to exceed three years from the date of issue of the first such warrant or temporary improvement bonds, to be repaid with interest from the proceeds of definitive warrants or improvement bonds maturing as hereinabove required, which the governing body shall issue and sell at or before the maturing date of said temporary warrants or temporary improvement bonds, in the amount required, with moneys theretofore received in such fund, to pay the total cost of the improvement and all temporary warrants or temporary improvement bonds theretofore issued on the fund, with interest then accrued thereon. The warrants shall ~~or temporary improvement bonds~~ must bear interest at a rate or rates and shall must be sold at a price, not less than ninety-eight percent of par, resulting in an average net interest cost not to exceed twelve percent per annum payable annually or semiannually, except that there is no interest rate ceiling on an issue sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. The definitive warrants or improvement bonds may bear interest at a rate or rates higher or lower than those borne by the temporary warrants or temporary improvement bonds, as determined by the governing body in effecting the sale thereof. In the sale of temporary warrants or temporary improvement bonds, the municipality may by resolution of the governing body agree to issue to the holder or holders thereof definitive warrants or improvement bonds upon specified terms as to interest, maturity, redemption provisions, and all other pertinent details, in the event that the municipality is unable to sell definitive warrants or improvement bonds to others upon more favorable terms. Coupons representing the interest for each year or lesser period may be attached to the warrants, whether definitive or temporary, or improvement bonds or temporary improvement bonds. All such warrants or bonds shall be negotiable within the meaning of and for all the purposes specified in title 41, and, to the same extent as general obligation bonds of the issuing municipality, shall ~~be~~ are valid investments of the funds of any guardian, trustee, and

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other fiduciary of any kind or nature, any ~~insurance company~~, bank, or other financial institution, any charitable, educational, or eleemosynary institution, and any public corporation or official, municipality, school district, or other political subdivision, including bond sinking funds, special improvement funds, municipal utility funds, and funds of the state of North Dakota and its instrumentalities and agencies.

SECTION 7. AMENDMENT. Section 40-24-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-24-21. Warrants may be used as payment to contractor ~~or sold for cash~~. Special improvement warrants may be used in making payments on contracts for the improvements for which the special improvement fund was created ~~or may be sold for cash~~ at not less than the par value thereof ~~and the proceeds thereof credited to such fund and used for paying for such improvements~~.

SECTION 8. AMENDMENT. Section 40-27-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-27-06. Refunding special assessment warrants or bonds - Purpose for which issuable. Any municipality having valid outstanding special assessment warrants or bonds issued pursuant to the ~~provisions of~~ this title which are past due or which are redeemable either at the option of the municipality or with the consent of the warrant holders or bondholders may issue refunding special assessment warrants or bonds if there is not sufficient money in the special improvement fund against which such warrants or bonds are drawn to pay the same. Such refunding special assessment warrants or bonds may be issued for any of the following purposes:

1. To extend the maturities of the special assessment warrants; or bonds.
2. To reduce the rate of interest on the special assessment warrants; or bonds.
3. To equalize the general tax which the municipality may be, or may become, obligated to levy to discharge deficiencies in the fund against which the special assessment warrants or bonds are drawn.
4. To consolidate two or more outstanding issues of warrants or bonds.

SECTION 9. AMENDMENT. Section 40-27-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-27-07. Refunding warrants or bonds authorized by resolution - Contents of resolution. The issuance of refunding warrants or bonds may be authorized by the governing body of the municipality by resolution. Such resolution shall describe the warrants or bonds to

be refunded, and the amount, maturity, and other details of the refunding warrants or bonds.

