

MUNICIPAL GOVERNMENT

CHAPTER 339

SENATE BILL NO. 2208

(Senator Trenbeath)  
(Representatives Grande, Wieland)

CITY MEETING DATES

AN ACT to amend and reenact sections 40-04.1-05, 40-08-10, and 40-09-11 of the North Dakota Century Code, relating to the meeting dates of city governing bodies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 40-04.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**40-04.1-05. Meetings - Regular, special, and for organization.** The city council shall hold its regular meetings at least once a month, ~~on or before the fifteenth day of the month,~~ and may prescribe by ordinance the manner in which special meetings may be called. The city council shall establish by resolution or ordinance the date of its regular meetings. The first meeting for the organization of the city council must be held on the fourth Tuesday in June of each even-numbered year.

**SECTION 2. AMENDMENT.** Section 40-08-10 of the North Dakota Century Code is amended and reenacted as follows:

**40-08-10. Meetings of council - Regular, special, and for organization.** The city council shall hold its regular meetings at least once a month ~~on or before the fifteenth day of the month~~ on a date certain established by resolution or ordinance of the council, and may prescribe by ordinance the manner in which special meetings may be called as well as the establishment of any additional regular meetings desired. If a regular meeting falls upon a holiday, the meeting must be held upon the next business day with the same effect as if conducted upon the day appointed. All regular and special meetings must be held at a time and place designated by the city council. The first meeting for the organization of the city council must be held on the fourth Tuesday in June of each even-numbered year.

**SECTION 3. AMENDMENT.** Section 40-09-11 of the North Dakota Century Code is amended and reenacted as follows:

**40-09-11. Meetings of board - Regular and special - Action on departmental matters.** The board of city commissioners shall meet in regular meeting at least once ~~every two weeks~~ a month and at such additional times as the board, by ordinance, may establish. All regular meetings shall be held at a time and place to be designated by the board. No action of the board shall be effective unless upon a vote of a majority of a quorum of the members of such board. No final action shall be taken in any matter concerning the special department of any absent commissioner unless such business has been made a special order of the day or such action is taken at a regular meeting of the board. Special meetings may be called at any time by the president or any two members of the board to consider matters mentioned in the call of such meeting. Written notice of any special meeting shall be given to each member of the board.

Approved March 25, 2003

Filed March 25, 2003

## CHAPTER 340

### HOUSE BILL NO. 1056

(Representatives Eckre, Williams, Weiler)  
(Senators Thane, Heitkamp, Espegard)

## CITY OWNERSHIP OF PROPERTY OUTSIDE STATE

AN ACT to amend and reenact subsection 55 of section 40-05-01 of the North Dakota Century Code, relating to ownership by a municipality of property located outside this state.

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

<sup>166</sup> **SECTION 1. AMENDMENT.** Subsection 55 of section 40-05-01 of the North Dakota Century Code is amended and reenacted as follows:

55. Real and personal property. To acquire by lease, purchase, gift, condemnation, or other lawful means and to hold in its corporate name for use and control as provided by law, both real and personal property and easements and rights of way within or without the corporate limits or outside this state for all purposes authorized by law or necessary to the exercise of any power granted.

Approved March 27, 2003

Filed March 28, 2003

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<sup>166</sup> Section 40-05-01 was also amended by section 3 of Senate Bill No. 2261, chapter 342, and section 1 of Senate Bill No. 2320, chapter 341.

## CHAPTER 341

### SENATE BILL NO. 2320

(Senators Brown, J. Lee)

(Representative Keiser)

## CITY GOVERNING BODY POWERS

AN ACT to amend and reenact subsection 75 of section 40-05-01 of the North Dakota Century Code, relating to the powers of a city governing body.

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

<sup>167</sup> **SECTION 1. AMENDMENT.** Subsection 75 of section 40-05-01 of the North Dakota Century Code is amended and reenacted as follows:

75. Encouragement of arts. To, consistent with section 54-54-01, appropriate and disburse city moneys and to accept and disburse moneys received from federal, state, county, city, or private sources for the establishment, maintenance, or encouragement of arts within the municipality city. ~~The municipality may provide matching funds before or after receipt of the moneys.~~ The authority of a municipality city under this subsection is supplemental to the authority provided in chapter 40-38.1.

Approved April 11, 2003

Filed April 14, 2003

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<sup>167</sup> Section 40-05-01 was also amended by section 3 of Senate Bill No. 2261, chapter 342, and section 1 of House Bill No. 1056, chapter 340.

## CHAPTER 342

### SENATE BILL NO. 2261

(Senators Nething, Heitkamp, Wardner)  
(Representatives Delmore, Devlin, Keiser)

## LONG-TERM LEASES AND LEASEBACK TRANSACTIONS

AN ACT to create and enact a new subsection to section 6-09.4-07, a new section to chapter 15-10, a new subsection to section 40-05-01, a new section to chapter 40-34, a new section to chapter 54-01, a new section to chapter 54-17, three new subsections to section 57-02-08, a new subsection to section 61-24.5-09, and a new subsection to section 61-35-12 of the North Dakota Century Code, relating to long-term leases and leaseback transactions; to amend and reenact sections 40-11-04, 40-33-01, 40-33-02, 40-33-03, 40-33-04, and 40-34-02 of the North Dakota Century Code, relating to long-term leases and leaseback transactions; and to declare an emergency.

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

**SECTION 1.** A new subsection to section 6-09.4-07 of the North Dakota Century Code is created and enacted as follows:

To do and perform any act and thing authorized by section 54-01-05.6 or 54-17-35 under, through, or by means of its officers, agents, or employees or by contracts with any person to assist the state, or any agency or institution of the state, in making, entering, and enforcing all contracts or agreements necessary, convenient, or desirable for the purposes of leasing all or part of, or an undivided or other interest in, property.

**SECTION 2.** A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

**Long-term lease and leaseback transaction revenue.** The board shall use revenue earned from long-term lease and leaseback transactions under chapter 54-01 for the repair and upkeep of campus buildings commonly referred to as deferred maintenance projects.

<sup>168</sup> **SECTION 3.** A new subsection to section 40-05-01 of the North Dakota Century Code is created and enacted as follows:

Lease of waterworks or sewage systems. To lease, for a term not to exceed ninety-nine years, the plant or equipment of any waterworks, mains, or water distribution system and any property related thereto pursuant to subsection 5 of section 40-33-01 or to lease, for a term not

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<sup>168</sup> Section 40-05-01 was also amended by section 1 of House Bill No. 1056, chapter 340, and section 1 of Senate Bill No. 2320, chapter 341.

to exceed ninety-nine years, any sewage system and all related property for the collection, treatment, purification, and disposal in a sanitary manner of sewage pursuant to section 40-34-01.2.

