Prepared by the North Dakota Legislative Council staff for the Taxation Committee
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SPECIAL ASSESSMENT PROTESTS OR PROPERTY TAX LEVY REFERRALS

PROTEST OF CITY IMPROVEMENTS BY SPECIAL ASSESSMENTS

An improvement district must be created as a jurisdictional prerequisite before a public improvement to be paid for by special assessments may be undertaken (North Dakota Century Code (NDCC) Section 40-22-08). After a special improvement district has been created, the city governing body must direct the city engineer to prepare a report as to the nature, purpose, and feasibility of the improvement and an estimate of the probable cost of the project (Section 40-22-10) and the city governing body must direct the city engineer to prepare detailed plans and specifications for construction of the improvement (Section 40-22-11).

After filing an approval of the city engineer's report, the city governing body may adopt a resolution declaring the necessity of the improvements (NDCC Section 40-22-08). A resolution of necessity is not required if the improvement is a water or sewer improvement, the improvement will be paid for by service charges, or a petition signed by owners of a majority of the area of property included within the district has been received. A resolution of necessity must be published once each week for two consecutive weeks in the official newspaper of the city (Section 40-22-15).

Within 30 days after the first publication of the resolution of necessity, owners of property in the proposed improvement district are entitled to file written protests against adoption of the resolution (NDCC Section 40-22-17). If protests are filed, the city governing body must consider the protests at its next meeting after the expiration of the time for filing protests. If the protests received contain the names of owners of a majority of the area of property within the improvement district, the protest is a bar against proceeding further with the improvement project (Section 40-22-18). If the protests contain the names of owners of a majority of any separate property area included within the district, the protest is a bar against proceeding with the portion of the improvement to be assessed in whole or in part upon property within that area.

COUNTY SPECIAL ASSESSMENTS

For a defined area outside the limits of any incorporated city, the board of county commissioners may levy special assessments for improvements. Under NDCC Section 11-11-55.1, a county is given all the authority and duties with regard to special assessments which belong to cities in Chapters 40-22, 40-23, 40-23.1, 40-24, 40-25, 40-26, 40-27, and 40-28, and whenever action is required of city officials in those chapters, the comparable county officials must take the action.

TOWNSHIP SPECIAL ASSESSMENTS

Under NDCC Chapter 58-18, townships are given authority to defray expenses of improvements through special assessment districts. A board of township supervisors may create an improvement district upon petition of 60 percent of the freeholders in a proposed improvement district area. "Freeholder", for purposes of Title 58, means the legal title owner of the surface estate in real property. Each improvement district must be of a size and form to include all properties the township board of supervisors believes will be benefited by the improvement project.

After a township special improvement district has been created, the board of township supervisors is required to direct a competent engineer to prepare a report on the nature, purpose, and feasibility of the improvement and the probable cost of the work. The board of township supervisors must provide 30 days' written notice by first-class mail to each freeholder within the improvement district and publish a notice in a legal newspaper published in the township or, if there is no such newspaper, in the county's official newspaper at least 10 days prior to a special meeting for public disclosure of the findings of the engineer.

At the special township meeting for public disclosure of the findings of the engineer, the freeholders of the township in attendance are entitled to vote on the question of whether to proceed with the improvement project. Approval by 60 percent or more of the votes cast at the meeting or filed with the township clerk within 15 days after the meeting is required before the project may proceed. A freeholder affected by the project is entitled to one vote for each dollar of the proposed special assessment against the freeholder's property within the proposed improvement district. If there is more than one owner of a parcel of property, the votes available for the parcel must be prorated among the owners in accordance with their percentage ownership interests. If fewer than 60 percent of votes cast on the question approve the project, the election result is a bar against proceeding with the improvement project.

REFERRAL OF POLITICAL SUBDIVISION BUDGETS OR PROPERTY TAX LEVIES

There is no statutory provision providing general authority for referral of a budget or property tax levy by a taxing district.

Under NDCC Chapter 40-12, any ordinance adopted by a city governing body is subject to referral upon petition signed by electors equal to at least

10 percent of the vote cast in the most recent election for the executive officer of the city. Filing of a petition to refer an ordinance suspends the ordinance until the measure is voted upon. A referendum must be submitted at the next regular election or at a special election. Regular city elections are held on the second Tuesday in June in each even-numbered year (Section 40-21-02). The deadline for amending city budgets is October 10. If adoption of a budget and imposition of a property tax levy by a city is an "ordinance" within the meaning of Chapter 40-12, then those matters could be referred and submission of a referendum petition would require a special city election on very short notice to determine the issue before December 10, which is the deadline for preparation of tax lists by the county auditor.

It appears that with regard to the question of the legal significance of the use of the term "ordinance," courts are fairly unanimous in holding that not all action taken by a city governing body is an ordinance. It appears that a budget and tax levy are not permanent in nature and would not be considered an ordinance. Courts have generally concluded that a resolution is ministerial or temporary in character while an ordinance prescribes a permanent rule of conduct of government. This appears to be the conclusion of the North Dakota Supreme Court in two cases the court has considered. The court concluded that:

> "A tax levy comes within none of the definitions of an ordinance. It is not a law; not a rule of action. It has no permanency . . . It carries no command to the public generally, it is not a thing that can be violated. It has no single element of what is generally understood to be an ordinance. It never properly, and seldom in fact, assumes the form or name of an ordinance. It is generally made by a resolution of the proper body. (*Shuttuck v. Smith*, 69 N.W. 5, (N.D. 1896).
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> A "resolution" is not a law or an ordinance, but merely the form in which a legislative body expresses a determination or directs a particular action. An "ordinance" prescribes a permanent rule for conduct of government, while a "resolution" is of a special or temporary character. (*Mitchell v. City of Parshall*, 108 N.W. 2d 12 (N.D. 1961)."

It appears there is no authority for referral of city budget and tax levy action. It appears there is no general authority for referendum on any decision of a board of county commissioners or school board.

The deadline for adoption of a budget for counties is the first week in October (NDCC Sections 11-11-05 and 11-23-05). The deadline for adoption of a budget by cities is October 7 (Sections 40-40-06 and 40-40-09). The deadline for adoption of a school district levy is August 15 (Section 57-15-13). The deadline for amending a budget for all taxing districts is October 10 (Section 57-15-31.1).

From the October 10 deadline for amending budgets until December 10, the county auditor is required to prepare tax lists. By December 10, the county auditor must deliver tax lists to the county treasurer (NDCC Section 57-20-06). By December 26, the county treasurer must mail property tax statements to property owners (Section 57-20-07.1).

If statutory provisions are to be created to allow referendum on city, county, or school district budgets and property tax levies, the timeframe for a petition and election process would be restricted by the current schedule for submitting and amending budgets. From October 10 to December 10, the county auditor does a significant amount of work to complete the tax lists for delivery to the county treasurer. A referendum petition and election process would be extremely compacted to be completed before December 10 and, even if that is possible, it may be impossible for the taxing district to revise its budget and levy and the county auditor to change the tax lists after a referendum election if the December 10 deadline is to be observed.