

GOVERNMENTAL FINANCE

CHAPTER 238

SENATE BILL NO. 2085

(Political Subdivisions Committee)

(At the request of the North Dakota Municipal Bond Bank)

CERTIFICATES OF INDEBTEDNESS

AN ACT to amend and reenact sections 21-02-10 and 21-02-13 of the North Dakota Century Code, relating to certificates of indebtedness.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 21-02-10 of the North Dakota Century Code is amended and reenacted as follows:

21-02-10. Taxing districts ~~having population over four thousand exempt from certain provisions.~~ Any taxing district ~~having a population of over four thousand~~ may issue certificates of indebtedness in any amount not in excess of uncollected taxes of the current year, plus uncollected taxes of prior years standing to the credit of the district, plus amounts still owed it under currently existing bureau of Indian affairs contracts, plus uncollected distributions of revenue pursuant to a state appropriation or statutory or constitutional provisions, in such form and manner and subject to such terms and conditions as the governing board may prescribe, and need not comply with nor conform to any of the other provisions of this chapter pertaining to the issuance of certificates of indebtedness unless such board shall choose to avail itself of such provisions.

SECTION 2. AMENDMENT. Section 21-02-13 of the North Dakota Century Code is amended and reenacted as follows:

21-02-13. Certificates of indebtedness in anticipation of revenue to be received from the state. Any political subdivision which will receive a distribution of revenue pursuant to a state appropriation or statutory or constitutional provision shall, in anticipation of such revenue, have power to borrow not more than the amount it will receive from that source during that fiscal year. For the purpose of borrowing, all such political subdivisions may issue certificates of indebtedness.

Certificates of indebtedness issued pursuant to this section must provide for payment by the political subdivision of a stated sum on or before a specified date not more than six months after the anticipated date of receipt of the revenue, together with interest thereon at a specified rate not exceeding twelve percent per annum if sold at private sale. There is no interest rate ceiling on certificates sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. The certificates are payable out of the anticipated revenue.

For the purpose of administering the provisions of this section, all of the provisions of this chapter, to the extent consistent herewith, that relate to signing and issuance of certificates of indebtedness, the certificate of the county auditor on the certificates of indebtedness, the recording of certificates of indebtedness, certifying the amount to be received from the state by a political

subdivision, setting aside the amount to be received for payment of the certificates, order of payment of such certificates, and advertising for bids, ~~including the exceptions for taxing districts over four thousand in population subject to section 21-02-10,~~ govern the administration of the provisions of this section.

Approved April 12, 1993
Filed April 12, 1993

CHAPTER 239

SENATE BILL NO. 2454
(Senator Lindgren)

BOND REQUIREMENTS

AN ACT to amend and reenact sections 21-03-01, 21-03-02, 21-03-21, 21-03-26, 21-03-27, 21-03-28, 21-03-40, and 40-01-06 of the North Dakota Century Code, relating to general obligation bonds of municipalities and the execution of bonds, contracts, and conveyances; and to repeal sections 21-03-21.1, 21-03-22, 21-03-31, and 21-03-32 of the North Dakota Century Code, relating to the opinion of the attorney general as to legality for investment, recording of bonds, notice of sale to the Bank of North Dakota, and purchase of bonds by state agencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 21-03-01 of the 1992 Special Supplement to the North Dakota Century Code is amended and reenacted as follows:

21-03-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Governing body" means a board of county commissioners, city council, board of city commissioners, school board of any school district, and the similarly constituted and acting board of any other municipality enumerated in subsection 3.
2. "Initial resolution" means any resolution or ordinance adopted pursuant to section 21-03-09, by which a proceeding is instituted for the purpose of authorizing a municipality to borrow money and issue bonds.
3. "Municipality" means a county, city, township, public school district, park district, recreation service district, or rural fire protection district empowered to borrow money and issue written obligations to repay the same out of public funds or revenue.
4. "Population of a municipality" means its population according to the last officially published United States or state census, whichever was taken latest.
5. "Recorded" means copied at length in the record book required by section 21-03-17.
6. "Value of taxable property" or "the assessed valuation" of a municipality means the assessed value of all taxable property in such municipality as determined pursuant to chapter 57-02.