**SECTION 4. AMENDMENT.** Section 40-11-04 of the North Dakota Century Code is amended and reenacted as follows:

**40-11-04. Ordinance required for the transfer of property.** Every municipality shall enact an ordinance providing for the conveyance, sale, lease, or disposal of personal and real property of the municipality. When the property to be disposed of is estimated by the governing body of the municipality to be of a value of less than two thousand five hundred dollars, the property may be sold at private sale upon the proper resolution of the governing body. In all other cases, the property may be sold only at public sale or as provided under section 40-11-04.2. This section and sections 40-11-04.1 and 40-11-04.2 do not apply to a lease by a municipality to the state, or any agency or institution of the state, of any waterworks, mains, and water distribution system and any equipment or appliances connected therewith and any real property related thereto pursuant to subsection 5 of section 40-33-01 or of any sewage system and all related property for the collection, treatment, purification, and disposal in a sanitary manner of sewage pursuant to section 40-34-01.2.

**SECTION 5. AMENDMENT.** Section 40-33-01 of the North Dakota Century Code is amended and reenacted as follows:

**40-33-01. Electric light, telephone, natural and artificial gas plants, pipelines and distribution systems and power plants - Municipalities may purchase, erect, construct, maintain, sell, or lease.** Any municipality may purchase, erect, construct, operate, maintain, enlarge, improve and extend, or lease from any person, ~~firm, corporation, or limited liability company~~, or sell or lease to any person, ~~firm, corporation, or limited liability company~~:

1. Any electric light and power plant, site, buildings, and equipment thereof.
2. Any electric distribution system and equipment thereof.
3. Any electric transmission line and equipment thereof.
4. Any telephone plant, equipment, and distribution system thereof.
5. Any waterworks, mains, and water distribution system and any equipment or appliances connected therewith and any property related thereto, notwithstanding any other provision of law.
6. Any heating system, gas or otherwise, and the buildings and equipment necessary to furnish heat to the public buildings of the municipality and to the inhabitants of the municipality.
7. Any natural or artificial gas pipeline transmission or distribution system or plants.

For purposes of subsection 5, the term "lease" includes any lease, sublease, purchase agreement, lease-purchase agreement, installment purchase agreement, leaseback agreement, or other contract, agreement, instrument, or arrangement pursuant to which any rights, interests, or other property are transferred to, by, or

from any party to, by, or from one or more parties, and any related documents entered or to be entered, including any operating agreement, service agreement, indemnity agreement, participation agreement, loan agreement, or payment undertaking agreement. A lease obligation of a municipality under subsection 5 may not exceed a term of ninety-nine years. A lease obligation of a municipality under subsection 5 does not constitute an indebtedness of the municipality, or a pledge of the full faith and credit or unlimited taxing resources of the municipality. Notwithstanding any other provision of law, a municipality may solicit and accept one or more proposals for a lease transaction, including the arrangement thereof, under subsection 5. The municipality, by resolution of its governing body upon a majority vote of the members of the governing body, may accept a proposal that it determines to be in the public interest. A lease under subsection 5, and any related documents entered or to be entered, may be authorized by resolution of the governing body of the municipality.

**SECTION 6. AMENDMENT.** Section 40-33-02 of the North Dakota Century Code is amended and reenacted as follows:

**40-33-02. Acquiring, erecting, or improving plant, system, or line without election prohibited - ~~Exception~~ Exceptions.** No municipal officers may purchase, erect, substantially enlarge, improve, or extend an existing plant, or lease from others any plant, system, or line provided for in section 40-33-01, unless the proposition has been submitted by a resolution of the governing body to the qualified electors of the city at a biennial or special election called, held, and conducted upon the notice and in the manner specified by this title for the election of the governing body of the city, and has been approved by a majority of the electors voting thereon. If the cost of any enlargement, improvement, or extension will be paid out of the earnings of the plant and the cost does not exceed the sum of five thousand dollars, or if eighty per centum or more of the cost of any waterworks, mains, water system and equipment or appliances therefor is to be paid by special assessments or by the earnings of the plant or by both, the governing body is not required to submit the proposition to the electors of the city. If the improvement and facilities are to provide for a greater and more adequate water supply to meet the needs of the city for domestic use, fire protection, or for sanitation and sewage disposal, regardless of cost the governing body thereof may by resolution provide for the needed improvement and facilities in cooperation with the state or federal government, or any agency thereof, without an election if funds for such cooperation or for defraying the entire cost thereof are available in the municipal utilities fund as defined by section 40-33-10. If the lease by the city of any plant, system, or line provided for in subsection 5 of section 40-33-01 is from the state, or any agency or institution of the state, the governing body is not required to submit the proposition to the electors of the city.

**SECTION 7. AMENDMENT.** Section 40-33-03 of the North Dakota Century Code is amended and reenacted as follows:

**40-33-03. Sale or lease of plant, system, or line - Offer or written proposition - Election - Proceeds.** No municipality shall sell any municipal plant, system, or line, nor lease the same, or any substantial part thereof, or interest therein, to any person, firm, corporation, or limited liability company unless the person, firm, corporation, or limited liability company shall have filed in the office of the auditor of the municipality a complete written offer or proposition, nor unless a majority of the qualified electors of the municipality shall have voted in favor of accepting the offer or proposition at an election called, held, and conducted as specified in section 40-33-02. A copy of the offer or proposition shall be published with the notice of the election. The proceeds of any sale or lease made according to this section shall be applied toward the payment of the existing indebtedness of the

municipality incurred for the purpose of purchasing, erecting, operating, or enlarging, improving, or extending such plant, system, or line. The purchaser or lessee, however, shall not be required to see that the consideration of the purchase or lease is applied correctly as provided in this section, but he shall be protected fully in making the payment or payments by the receipt of the city auditor. Nothing contained in this section shall prevent the governing body from selling or disposing of any machinery, material, or other property belonging to any such utility which may have been inadequate or insufficient for the purposes for which it was intended to be used. This section does not apply to a lease by a municipality of any plant, system, or line to the state, or any agency or institution of the state pursuant to subsection 5 of section 40-33-01.