SECTION 10. AMENDMENT. Section 40-27-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-27-08. Contents of refunding warrants and bonds - Redemption - ~~Interest--~~ Negotiability - Eligibility as investments. The refunding warrants or bonds shall bear such date, be in such denominations, and mature at such time or times, not exceeding thirty years from date of issue, as the governing body shall determine. Such warrants or bonds may be made subject to redemption at any specified time or times if it is so provided in the initial resolution. ~~The average annual net rate of interest upon such warrants shall not exceed the rate of interest on warrants to be refunded thereby.~~ Refunding warrants or bonds issued pursuant to this chapter may be designated as "refunding improvement warrants" or "refunding improvement bonds" as the governing body shall determine; provided that nothing herein shall be deemed to subject such warrants or bonds to the provisions of chapter 21-03 with reference to general obligation bonds of the municipality. All such warrants or bonds shall be negotiable within the meaning of and for all the purposes specified in title 41, and shall be valid investments for fiduciary, corporate and public funds to the same extent as improvement warrants or bonds.

SECTION 11. AMENDMENT. Section 40-27-09 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-27-09. Sale or exchange of refunding warrants or bonds - Issuance - Agreement by governing body to exchange. Refunding warrants or bonds may be sold for cash in such manner as the governing body may direct, and the proceeds used to pay the warrants or bonds described in the initial resolution, or may be exchanged for such warrants or bonds, but no exchange shall be made at less than par plus accrued interest, and no sale shall be made at less than ninety-eight percent of par plus accrued interest on the refunding warrants or bonds. Refunding warrants or bonds may be issued from time to time as the original warrants or bonds mature or are called for payment and redemption or may be sold to pay, or, by agreement with the holders thereof, may be exchanged for, warrants or bonds which are not due. The governing body may enter into an agreement with the holders of outstanding warrants or bonds relating to an exchange of such warrants or bonds for refunding warrants or bonds and may provide, in its discretion, that the agreement shall be effective only when the holders of not less than seventy-five percent of the warrants or bonds shall have entered into the agreement.

SECTION 12. AMENDMENT. Section 40-27-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-27-10. Expense of issuing refunding special assessment warrants or bonds chargeable to special improvement fund. Any municipality which shall issue refunding special assessment warrants or bonds may incur

and pay the reasonable expenses incidental thereto including the cost of printing and legal fees. All such expenses shall be payable solely out of moneys in the special improvement fund or funds from which the refunded warrants or bonds are payable or out of money derived from the sale of warrants or bonds drawn on the fund from which the refunding warrants or bonds are payable.

SECTION 13. AMENDMENT. Section 40-27-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-27-11. Special fund created for payment of refunding special assessment warrants or bonds - Procedure on paying refunded warrants or bonds. A special fund or special funds shall be created in accordance with this section for the payment of refunding special assessments assessment warrants or bonds. Such special fund may be created as a single consolidated fund for warrants or bonds issued to refund special assessment warrants or bonds of more than one district, or a separate special fund may be created for warrants or bonds issued to refund special assessment warrants or bonds of each district. In either case, the refunded warrants or bonds shall not be canceled but shall be retained by the municipality as an asset of the fund from which the refunding warrants or bonds are payable. The special fund or funds from which the refunded warrants or bonds are payable shall be continued, and payments therefrom shall be made on the warrants or bonds drawn thereon, in the same manner as though none of such warrants or bonds had been refunded. All payments made on the principal and on the interest of refunded warrants or bonds shall be credited to the fund from which the appropriate refunding warrants or bonds are payable and shall be applied in payment of the principal and on the interest on the refunding warrants or bonds in the manner prescribed by the resolution authorizing the issuance of such refunding warrants or bonds.

SECTION 14. AMENDMENT. Section 40-27-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-27-12. Rights of warrant holders or bondholders to be preserved - Tax levy for deficiency - When levied. A municipality issuing refunding special assessment warrants or bonds shall preserve and enforce, for the security of the refunding warrants or bonds, all of the rights and duties which constituted security for the refunded warrants or bonds. At the date of the maturity of the last maturing warrant or bond of the original issue, the governing body shall levy a tax for the payment of any deficiency in the special improvement fund against which the refunded special assessment warrants or bonds were drawn. Such tax may be made payable in the years and in the amounts required to pay the principal of and interest on the refunding warrants or bonds as the same becomes due.

Approved March 15, 1983

CHAPTER 461

SENATE BILL NO. 2330
(Olson)

GENERAL TAXATION PAYMENT OF SPECIAL ASSESSMENT IMPROVEMENT

AN ACT to amend and reenact section 40-24-10 of the North Dakota Century Code, relating to the payment by general taxation of an improvement financed by special assessment.