SECTION 2. AMENDMENT. Section 21-03-02 of the North Dakota Century Code is amended and reenacted as follows:

¹ **21-03-02. Provisions not applicable to certain issues.** This chapter is not applicable:

1. To ~~issue~~ issues of bonds, warrants, or other forms of public securities issued on account of public improvements and for the payment of which special assessments are or shall be levied upon and against property benefited thereby which do not constitute, at the time of their issuance, a general obligation or fixed liability of the municipality issuing the same, nor the portion of any such issue payable by general taxation on account of assumption of a portion of the cost of such improvement under section 40-24-10 or any similar law. Nothing in this subsection may be construed to prevent the issuance of bonds by any city for the purposes specified in subdivision g of subsection 2 of section 21-03-06.
2. To drainage bonds or irrigation bonds.
3. To refunding of seed and feed bonds under the provisions of sections 11-29-34 to 11-29-38.
4. To borrowing of money in anticipation of tax collections by means of certificates of indebtedness, as provided by chapter 21-02.
5. To revenue bonds under the provisions of chapter 40-35.

SECTION 3. AMENDMENT. Section 21-03-21 of the North Dakota Century Code is amended and reenacted as follows:

21-03-21. Execution of bonds. Municipal bonds must be executed in the name of and for the municipality issuing them, by its qualified officers, who for that purpose shall sign the same by manual or facsimile signatures in their official capacities, as follows:

1. For a county, the chairman of the board of county commissioners and the county auditor.
2. For a city, the mayor or president of the board of city commissioners and the city auditor.
3. Repealed by S.L. 1967, ch. 323, § 285.
4. For any other municipality, the chairman or president of the governing board and the clerk or secretary thereof, or such other officer as the governing body thereof may determine.

The interest coupons attached to such bonds may be executed by the lithographed or engraved facsimile signature of such officers. The validity of every bond so executed remains unimpaired by the fact that any subscribing officer has ceased to be such officer before delivery to the purchaser. ~~Every bond~~ Bonds issued by a municipality having an official seal ~~must need not~~ be sealed with such seal. The city auditor, county auditor, clerk, or secretary or such other officer as the governing body of the municipality may determine shall sign an endorsement on the

¹ NOTE: Section 21-03-02 was also amended by section 1 of House Bill No. 1353, chapter 240.

back of each bond certifying that the bond is issued pursuant to law and is within the debt limit of the municipality issuing the bond.

SECTION 4. AMENDMENT. Section 21-03-26 of the North Dakota Century Code is amended and reenacted as follows:

21-03-26. Bonds - Call for bids - How advertised - ~~Copy to tax commissioner~~ - Penalty. A notice calling for bids for each proposed issue of municipal bonds must be published at least once in the official newspaper of the ~~county if the municipality is other than a city~~ municipality, or, if the municipality is a city ~~does not have an official newspaper, then~~ in the city's county's official newspaper as provided in section 40-01-09, not less than ten days nor more than thirty days before the date specified therein for the receiving of such bids. Such notice may be in any form but must specify the amount of bonds offered for sale and the date of the maturity thereof. ~~A copy of such notice must be mailed to the state tax commissioner at Bismarck not less than ten days before the date specified for the opening bids, and the tax commissioner shall keep such notice on file for public inspection. The county auditor, or the auditor or secretary of the municipality advertising such sale, at the same time shall file with the tax commissioner a statement giving the assessed valuation, the area, the population, and the indebtedness thereof. Failure to publish such notice or to send a copy thereof to the tax commissioner does not impair the validity of such bonds but renders unenforceable any executory contract entered into for the sale thereof. An auditor or secretary failing to publish or to send such notice is subject to a penalty of not more than five hundred dollars, at the discretion of the district court, to be recovered in an action brought by the state's attorney in the name of the state. The penalty, when collected, must be paid into the general fund of the county.~~