**SECTION 8. AMENDMENT.** Section 40-33-04 of the North Dakota Century Code is amended and reenacted as follows:

**40-33-04. Manner of payment of purchase, erection, improvement, or leasing of plant, system, or line.** Any municipality may pay the cost of purchasing, erecting, enlarging, improving, extending, or leasing any municipal plant, system, line, or any part thereof:

1. Out of the earnings of the plant, system, or line;
2. By issuing special assessment warrants as provided in section 40-33-05;
3. By issuing bonds of the municipality as provided in section 40-33-07;
4. Partly by such special assessment warrants and partly by such bonds;  
or
5. Partly out of the earnings of the plant, system, or line, and partly by such special assessments or bonds or special assessments and bonds.

A municipality may pay the cost of leasing any municipal plant, system, line, or any part thereof from the state, or any agency or institution of the state under subsection 5 of section 40-33-01 solely from revenues to be derived by the municipality from the ownership, sale, lease, disposition, and operation of the waterworks, mains, and water distribution system; the funds or any other amounts invested by the municipality pursuant to section 21-06-07, or invested on the municipality's behalf by the state, or any agency or institution of the state, in conformity with policies of the industrial commission, including investment in a guaranteed investment contract and any earnings thereon, to the extent pledged therefor; and funds, if any, appropriated annually by the governing body of the municipality or received from federal or state sources.

When such cost, or any part thereof, is to be paid out of the earnings, the cost or the part thereof payable out of the earnings shall not become a general obligation of the municipality payable out of the money raised through taxation but shall be a special obligation payable solely and exclusively out of the earnings derived from the operation of the plant, system, or line.

**SECTION 9.** A new section to chapter 40-34 of the North Dakota Century Code is created and enacted as follows:

**Agreements between municipalities and with the state or private parties**  
**- Leasing property.** Notwithstanding any other law, any municipality of the state,



either individually or jointly by agreement, may enter agreements to lease to the state, or any agency or institution of the state, or to any person for such compensation and upon such terms and conditions as the parties under such agreement may stipulate, all or part of, or an undivided or other interest in, its sewage system and all related real and personal property for the collection, treatment, purification, and disposal in a sanitary manner of sewage. In addition, any municipality of the state, either individually or jointly by agreement, may enter agreements to lease from the state, or any agency or institution of the state, or from any person all or part of, or an undivided or other interest in, its sewage system and all related real and personal property for the collection, treatment, purification, and disposal in a sanitary manner of sewage for such compensation and upon such terms and conditions as the parties under such agreement may stipulate. Such agreements must be authorized by resolution of the governing body of a municipality upon a majority vote of the members of the governing body. For the purposes of this section, such agreements include any lease, sublease, purchase agreement, lease-purchase agreement, installment purchase agreement, leaseback agreement, or other contract, agreement, instrument, or arrangement pursuant to which any rights, interests, or other property are transferred to, by, or from any party to, by, or from one or more parties, and any related documents entered or to be entered, including any operating agreement, service agreement, indemnity agreement, participation agreement, loan agreement, or payment undertaking agreement. A lease obligation under this section may not exceed a term of ninety-nine years. A lease obligation under this section does not constitute an indebtedness of the municipality or a pledge of the full faith and credit or unlimited taxing resources of the municipality. Notwithstanding any other law, a municipality may solicit and accept one or more proposals for a lease transaction, including the arrangement thereof, under this section. The municipality may, by resolution of the governing body upon a majority vote of the members of the governing body, accept a proposal that it determines to be in the public interest.

**SECTION 10. AMENDMENT.** Section 40-34-02 of the North Dakota Century Code is amended and reenacted as follows:

**40-34-02. Methods of defraying cost of sewage or garbage disposal improvements or lease.** The total cost of a sewage or garbage disposal system, or any portion thereof, may be defrayed by the following alternative methods:

1. Out of the general current tax revenues on hand and appropriated for that purpose.
2. Out of the proceeds of the sale of general liability bonds issued in accordance with the procedure and subject to the conditions and limitations prescribed by chapter 21-03, as far as the same are applicable.
3. Partly out of general current tax revenues on hand and appropriated for that purpose and the residue out of the proceeds of the sale of general liability bonds as provided in subsection 2, as the governing body of the municipality shall determine by a majority vote.
4. Partly from moneys secured by the issuance of mortgage bonds secured by the net revenues of the improvement or system and by a mortgage or deed of trust upon the improvement or system issued by the municipality. Bonds issued under this subsection shall not exceed sixty percent of the cost of the improvement, and the remaining forty

percent of such cost shall be defrayed as provided in subsection 1, 2, or 3.

5. From moneys secured by the issuance and sale of first mortgage bonds secured by the assets and property of the improvement or system in like manner as provided in subsection 4, except that such bonds may be issued for the total cost of the improvement upon compliance with this subsection. Bonds issued under this subsection shall be secured by a pledge of the net revenues of the improvement or system to be set apart as an interest and sinking fund to pay the principal and interest of such first mortgage bonds as they mature. If the method provided in this subsection is utilized by any municipality to defray the cost of a sewage disposal system, it, by a resolution of its governing body, shall create the district, provide for and approve the plans and specifications and estimates of the cost, and adopt and publish the resolution declaring the work necessary to be done in accordance with the requirements of chapter 40-22 as far as the same may be applicable. If the owners of property liable to be imposed with the sewage disposal service charges as provided in this subsection shall file with the city auditor, within thirty days after the first publication of the resolution, a written protest against the improvement, the governing body at its next meeting after the expiration of the time for filing protests against the improvement, shall hear and determine the sufficiency of the protests. After the hearing has been had, the governing body, if it finds the protests to contain the signatures of the owners of a majority of the property liable to be charged, shall not proceed further with the improvement. If the protests are found insufficient or invalid, the governing body of the municipality may cause the improvement to be made, contract therefor, and defray the cost thereof in the manner provided in this subsection.

A municipality may pay the cost of leasing any sewage systems and all related real and personal property for the collection, treatment, purification, and disposal in a sanitary manner of sewage from the state, or any agency or institution of the state under section 40-34-01.2, solely from revenues to be derived by the municipality from the ownership, sale, lease, disposition, and operation of the sewage systems; the funds or any other amounts invested by the municipality pursuant to section 21-06-07, or invested on the municipality's behalf by the state, or any agency of the state, in conformity with policies of the industrial commission, including investment in a guaranteed investment contract and any earnings thereon, to the extent pledged therefor; and funds, if any, appropriated annually by the governing body of the municipality or received from federal or state sources.