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

SECTION 1. AMENDMENT. Section 40-24-10 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-24-10. One-fifth of cost of improvement may be paid by general assessment within constitutional debt limit. Any municipality, at the option of its governing body, may provide for the payment by general taxation of all the taxable property in the municipality of not more than one-fifth of the cost of any improvement financed by the levying of special assessments other than the opening and widening of streets or the laying of sewer or water connections from the main to the curb line. Any amount which the municipality shall determine to pay by general assessment shall be considered as a part of the debt of the municipality and shall not be valid unless such amount is within the constitutional debt limit of such municipality, computed on the portion of the last equalized value of property to which the mill rate of general property taxes is applied. Any incorporated city, by a two-thirds vote of the qualified voters thereof voting upon the question at a general or special election, may increase its limit of indebtedness three percentum on the assessed valuation of taxable property in such city beyond five percentum of the valuation thereof, and by a majority vote, in like manner, may increase its limit of indebtedness four percentum of such valuation without regard to the existing indebtedness of such city for the purpose of constructing or purchasing waterworks for furnishing a supply of water to the inhabitants of such city, or for the purpose of constructing sewers, provided that such increase or increases must be duly voted before the levy of any general taxes exceeding the existing debt limit may be made to pay part of the cost of any such improvement. In making any contract with reference to any special improvement, the governing body may take into

consideration such portion of the cost of the improvement as will be paid by general assessment, and may make appropriations and levy taxes and assessments therefor in annual installments extending over the same period of time as is provided in the special assessments for such improvement. The appropriation may be made at such time as occasion may require and shall be included in the municipality's first annual tax levy thereafter. The appropriation and levy, whether it is made as a part of the regular annual appropriation ordinance or otherwise, shall state the specific improvement for which the assessment is made and the tax levied, the amount thereof, and the district in which the improvement is made. The amount of such assessment and the moneys collected thereon shall become a part of the district fund upon which the warrants issued in payment for the improvement are to be drawn.

Approved March 10, 1983

CHAPTER 462

HOUSE BILL NO. 1434
(Black, Gates)

ASSESSMENTS FOR SIDEWALKS AND CURBS AND GUTTERS

AN ACT to amend and reenact sections 40-29-04 and 40-31-02 of the North Dakota Century Code, relating to assessment of the expense for sidewalks or curb and gutter construction, repair, or rebuilding.

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

SECTION 1. AMENDMENT. Section 40-29-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-29-04. Power of municipality upon failure of property owner to comply with notice. If the sidewalk is not constructed, repaired or rebuilt in the manner and within the time prescribed in the notice, the governing body shall order the work done by such person as it may have contracted with therefor, under the supervision of the city engineer or of the street commissioner in a city having no city engineer, at the expense of the ~~lot or parcel of land adjoining such lots or parcels of land benefiting from the sidewalk.~~ lots or parcels of land benefiting from the sidewalk. The expense of constructing, repairing, or rebuilding the sidewalk shall include the expense of giving all notices required by the provisions of this chapter, of making assessments, and of any other nature incurred in doing such work.

SECTION 2. AMENDMENT. Section 40-31-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-31-02. City to build curbing - Assessment of expense - Notice of assessment - Approval by governing body. The curbing in the city shall be built, repaired, or rebuilt in the manner and within the time prescribed by the governing body, which shall order the work to be done by such person as it may have contracted with therefor, under the direction of the city engineer, or street commissioner, if the city has no city engineer, at the expense of the ~~lot or parcel of land fronting on or adjoining such lots or parcels of land benefiting from the curbing.~~ lots or parcels of land benefiting from the curbing. Such expense, including the expense of all notices in connection with such work, the assessment therefor, and any other expense incurred for such work, shall be assessed by

the city engineer, or by the street commissioner if the city has no city engineer, against the lot or parcel of land properly chargeable therewith. Such assessment shall be returned by the engineer or commissioner and filed in the office of the city auditor, and the city auditor shall cause the assessment, together with a notice of the time when and place where the governing body will meet to consider the approval of the same, to be published once in the official newspaper of the city at least ten days prior to the meeting of the governing body to consider the approval of the assessment.