SECTION 5. AMENDMENT. Section 21-03-27 of the North Dakota Century Code is amended and reenacted as follows:

21-03-27. Bids - Where received - Record. The notice must specify the time and place at which bids will be received. ~~In case of cities, school districts, or park districts of over four thousand population, the~~ The place where bids shall be received ~~may must~~ be fixed by the governing board and may be within or outside the state. ~~In all other cases, the place must be the county auditor's office. At the time and place specified, the governing board of the taxing district must be represented by one of its officials, or by the county auditor or some other person acting at the request of the board, who shall receive competitive bids, whether submitted orally or in writing. When the bids are received at his office, the county auditor, auditor, secretary, or other person acting at the request of the board shall enter in a permanent record the amount and rate of interest of each bid and the name and address of the bidder. If the bids are not received at the office of the county auditor, the auditor or secretary of the municipality shall make a similar record.~~

SECTION 6. AMENDMENT. Section 21-03-28 of the North Dakota Century Code is amended and reenacted as follows:

21-03-28. Bids - Accompanied by draft - Sale to best bidder - Rejection of all bids. All bids must be accompanied by a certified check, cashier's check, surety bond, or bank draft, in the amount of not less than ~~two one~~ percent of the bid. After all bids have been received, they must be delivered forthwith to the governing body of the municipality, which shall award the sale of such bonds to the

bidder who agrees to purchase them upon the terms most favorable to the municipality, unless the governing body determines to reject all bids. The governing body has the right to reject any and all bids. If no bids are received or if all bids received are rejected, the governing body may, without readvertising the bonds for sale, negotiate the sale of all of the bonds to any person upon terms complying with those specified in the notice of sale theretofore published, and if bids were rejected, more favorable to the municipality than those specified in a rejected bid. No sale may be for less than ninety-eight percent of the par value of such bonds plus the interest accrued on the bonds to the date of the delivery thereof.

SECTION 7. AMENDMENT. Section 21-03-40 of the North Dakota Century Code is amended and reenacted as follows:

21-03-40. Sinking funds - Custodian. ~~The county treasurer must be custodian of each sinking fund for the payment of bonds issued by each taxing district within the county except in case of any city or park district having a population of more than one thousand and any school district which upon the passage of a resolution by the school board chooses to have its business manager of the school district be custodian of such sinking fund. In the case of any city or park district having a population of more than one thousand, or a school district approving a resolution as provided in this section, the~~ The city auditor, park district treasurer, or business manager of the school district or similarly acting officer of the respective city, park district, or school district must be municipality is custodian of each of its sinking funds, unless the governing body by resolution appoints the county treasurer.

SECTION 8. AMENDMENT. Section 40-01-06 of the North Dakota Century Code is amended and reenacted as follows:

40-01-06. Bonds, contracts, and conveyances - How signed and countersigned. All bonds, contracts, and conveyances of a municipality, except as otherwise provided, shall be signed by the executive officer and countersigned by the auditor or clerk, as the case may be, ~~who shall affix the seal of the municipality thereto.~~

SECTION 9. REPEAL. Sections 21-03-21.1, 21-03-22, 21-03-31 and 21-03-32 of the North Dakota Century Code are repealed.