**SECTION 11.** A new section to chapter 54-01 of the North Dakota Century Code is created and enacted as follows:

**Lease of state-owned property.** Notwithstanding any other provision of law, the state, or any agency or institution of the state, may enter agreements to lease all or part of, or an undivided or other interest in, any real or personal property belonging to the state, or any agency or institution of the state, to and, or, from any agency or institution of the state or any person for such compensation and upon such terms and conditions as the parties under such agreement may stipulate. Such agreements must be authorized by the board, if any, or commissioner or other executive officer of the commission, agency, or institution holding, controlling, possessing, or owning the property or on whose behalf the property is held, and must be approved by the industrial commission. For purposes of this section, the agreements include any lease, sublease, purchase agreement, lease-purchase

agreement, installment purchase agreement, leaseback agreement, or other contract, agreement, instrument, or arrangement pursuant to which any rights, interests, or other property are transferred to, by, or from any party to, by, or from one or more parties, and any related documents entered or to be entered, including any operating agreement, service agreement, indemnity agreement, participation agreement, loan agreement, or payment undertaking agreement entered as part of a long-term lease and leaseback transaction. A lease obligation under this section may not exceed a term of ninety-nine years. A lease obligation entered into under this section is payable solely from revenues to be derived by the state, or any agency or institution of the state, from the ownership, sale, lease, disposition, and operation of the property; any funds or investments permitted under state law, and any earnings thereon, to the extent pledged therefor; revenues to be derived by the state, or any agency or institution of the state, from any support and operating agreement, service agreement, or any other agreement relating to the property; funds, if any, appropriated annually by the legislative assembly or received from federal sources; and income or proceeds from any collateral pledged or provided therefor. A lease obligation under this section does not constitute an indebtedness of the state, or any agency or institution of the state, or a pledge of the full faith and credit or unlimited taxing resources of the state, or any agency or institution of the state. Notwithstanding any other law, the state, or any agency or institution of the state, may solicit and accept one or more proposals for a lease transaction, including the arrangement thereof, under this section, and accept any proposal that is determined to be in the public interest. The bond bank, on behalf of the state, or any agency or institution of the state, may do and perform any acts and things authorized by this section, including making, entering, and enforcing all contracts or agreements necessary, convenient, or desirable for the purposes of this section.

**SECTION 12.** A new section to chapter 54-17 of the North Dakota Century Code is created and enacted as follows:

**Lease of municipal waterworks and sewage systems.** Notwithstanding any other provision of law, the state, acting by and through its industrial commission, may enter agreements to lease all or part of, or an undivided or other interest in, the plant or equipment of any waterworks, mains, or water distribution system and any property related thereto pursuant to subsection 5 of section 40-33-01, subsection 12 of section 61-24.5-09, or subsection 23 of section 61-35-12 or any sewage system and all related property for the collection, treatment, purification, and disposal in a sanitary manner of sewage pursuant to section 40-34-01.2 or subsection 23 of section 61-35-12 to or from a municipality or other political subdivision or agency of the state, or to or from any person, for such compensation and upon such terms and conditions as the parties under such agreement may stipulate. For the purposes of this section, such agreements include any lease, sublease, purchase agreement, lease-purchase agreement, installment purchase agreement, leaseback agreement, or other contract, agreement, instrument, or arrangement pursuant to which any rights, interests, or other property are transferred to, by, or from any party to, by, or from one or more parties, and any related documents entered or to be entered, including any operating agreement, service agreement, indemnity agreement, participation agreement, loan agreement, or payment undertaking agreement. Any lease obligation entered under this section is payable solely from revenues to be derived by the state or any agency or institution of the state from the ownership, sale, lease, disposition, and operation of the plant or equipment of any waterworks, mains, or water distribution system and any property related thereto or sewage systems and all related property for the collection, treatment, purification, and disposal in a sanitary manner of sewage; any funds or investments permitted under state law, and any earnings thereon, to the extent pledged therefor; revenues to be derived by the state from any support and operating agreement, service agreement, or any other

agreement relating to the waterworks, mains, and water distribution system or sewage system; funds, if any, appropriated annually by the legislative assembly; and income or proceeds from any collateral pledged or provided therefor. A lease obligation entered under this section does not constitute an indebtedness of the industrial commission, the state, or any agency or officer or agent thereof, or a pledge of the full faith and credit or unlimited taxing resources of the industrial commission, the state, or any agency or officer or agent thereof. The industrial commission may authorize the bond bank or another agency or institution of the state to do and perform any acts and things authorized by this section, including making, entering, and enforcing all contracts or agreements necessary, convenient, or desirable for the purposes of this section.

**SECTION 13.** Three new subsections to section 57-02-08 of the North Dakota Century Code are created and enacted as follows:

Notwithstanding any other law, all property, including any possessory interest therein, relating to any waterworks, mains, and water distribution system leased to the state, or any agency or institution of the state, or to a private entity pursuant to subsection 5 of section 40-33-01, subsection 12 of section 61-24.5-09, or subsection 23 of section 61-35-12, which property is operated by, or providing services to, a municipality or other political subdivision or agency of the state, or its citizens.

Notwithstanding any other law, all property, including any possessory interest therein, relating to any sewage systems and facilities for the collection, treatment, purification, and disposal in a sanitary manner of sewage leased to the state, or any agency or institution of the state, or to a private entity pursuant to section 40-34-01.2 or subsection 23 of section 61-35-12, which property is operated by, or providing services to, a municipality or other political subdivision or agency of the state, or its citizens.

Notwithstanding any other law, all property, including any possessory interest therein, leased to a private entity pursuant to section 54-01-05.6, which property is operated by, or providing services to, the state or its citizens.

**SECTION 14.** A new subsection to section 61-24.5-09 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding any other law, to exercise the powers granted to a municipality under subsection 5 of section 40-33-01 pursuant to the limitations set forth therein. The authority may pay the cost of leasing any waterworks, mains, and water distribution system and any equipment or appliances connected therewith and any property related thereto pursuant to subsection 5 of section 40-33-01 solely from revenues to be derived by the authority from the ownership, sale, lease, disposition, and operation of the waterworks, mains, and water distribution system; the funds or any other amounts invested by the authority pursuant to the laws of the state or invested on the authority's behalf by the state, or any agency or institution of the state, in conformity with policies of the industrial commission, including investment in a guaranteed investment contract and any earnings thereon, to the extent

pledged therefor; and funds, if any, appropriated annually by the board of the authority or received from federal or state sources.