Approved March 8, 1983

CHAPTER 463

HOUSE BILL NO. 1403
(Unhjem, Mushik)

PUBLIC LIBRARY SERVICE LEVY

AN ACT to amend and reenact subsection 4 of section 40-38-02 of the North Dakota Century Code, relating to powers of municipalities to increase tax levies for public library service; and to provide an emergency.

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

SECTION 1. AMENDMENT. Subsection 4 of section 40-38-02 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. Upon motion of the governing body or upon petition of not less than twenty-five percent of the voters in the last general election of any city, school district, township, or county, filed not less than sixty days before the next ~~regular~~ election, the governing body shall submit to the voters at the next ~~regular~~ election the question of whether the governing body shall increase the mill levy a specified amount for public library service above the mill levy limitation set out in this section. The governing body may call a special election at any time for the purpose of voting on the question, and the election shall be called, conducted, and certified as are other elections in that political subdivision. Upon approval by sixty percent of the voters voting in the election, the governing body shall increase the levy for public library service in the amount approved by the voters.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 4, 1983

CHAPTER 464

HOUSE BILL NO. 1192
(Committee on Political Subdivisions)
(At the request of the State Auditor)

BUDGET REQUIREMENTS OF MUNICIPALITIES

AN ACT to amend and reenact sections 40-40-05, 40-40-08, 40-40-09, and 40-40-21 of the North Dakota Century Code, relating to budget requirements of municipalities; and to repeal section 40-40-19 of the North Dakota Century Code, relating to municipal liabilities that occur before the final appropriation is approved.

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

SECTION 1. AMENDMENT. Section 40-40-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-40-05. Contents of preliminary budget statement. The preliminary budget shall set forth specifically:

1. The ~~detailed~~ estimated expenses of the municipality for the ~~last~~ current fiscal year;
2. The estimated expenditures for the ~~current~~ ensuing fiscal year, segregated and itemized under three groups as follows:
 - A. Group A shall cover all maintenance and operation expenses, including all wages, salaries, and other items which comprise the current expenses of the municipality. Although the whole amount paid for wages and salaries may be stated in one sum in the budget statement, there shall be on file with the governing body and open to public inspection a detailed statement showing the names of all persons receiving salaries or wages and the annual amount paid to each person. Municipalities may also include as items of expense the following, which shall be placed in separate funds:
 - (1) Equipment replacement. Such amount shall not exceed the total of the anticipated reasonable

costs of depreciation for the ensuing fiscal year, based on current costs, on all equipment owned by the city, and no expenditure shall be paid out of said equipment replacement fund except for the purchase of equipment to replace equipment which is worn out, damaged or obsolete. The term "equipment" shall not include structures or building fixtures.

- (2) Snow removal reserve. Such amount shall not exceed the total of the anticipated reasonable costs of snow removal for the ensuing fiscal year, based on current costs and previous experience, and no expenditure shall be paid out of removal reserve fund except for the removal of snow from the public streets or ways.
 - (3) Flood control reserve. Such amount shall not exceed the total of the anticipated reasonable costs of flood control for the ensuing fiscal year, based on current costs and previous experience, and no expenditure shall be paid out of said flood control reserve fund except for the actual costs of flood prevention and control to the municipality.
- B. Group B shall cover all capital and betterment expenditures, including new construction, major repairs, and all other items which go toward adding to the permanent improvement and value of the municipal property and may include an item which shall be placed in a separate fund as a building reserve. The building reserve fund item shall not exceed the total of the anticipated reasonable costs of depreciation for the ensuing fiscal year, based on original costs on all buildings and structures owned by the city, and no expenditures shall be paid out of the said fund except for purchase, construction, or reconstruction to replace buildings or structures which are obsolete, substandard, or generally unfit for public use.
- C. Group C shall cover all debt retirement requirements, including all amounts required to retire floating indebtedness, bonded indebtedness, and to pay interest thereon during the current fiscal year, and also a statement showing the amounts and terms of bond issues, certificates of indebtedness, and warrants or other debts to be taken care of by the levies for debts retirement;
3. The estimated cash balance standing to the debit or credit of the municipality at the end of the ~~last~~ current fiscal year;

4. An estimate of the probable amounts that may be received during the ~~current~~ ensuing fiscal year from sources other than direct property taxes, and a statement of all the uncollected taxes due to the municipality.