Approved March 16, 1993

Filed March 16, 1993

CHAPTER 240

HOUSE BILL NO. 1353
(Representative Grosz)

SEED AND FEED BONDS

AN ACT to amend and reenact section 21-03-02 of the North Dakota Century Code, relating to seed and feed bonds; and to repeal chapter 11-29 of the North Dakota Century Code, relating to seed, feed, and fuel loans.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 21-03-02 of the North Dakota Century Code is amended and reenacted as follows:

¹ **21-03-02. Provisions not applicable to certain issues.** This chapter is not applicable:

1. To issue of bonds, warrants, or other forms of public securities issued on account of public improvements and for the payment of which special assessments are or shall be levied upon and against property benefited thereby which do not constitute, at the time of their issuance, a general obligation or fixed liability of the municipality issuing the same, nor the portion of any such issue payable by general taxation on account of assumption of a portion of the cost of such improvement under section 40-24-10 or any similar law. Nothing in this subsection may be construed to prevent the issuance of bonds by any city for the purposes specified in subdivision g of subsection 2 of section 21-03-06.
2. To drainage bonds or irrigation bonds.
3. ~~To refunding of seed and feed bonds under the provisions of sections 11-29-34 to 11-29-38.~~
4. ~~To borrowing of money in anticipation of tax collections by means of certificates of indebtedness, as provided by chapter 21-02.~~

SECTION 2. REPEAL. Chapter 11-29 of the North Dakota Century Code is repealed.

Approved April 7, 1993
Filed April 8, 1993

¹ NOTE: Section 21-03-02 was also amended by section 2 of Senate Bill No. 2454, chapter 239.

CHAPTER 241

SENATE BILL NO. 2463
(Senators Grindberg, Lindgren)

SPECIAL ASSESSMENT PREPAYMENT BONDS

AN ACT to create and enact a new subsection to section 21-03-07 of the North Dakota Century Code, relating to the issuance of general obligation bonds to prepay outstanding special assessments against political subdivision property; and to amend and reenact section 57-15-41 of the North Dakota Century Code, relating to the issuance of general obligation bonds to prepay outstanding special assessments against political subdivision property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 21-03-07 of the North Dakota Century Code is created and enacted as follows:

The governing board of any county, city, public school district, park district, or township may by resolution adopted by a two-thirds vote dedicate the tax levy authorized by section 57-15-41 and authorize and issue general obligation bonds to be paid by the dedicated levy for the purpose of providing funds to prepay outstanding special assessments made in accordance with the provisions of title 40 against property owned by the county, city, public school district, park district, or township.

SECTION 2. AMENDMENT. Section 57-15-41 of the North Dakota Century Code is amended and reenacted as follows:

57-15-41. Political subdivision tax levies for payment of special assessments exempt from levy limitations. No tax levy limitations provided by any statute of this state shall apply to tax levies ~~heretofore or hereafter made~~ by any county, city, school district, park district, or township for the purpose of paying any special assessments or paying debt service on bonds issued to prepay special assessments made in accordance with the provisions of title 40, against property owned by such county, city, school district, park district, or township. Any surplus in the special assessment fund after all of the special assessments for which the fund was created have been paid shall be placed in the general fund of the political subdivision.

Approved March 16, 1993
Filed March 16, 1993

CHAPTER 242

SENATE BILL NO. 2166
(Political Subdivisions Committee)
(At the request of the Superintendent of Public Instruction)

SINKING FUND SURPLUS TRANSFER

AN ACT to amend and reenact section 21-03-45 of the North Dakota Century Code, relating to the transfer of surplus funds from a political subdivision's sinking fund to its general fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 21-03-45 of the North Dakota Century Code is amended and reenacted as follows:

21-03-45. Sinking fund - Surplus placed in general fund. Any surplus in a sinking fund after all of the bonds for the payment of which the fund was created have been paid and canceled and after all investments of the second and third class finally have been disposed of or realized upon, must, within two years, be placed in the general fund of the municipal treasury.