**SECTION 15.** A new subsection to section 61-35-12 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding any other law, exercise the powers granted to a municipality under subsection 5 of section 40-33-01 and section 40-34-01.2, pursuant to the limitations set forth therein. A district may pay the cost of leasing any waterworks, mains, and water distribution system and any equipment or appliances connected therewith and any property related thereto pursuant to subsection 5 of section 40-33-01, or of any sewage system and all related property for the collection, treatment, purification, and disposal in a sanitary manner of sewage pursuant to section 40-34-01.2, solely from revenues to be derived by the district from the ownership, sale, lease disposition, and operation of the waterworks, mains, and water distribution system or sewage system; the funds or any other amounts invested by such district pursuant to section 21-06-07, or invested on such district's behalf by the state, or any agency or institution of the state, in conformity with policies of the industrial commission, including investment in a guaranteed investment contract and any earnings thereon, to the extent pledged therefor; and funds, if any, appropriated annually by the board of the district or received from federal or state sources.

**SECTION 16. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 14, 2003  
Filed April 14, 2003

## CHAPTER 343

### SENATE BILL NO. 2175

(Senators Polovitz, Christenson, Tollefson)  
(Representatives Herbel, Potter)

### MAYOR COMPENSATION

AN ACT to amend and reenact section 40-08-15 of the North Dakota Century Code, relating to the compensation of a mayor.

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

**SECTION 1. AMENDMENT.** Section 40-08-15 of the North Dakota Century Code is amended and reenacted as follows:

**40-08-15. Compensation of mayor.** The mayor shall receive such compensation as the city council may direct by ordinance; ~~but his compensation shall not be changed during his term of office.~~

Approved March 25, 2003

Filed March 25, 2003

## CHAPTER 344

### SENATE BILL NO. 2270

(Senators Christenson, Nelson)  
(Representative Keiser)

## CITY FINANCIAL STATEMENTS

AN ACT to amend and reenact sections 40-16-04 and 40-16-05 of the North Dakota Century Code, relating to preparation and publication of the city financial statement.

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

**SECTION 1. AMENDMENT.** Section 40-16-04 of the North Dakota Century Code is amended and reenacted 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 financial statement. A monthly financial statement shall be prepared showing the revenues, expenditures, transfers, and fund balances.
2. Annual financial statement. An annual financial statement shall be prepared, on or before ~~February~~ March 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.

**SECTION 2. AMENDMENT.** Section 40-16-05 of the North Dakota Century Code is amended and reenacted as follows:

**40-16-05. Auditor to publish statement.** Within ~~thirty~~ sixty days after the close of each fiscal year, the auditor of each city shall make and cause to be published in the official city newspaper a financial statement of the city showing the receipts and disbursements on account of each fund during the last preceding year.

Approved March 27, 2003  
Filed March 28, 2003

## CHAPTER 345

### SENATE BILL NO. 2053

(Legislative Council)  
(Taxation Committee)

## SPECIAL ASSESSMENT COST ESTIMATES

AN ACT to amend and reenact sections 40-22-10 and 40-22-29 of the North Dakota Century Code, relating to cost estimates for improvements by special assessments; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 40-22-10 of the North Dakota Century Code is amended and reenacted as follows:

**40-22-10. Engineer's report required - Contents.** After a special improvement district has been created, the governing body of a municipality, if it deems it necessary to make any of the improvements set out in section 40-22-01 in the manner provided in this chapter, shall direct the engineer for the municipality, or some other competent engineer if the municipality does not have a competent municipal engineer, to prepare a report as to the general nature, purpose, and feasibility of the proposed improvement and an estimate of the probable cost of the ~~work~~ improvement, including:

1. A separate statement of the estimated cost of the work for which proposals must be advertised under section 40-22-19; and
2. A separate statement of all other items of estimated cost not included under subsection 1 which are anticipated to be included in the cost of the improvement under sections 40-23-05 and 40-23.1-04.

**SECTION 2. AMENDMENT.** Section 40-22-29 of the North Dakota Century Code is amended and reenacted as follows:

**40-22-29. Engineer's statement of estimated cost required - Governing body to enter into contracts.** Before adopting or rejecting any bid filed under the provisions of this chapter, the governing body shall require the engineer for the municipality to make a careful and detailed statement of the estimated cost of the work for which proposals were advertised under section 40-22-19. The governing body may not award the contract to any bidder if the engineer's estimate prepared pursuant to this section exceeds the engineer's estimate of the cost of the work prepared pursuant to subsection 1 of section 40-22-10 by forty percent or more.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for improvement districts for which a resolution or ordinance creating the district is adopted after July 31, 2003.

Approved March 21, 2003  
Filed March 24, 2003



## CHAPTER 346

### SENATE BILL NO. 2052

(Legislative Council)  
(Taxation Committee)

## FLOOD CONTROL ASSESSMENTS

AN ACT to amend and reenact section 40-23-22.1 of the North Dakota Century Code, relating to city flood control special assessments on privately owned structures, fixtures, and improvements, used for private commercial purposes, which are located on state-owned land; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 40-23-22.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **40-23-22.1. City flood control special assessment exemption for state property - Limitations.**

1. Notwithstanding any other provision of law, property of the state in a city subject to this section is exempt from special assessments levied for flood control purposes. Upon request by the governing body of the city, the exemption under this section may be completely or partially waived by majority vote of the budget section of the legislative council. A city is subject to the exemption under this section in recognition of state financial assistance for flood control provided to the city pursuant to section 61-02.1-01 or other appropriation or commitment of state funds.
2. The exemption under this section does not apply to any privately owned structure, fixture, or improvement located on state-owned land if the structure, fixture, or improvement is used for commercial purposes unless the structure, fixture, or improvement is primarily used for athletic or educational purposes at a state institution of higher education. An assessment allowed under this subsection must be based on the square footage or front footage of the land occupied by the structure, fixture, or improvement and made against the structure, fixture, or improvement and not against the land on which it is located.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for special assessment installments confirmed after July 31, 2003.

Approved April 4, 2003  
Filed April 4, 2003

## CHAPTER 347

### SENATE BILL NO. 2368

(Senators Cook, Fischer, J. Lee)  
(Representatives Clark, R. Kelsch, Porter)

## SPECIAL ASSESSMENT AUDITS

AN ACT to create and enact two new sections to chapter 40-23 of the North Dakota Century Code, relating to audits of special assessments when costs exceed estimates and future assessments on annexed property; and to provide an effective date.