In addition to the specific sums provided for under groups A and B, the governing body may include in group A, and may appropriate for contingent expenses not otherwise provided for, a sum not exceeding five percent of the total amount of the sums set forth in groups A and B.

SECTION 2. AMENDMENT. Section 40-40-08, of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-40-08. Hearing of protests and objections - Changes in preliminary budget - Preparation of final budget - Contents. The governing body shall meet at the time and place specified in the notice and shall hear any and all protests or objections to the items or amounts set forth in the preliminary budget statement. At the hearing, the governing body shall make any changes in the items or amounts shown on the preliminary budget statement as it may deem advisable except as limited in this chapter, and shall prepare the final budget, which shall consist of the preliminary budget with the addition of columns showing:

1. The final appropriations made on account of the various items of expenditures specified in the preliminary budget statement, but the final appropriation, as to any group total, shall not exceed the amount specified in the preliminary budget estimate;
2. The estimated amount of unencumbered cash on hand at the end of the current fiscal year, ~~which amount~~ shall not include cash or investments of the equipment replacement fund as provided for in section 40-40-05;
3. The amount of uncollected taxes standing to the credit of the municipality which, in the opinion of the governing body, may be collected during the ensuing fiscal year;
4. The estimated income that may be received during the ensuing year from sources other than direct property taxes;
5. The net amount which it will be necessary to raise by taxation to meet the appropriations; and
6. The amount of levy estimated to be necessary to provide such net amount of revenue during the fiscal year.

SECTION 3. AMENDMENT. Section 40-40-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-40-09. Determination of amount to be levied - Adoption of levy - Limitations. After completing the final budget on the fourth Wednesday in July, or within ten days thereafter or before October first, the governing body shall proceed to make the annual tax levy in an amount sufficient to meet the expenses of the current ensuing fiscal year as determined at the budget meeting. In determining the amount required to be levied, the governing body first shall ascertain its net current resources by adding together the totals shown in the columns described in subsections 2, 3, and 4 of section 40-40-08. Such total amount shall be considered net current resources of the district. The net current resources shall be deducted from the total amount estimated to be appropriated, and the balance shall be considered the amount which is required to be raised by taxation during the ensuing year. The net amount which is to be levied then shall be determined by taking into consideration the fact that the laws of this state provide for the semiannual payment of real estate taxes and that consequently only a part of the amount levied can be collected within the current fiscal year. The determination of the amount of the levy which can be collected within the current ensuing fiscal year shall be made by the governing body based upon the past experience of the district. The levy as finally fixed shall be adopted in the form of an ordinance termed the annual appropriation bill by a majority vote of the members of the governing body. The amount levied shall be subject to such limitations as are prescribed by the laws of this state, and shall be subject to the further limitation that such amount shall not exceed the amount which will produce the funds required by the municipality within the fiscal year period for which the levy is being made. Such ordinance shall appropriate in specific amounts the sums of money necessary to meet the expenses and liabilities of the municipality.

SECTION 4. AMENDMENT. Section 40-40-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-40-21. Balance at end of fiscal year to become part of unappropriated balance - When special appropriation to lapse. At the end of the fiscal year of June thirtieth, the balance to the credit of each annual appropriation shall become a part of the general unappropriated balance in the municipal treasury, except in the case of an appropriation made during the war for postwar construction purposes, and except that the unused balance to the credit of the equipment replacement fund provided for in section 40-40-05 shall not become a part of the general unappropriated balance in the municipal treasury, but no special appropriation shall lapse until the work for which it was made has been completed, the bills paid, and the accounts closed.