Approved March 16, 1993

Filed March 16, 1993

CHAPTER 243

SENATE BILL NO. 2423
(Senators Heinrich, Evanson, Nalewaja, Kelly)
(Representatives Ring, Nelson)

PUBLIC FUNDS FOR NONPROFIT EDUCATION

AN ACT to create and enact a new section to chapter 21-06 of the North Dakota Century Code, relating to the use of property for nonprofit education foundations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 21-06 of the North Dakota Century Code is created and enacted as follows:

Use of public funds or property for nonprofit education foundations - Public purposes. Any school district established under chapter 15-47 or a board of education established under chapter 15-51 may provide use of public property or in-kind services of personnel to participate in the creation and administration of nonprofit public school education foundations, subject to an annual audit, to receive, manage, invest, and distribute funds or property provided to the foundation by private, or nonschool district governmental entities, if such foundations are established to enhance the mission of the school district by providing facilities or services for recognition of staff and students that are not normally available through the funding of the school district, to administer funds received for education scholarships or endowments established by other entities, to encourage elementary, secondary, and postsecondary education, and to assist in raising, adding, investing, and distributing funds and earnings according to guidelines established by the foundation. The records of a foundation are not subject to audit under section 54-10-14.

Approved March 24, 1993
Filed March 25, 1993

CHAPTER 244

SENATE BILL NO. 2268
(Senator Lindgren)
(Representative Rydell)

BOND VALIDATION

AN ACT to amend and reenact section 21-09-05 of the North Dakota Century Code, relating to validation of bonds issued by public bodies of the state prior to July 1, 1993.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 21-09-05 of the North Dakota Century Code is amended and reenacted as follows:

21-09-05. Application of chapter. The provisions of this chapter relating to validation apply to all bonds issued and proceedings taken by any public body prior to July 1, ~~1991~~ 1993.

Approved February 16, 1993
Filed February 16, 1993

CHAPTER 245

HOUSE BILL NO. 1035
(Legislative Council)
(Employee Benefits Programs Committee)

STATE RETIREMENT AND INVESTMENT

AN ACT to amend and reenact subsection 1 of section 21-10-01 of the North Dakota Century Code as amended by section 4 of chapter 667 of the 1989 Session Laws of North Dakota as amended by section 2 of chapter 628 of the 1991 Session Laws of North Dakota, relating to the membership of the state investment board; to repeal section 15 of chapter 667 of the 1989 Session Laws of North Dakota as amended by section 5 of chapter 628 of the 1991 Session Laws of North Dakota and to repeal section 5 of chapter 628 of the 1991 Session Laws of North Dakota, relating to the expiration date of the Act establishing the North Dakota state retirement and investment office; to provide for retroactive application of this Act; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 21-10-01 of the North Dakota Century Code as amended by section 4 of chapter 667 of the 1989 Session Laws of North Dakota as amended by section 2 of chapter 628 of the 1991 Session Laws of North Dakota is amended and reenacted as follows:

1. The North Dakota state investment board consists of the governor, the state treasurer, the commissioner of university and school lands, the director of the workers compensation bureau, the commissioner of insurance, three members of the teachers' fund for retirement board or the board's designees who need not be members of the fund as selected by that board, and three of the elected members of the public employees retirement system board as selected by that board. The teachers' fund for retirement board may appoint an alternate designee with full voting privileges to attend meetings of the state investment board when a selected member is unable to attend. The public employees retirement system board may appoint an alternate designee with full voting privileges from the public employees retirement system board to attend meetings of the state investment board when a selected member is unable to attend. The members of the state investment board, except elected and appointed officials, are entitled to receive the same compensation per day as provided in section 54-35-10 for members of the legislative council and necessary mileage and travel expenses as provided in sections 44-08-04 and 54-06-09 for attending meetings of the state investment board.

SECTION 2. REPEAL - RETROACTIVE APPLICATION. Section 15 of chapter 667 of the 1989 Session Laws of North Dakota, as amended by section 5 of chapter 628 of the 1991 Session Laws of North Dakota, and section 5 of chapter 628 of the 1991 Session Laws of North Dakota are repealed. This repeal is retroactive to June 29, 1993.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 15, 1993
Filed March 16, 1993