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

**SECTION 1.** A new section to chapter 40-23 of the North Dakota Century Code is created and enacted as follows:

**Audit of certain special assessment improvements.** If the costs of an improvement determined and assessed under section 40-23-07 or 40-23.1-04 exceeds the costs of the work as contained in the engineer's estimate under section 40-22-10 by seventy percent or more, the governing body of the city shall secure an audit of all costs included in the assessment for the project, prepared in accordance with generally accepted auditing standards. The audit report must include a separate statement of the engineer's estimate of the cost of the work, the actual cost of the work, the cost of extra work, engineering fees, fiscal agents' fees, attorneys' fees, publication costs, warrant printing costs, interest costs, and each separate item of expense incurred in making the improvement and levying the assessment for the improvement. The city shall make a copy of the audit report available without charge to any person who requests a copy. The audit report is not required if the costs of an improvement exceed the costs of the work as contained in the engineer's estimate by seventy percent or more because of a petition to enlarge the district under section 40-22-09 or a request for additional work within the district by the owners of a majority of the area of the property in the district. Audit and copying expenses under this section must be paid by the city and may not be paid from special assessment funds.

**SECTION 2.** A new section to chapter 40-23 of the North Dakota Century Code is created and enacted as follows:

**Future assessments on annexed property.** The special assessment commission shall prepare and file with the city auditor a list of estimated future assessments on property located outside the corporate limits of the city at the time of contracting for an improvement but which the special assessment commission determines is potentially benefited by the improvement and likely to be annexed to the city.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for special assessment improvement projects for which a resolution of necessity is adopted after July 31, 2003.

Approved April 8, 2003  
Filed April 9, 2003

## CHAPTER 348

### HOUSE BILL NO. 1288

(Representatives Kasper, Bellew, F. Klein)  
(Senators Espegard, Fischer, Robinson)

## PARK BOARD COMMISSIONER COMPENSATION

AN ACT to amend and reenact section 40-49-10 of the North Dakota Century Code, relating to the compensation of members of a board of park commissioners.

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

**SECTION 1. AMENDMENT.** Section 40-49-10 of the North Dakota Century Code is amended and reenacted as follows:

**40-49-10. Members of board of park commissioners may receive compensation - Interest in contracts restricted.** The members of the board of park commissioners ~~shall~~ are entitled to receive ~~such~~ compensation for their services ~~as may be prescribed in the amount approved by the governing body of the municipality board in the park district annual budget.~~ as may be prescribed in the amount approved by the governing body of the municipality board in the park district annual budget. ~~No~~ A park board member may not be directly or indirectly interested in any contract requiring the expenditure of park district funds unless the contract has been approved by two-thirds of the park board. Before the contract is approved, a motion must be made and approved that the service or property is not readily available elsewhere at equal cost. Regardless of this section, any park board, by resolution duly adopted, may contract with park board members for minor supplies or incidental expenses.

Approved March 19, 2003  
Filed March 19, 2003

CHAPTER 349

SENATE BILL NO. 2388

(Senators Syverson, Grindberg, Tollefson)  
(Representatives Bernstein, Clark, Koppelman)

MUNICIPAL INDUSTRIAL DEVELOPMENT BONDS

AN ACT to amend and reenact sections 40-57-02, 40-57-03, 40-57-04, 40-57-04.1, and 40-57-05 of the North Dakota Century Code, relating to municipal industrial development bonds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>169</sup> **SECTION 1. AMENDMENT.** Section 40-57-02 of the North Dakota Century Code is amended and reenacted as follows:

**40-57-02. "~~Project~~" and "~~municipality~~" defined Definitions.** As used in this chapter, unless a different meaning clearly appears from the context, the ~~term~~ "~~municipality~~" ~~includes~~ following terms have the meanings given below:

- 1. "Municipality" means counties as well as municipalities of the types listed in subsection 4 of section 40-01-01 and, in the case of parking projects, municipal parking authorities created pursuant to section 40-61-02; ~~and the term "project".~~
  
- 2. "Project" means any real property, buildings, and improvements on real property or the buildings thereon, and any equipment located on such real property or in such buildings, or elsewhere, or personal property which is used or useful in connection with a revenue-producing enterprise, or any combination of two or more such enterprises, engaged or to be engaged in:
  - 4. a. Assembling, fabricating, manufacturing, mixing, or processing of any agricultural, mineral, or manufactured products, or any combination thereof.
  
  - 2. b. Storing, warehousing, distributing, or selling any products of agriculture, mining, or manufacture.
  
  - 3. c. Providing hospital, nursing home, or other health care facilities and service.
  
  - 4. d. Improvements or equipment used or to be used for the abatement or control of environmental pollution in connection with any new or existing revenue-producing enterprise.
  
  - 5. e. Public vocational education.

<sup>169</sup> Section 40-57-02 was also amended by section 82 of House Bill No. 1183, chapter 138.

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

In no event, however, does the term "project" include those undertakings defined in chapter 40-35, with the exception of projects referred to in ~~subsections 3, 4, and 5~~ this subsection.

3. "Revenue agreement" means a written agreement between a municipality and a contracting party with respect to a project, whereby the contracting party agrees to pay to the municipality or its order amounts sufficient at all times to pay when due the principal of, premium, if any, and interest on all bonds issued by the municipality with respect to that project. A revenue agreement may be in the form of a lease, mortgage, direct or installment sale contract, loan agreement, take-or-pay or similar agreement, and be secured in a manner the parties agree to or be unsecured.

<sup>170</sup> **SECTION 2. AMENDMENT.** Section 40-57-03 of the North Dakota Century Code is amended and reenacted as follows:

**40-57-03. Powers of municipality.** Any municipality, in addition to the powers prescribed elsewhere by the laws of this state, shall have the power to:

1. Acquire whether by purchase, lease, or gift, from any source whatsoever, any real property, buildings, improvements on real property or buildings, including but not limited to easements, profits, rights in land and water rights deemed necessary in connection therewith, and to construct, reconstruct, improve, better, or extend to real property, buildings, and improvements on real property and buildings of any project which shall be located within this state; provided, that the property acquired for the project shall be located wholly within the boundaries of the municipality acquiring it unless a contract or agreement between that municipality and any other municipality in which part or all of the property is located is entered into as authorized by subsection 8.
2. Issue revenue bonds, in anticipation of the collection of revenues of the project, to finance, in whole or in part, the cost of the project, whether then in existence or not.
3. Lease projects to any industrial or commercial enterprise or nonprofit corporation or to any school district for vocational education purposes, in such manner that rents to be charged for the use of such projects shall be fixed, and revised from time to time as necessary, so as to produce income and revenue sufficient to provide for the prompt payment of interest upon all bonds issued hereunder, to create a sinking fund to pay the principal of such bonds when due, and to provide for the operation, maintenance, insurance on, and depreciation of such projects, and any taxes thereon.