SECTION 5. REPEAL. Section 40-40-19 of the North Dakota Century Code is hereby repealed.

Approved March 3, 1983

CHAPTER 465

HOUSE BILL NO. 1097
(Hausauer)

CITY EMPLOYEE PENSION PLAN

AN ACT to amend and reenact section 40-46-02 of the North Dakota Century Code, relating to city employee pension plans; and to repeal section 40-46-02.1 of the North Dakota Century Code, relating to the mill levy limitation for city employee pension funds in cities which have not adopted civil service systems for city employees.

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

* SECTION 1. AMENDMENT. Section 40-46-02 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-46-02. Tax levy for city employees' pension fund authorized - Limitations. In addition to any other levies authorized by law for general purposes, any city which has adopted a civil service system for city employees may levy an annual tax of not more than five mills for the purpose of creating and maintaining a city employees' pension fund. A city may make payment from a city employees' pension fund to any pension plan or retirement program for city employees provided the receiving plan or program is approved by the internal revenue service. Any pension system shall be based on actuarial tables and actuarial valuation shall be performed at intervals of not more than five years.

** SECTION 2. REPEAL. Section 40-46-02.1 of the 1981 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 4, 1983

* NOTE: Section 40-46-02 was also amended by section 46 of Senate Bill No. 2065, chapter 606.

** NOTE: Section 40-46-02.1 was amended by section 47 of Senate Bill No. 2065, chapter 606.

CHAPTER 466

HOUSE BILL NO. 1155
(Committee on Political Subdivisions)
(At the request of the Bank of North Dakota)

INDUSTRIAL DEVELOPMENT BOND SALE

AN ACT to amend and reenact subsection 1 of section 40-57-09 and sections 40-57-10 and 40-57-11 of the North Dakota Century Code, relating to municipal industrial development bonds.

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

SECTION 1. AMENDMENT. Subsection 1 of section 40-57-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The maximum rate or rates of interest which such bonds shall bear;

SECTION 2. AMENDMENT. Section 40-57-10 of the 1981 Supplement to the North Dakota Century Code 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. 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. State or national banks may purchase bonds from each issue of revenue bonds issued under the provisions of this chapter in an amount not to exceed at any time twenty-five percent of the unimpaired capital and surplus of the bank.

SECTION 3. AMENDMENT. Section 40-57-11 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-57-11. Bonds and receipts or certificates issued pending preparation of bonds - Negotiability. Pending the preparation of the definitive bonds, interim certificates or receipts, in the form and with the provisions the governing body may determine, may be issued to the purchaser or purchasers of bonds sold pursuant to this chapter. The bonds and interim receipts or certificates shall be negotiable within the meaning of and for all purposes specified in title 41.

Approved March 3, 1983

CHAPTER 467

SENATE BILL NO. 2482
(Senators Vosper, Thane, Tallackson)
(Representatives A. Olson, Olafson, Nowatzki)

NEW INDUSTRY TAX EXEMPTION

AN ACT to amend and reenact section 40-57.1-08 of the North Dakota Century Code, relating to tax exemptions for new industries and exclusions from provisions of chapter.

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

SECTION 1. AMENDMENT. Section 40-57.1-08 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-57.1-08. Large industrial projects - Exclusion from provisions of chapter. The legislative assembly finds that the location of large industrial projects in the communities of this state imposes extraordinary burdens on state and local governmental services and facilities. The legislative assembly also finds that the burdens imposed by such projects strain existing tax bases of such communities and thereby threaten to increase tax burdens on existing properties and taxpayers. Further, it is determined that to exempt large projects from property and income taxes is not in the public interest. Therefore, the provisions of this chapter shall not apply to any single project at a single location in this state which meets any of the following criteria:

1. The cost of the plant for such project, including buildings, improvements, and equipment, exceeds one hundred fifty million dollars.
2. The projected gross annual sales of such project exceed one hundred fifty million dollars.
3. The projected employment of such project exceeds one thousand employees at any time during construction or operation.

Approved March 10, 1983