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<sup>170</sup> Section 40-57-03 was also amended by section 83 of House Bill No. 1183, chapter 138.

4. With respect to any ~~hospitals, nursing homes, or other health care facilities comprising a project to be used by any nonprofit corporation,~~ enter into loan revenue agreements with such nonprofit corporation providing for the municipality to loan the proceeds derived from the issuance of bonds pursuant to this chapter to the ~~nonprofit corporation~~ contracting party to be used to pay costs of the project and providing for the repayment of the loan by the ~~nonprofit corporation~~ contracting party, and which may provide for such loans or bonds to be secured by a mortgage on and security in the project or such other security as may be determined by the municipality, whether delivered or granted to the municipality, the holder or holders of said bonds, a trustee therefor or otherwise.
5. Pledge to the punctual payment of said bonds and the interest thereof, all or any part of the revenues of such project, including the revenues of projects which shall be acquired or constructed subsequent to the issuance of such bonds, as well as revenues of projects existing when such bonds were issued.
6. Mortgage or otherwise encumber said projects in favor of the holder, or holders, of said revenue bonds, or a trustee therefor; provided, that in creating any such mortgages or encumbrances, a municipality shall not have the power to obligate itself except with respect to the project, except as otherwise provided by section 40-57-19.
7. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of the powers herein granted, or in the performance of its covenants or duties, or in order to secure the payments of its bonds.
8. Enter into and perform such contracts and agreements with other municipalities, political subdivisions, and state agencies, authorities, and institutions as the respective governing bodies of the same may deem proper and feasible for or concerning the planning, construction, lease, or other acquisition, and the financing of such facilities, and the maintenance thereof. Any such municipalities so contracting with each other may also provide in their contract or agreement for a board, commission, or such other body as their governing bodies may deem proper for the supervision and general management of the facilities of the project.
9. Accept from any authorized agency of the federal government loans or grants for the planning, construction, acquisition, leasing, or other provision of any project, and to enter into agreements with such agency respecting such loans or grants.
10. 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.

11. Issue said revenue bonds to refund, in whole or in part bonds previously issued by such municipality under authority of this chapter.
12. In any instance where the project ~~acquired~~ financed by the municipality consists of the construction, reconstruction, improvement, betterment of real property, buildings and improvements on real property and buildings, the provisions of chapter 48-02 and other applicable statutes shall apply; except that the municipality, in the ~~lease revenue agreement~~ 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 revenue agreement~~ and financing of the project when constructed, may permit a ~~lessee~~ contracting party which is not a governmental entity or a public institution, 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~~ contracting party, whether or not the procedure followed by the ~~lessee~~ contracting party is in conformity with said chapter 48-02.

No municipality may operate any project referred to in this chapter as a business or in any manner whatsoever, except as the lessor, contract vendor, secured party, or lender thereof. No debt on the general credit of the municipality may be incurred in any manner for any purpose under this chapter, except as otherwise provided by section 40-57-19. No municipality may pay out of its general fund for, or otherwise contribute to the cost of, construction of a project, except as otherwise provided by section 40-57-19.

**SECTION 3. AMENDMENT.** Section 40-57-04 of the North Dakota Century Code is amended and reenacted as follows:

**40-57-04. Resolution authorizing project and the issuance of revenue bonds - Public notice and hearing - No election required.** The acquisition, construction, reconstruction, improvement, betterment, extension, or financing of any project, and the issue of bonds in anticipation of the collection of the revenues of such project to provide funds to pay for the cost thereof, may be authorized by an ordinance or resolution of the governing body adopted at a regular meeting thereof by the affirmative vote of a majority of its members. Prior to the issuance of revenue ~~or refunding~~ bonds under authority of this chapter, the governing body shall give notice and hold a public hearing on the proposed bond issue. Notice of the hearing shall be published in the official newspaper of the municipality once a week for two successive weeks prior to the time set for the hearing. The notice shall specify the time and place of the hearing, and the amount and purpose of the proposed bond issue. The governing body shall not approve the bond issue unless it appears, after the public hearing, that such approval is in the public interest of the municipality. Except as provided in section 40-57-19, no election shall be required to authorize the use of any of the powers conferred by this chapter. No public hearing is required prior to the issuance of refunding bonds issued pursuant to section 40-57-19.1.

**SECTION 4. AMENDMENT.** Section 40-57-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**40-57-04.1. Notice to competitors - Authority to issue bonds limited if project would compete with existing enterprises.** Prior to approval of the issuance of any bonds under authority of this chapter, except refunding bonds issued

pursuant to section 40-57-19.1, the governing body of the municipality shall, when a competitive project is involved, include notice of the competitive nature of the proposed project in the public notice required to be published prior to the public hearing required under section 40-57-04. The governing body shall not approve the bond issue unless it appears that the impact and effect of the issue upon existing industry and business will not result in an unfair advantage for the proposed project to the substantial detriment of existing enterprises.

**SECTION 5. AMENDMENT.** Section 40-57-05 of the North Dakota Century Code is amended and reenacted as follows:

**40-57-05. Notice to securities commissioner - Approval of public officer not required.** Upon the issuance of bonds under this chapter, the ~~project lessee~~ contracting party shall furnish the state securities commissioner the following information concerning the project:

1. The name of the ~~project lessee~~ contracting party.
2. The location and nature of the project.
3. The amount and nature of the bonds issued.
4. The general terms and nature of the financing arrangement.
5. A copy of the official statement of the offering, if one was prepared.

The consent of any governmental body or public officer of the state shall not be required to authorize the issuance or sale of bonds or the making of any mortgage in connection therewith.

Approved March 21, 2003

Filed March 21, 2003



## CHAPTER 350

### HOUSE BILL NO. 1457

(Representatives Carlson, Svedjan)

(Senator Espegard)

## RENAISSANCE ZONE CRITERIA

AN ACT to amend and reenact subdivision c of subsection 1 and subsections 7 and 9 of section 40-63-03 of the North Dakota Century Code, relating to criteria for renaissance zones.

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

**SECTION 1. AMENDMENT.** Subdivision c of subsection 1 of section 40-63-03 of the North Dakota Century Code is amended and reenacted as follows:

- c. The proposed renaissance zone is not more than twenty square blocks, except in a city with a population of greater than five thousand the renaissance zone may exceed twenty square blocks at the rate of one additional block for each additional five thousand population to a maximum size of thirty-five blocks. Population is based upon the most recent federal decennial census.

**SECTION 2. AMENDMENT.** Subsections 7 and 9 of section 40-63-03 of the North Dakota Century Code are amended and reenacted as follows:

7. A city may apply to the department of commerce division of community services at any time during the duration of a zone to expand a previously approved renaissance zone that is less than ~~twenty square blocks~~ the maximum size allowed under subdivision c of subsection 1. If the expansion is approved by the department of commerce division of community services, the blocks in the expansion are eligible for up to fifteen years of renaissance zone status.
9. If ~~after a minimum of five years~~ a portion of an approved renaissance zone is not progressing, the city may request the department of commerce division of community services to permit deleting that portion and to make ~~a one-time adjustment~~ an adjustment of the boundaries to add another equal, contiguous area to the original zone.

Approved March 25, 2003

Filed March 25, 2003

## CHAPTER 351

### SENATE BILL NO. 2259

(Senators Grindberg, Espegard, Heitkamp)  
(Representatives S. Kelsh, Severson, Weiler)

## RENAISSANCE FUND ORGANIZATIONS

AN ACT to amend and reenact section 40-63-07 of the North Dakota Century Code, relating to renaissance fund organizations.

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

<sup>171</sup> **SECTION 1. AMENDMENT.** Section 40-63-07 of the North Dakota Century Code is amended and reenacted as follows:

#### **40-63-07. Renaissance fund organization - Exemption from taxation.**

1. Each city with a designated renaissance zone may establish a renaissance fund ~~corporation~~ organization, if the detailed plan for such an organization is clearly established in the development plan and approved with the plan, or is submitted at a later date to the department of commerce division of community services for approval after the designation of a renaissance zone.
2. The purpose of a renaissance fund organization is solely to raise funds to be used to make investments in zone projects and to make investments in ~~businesses within a city's designated renaissance zone cities.~~ A renaissance fund organization may provide financing to projects undertaken by individuals, partnerships, limited partnerships, limited liability companies, trusts, corporations, nonprofit organizations, and public entities. The financing may include any combination of equity investments, loans, guarantees, and commitments for financing. The amount of financing is not limited by this chapter.
3. ~~A renaissance fund organization that is established by a city may provide financing to businesses within the city's zone and may provide financing to zone-approved projects throughout the state.~~
4. A renaissance fund organization is exempt from any tax imposed by chapter 57-35.3 or 57-38. An exemption under this section may be passed through to any shareholder, partner, and owner if the renaissance fund organization is a passthrough entity for tax purposes. A corporation or financial institution entitled to the exemption provided by this subsection ~~must~~ shall file required returns and report income to the tax commissioner as required by the provisions of those chapters as if the exemption did not exist. If an employer, this subsection does not

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<sup>171</sup> Section 40-63-07 was also amended by section 30 of Senate Bill No. 2046, chapter 48.

exempt a renaissance fund organization from complying with the income tax withholding laws.

- ~~5.~~ 4. A credit against state tax liability as determined under section 57-35.3-03, 57-38-29, 57-38-30, or 57-38-30.3 is allowed for investments in a renaissance fund organization. The amount of the credit is fifty percent of the amount invested in the renaissance fund organization during the taxable year. Any amount of credit which exceeds a taxpayer's tax liability for the taxable year may be carried forward for up to five taxable years after the taxable year in which the investment was made.
- ~~6.~~ 5. The total amount of credits allowed under this section may not exceed, in the aggregate, an initial limit of two million five hundred thousand dollars. Upon exhaustion of this initial limit, an additional ~~one~~ two million five hundred thousand dollars in credits is available for investments in renaissance fund organizations ~~for taxable years beginning after December 31, 2000, for investments permitted under this chapter if more than sixty-five percent of the organization's net investments received have been invested as permitted under this chapter or the organization is established after the exhaustion of the initial limit. Upon exhaustion of the initial limit, an additional one million five hundred thousand dollars in credits is available for investments in renaissance fund organizations for taxable years beginning after December 31, 2002, for investments permitted under this chapter if more than sixty-five percent of the qualifying organization's net investments received have been invested as permitted under this chapter or the organization is established after the exhaustion of the initial limit. A renaissance fund organization that has received investments that qualify for these additional credits under this subsection may not use more than fifty percent of such investments for organization investments outside of a renaissance zone.~~
- ~~7.~~ 6. Income to a renaissance fund organization derived from the sale or refinancing of zone properties financed wholly or in part by the organization may be dispersed as annual dividends equal to the income, minus ten percent, derived from all sources and proportional to the investment. In the event of a loss to the fund resulting in a temporary diminishment of the fund below the original principal amount, no annual dividend may be paid until the fund is restored.
- ~~8.~~ 7. Income to a renaissance fund organization derived from interest or the temporary investment of its funds in certificates of deposit, bonds, treasury bills, or securities may be used for administration.
- ~~9.~~ 8. If an investment in a renaissance fund organization which is the basis for a credit under this section is redeemed by the investor within ten years of the date it is purchased, the credit provided by this section for the investment must be disallowed, and any credit previously claimed and allowed with respect to the investment must be paid to the tax commissioner with the appropriate return of the taxpayer covering the period in which the redemption occurred. When payments are made to the tax commissioner under this section, the amount collected must be handled in the same manner as if no credit had been allowed.

- ~~10.~~ 9. A renaissance fund organization shall secure an annual audit of its financial records, prepared by an independent certified public accounting firm in accordance with generally accepted auditing standards. The audit report must include a statement of the percentage of annual ~~net~~ investments received by the organization ~~after December 31, 2000~~, which have been invested by the organization in investments permitted under this chapter, including the use of investments, distinguishing between organization investments made in renaissance zones and outside renaissance zones. ~~If the audit report shows that less than fifty percent of such net investments have been so invested during the previous four years and the organization has been incorporated for four years or more, that organization may not accept any new investments until the governing body of the city in which the organization was established determines that good cause exists for the failure to reach that level of investment or until a subsequent audit report shows that fifty percent or more of such net investments have been so invested.~~ A renaissance fund organization shall file a copy of each audit of its financial records under this subsection with the governing body of the city in which it was established, the department of commerce division of community services, and the tax commissioner. The department of commerce division of community services shall provide an annual report to the budget section of the legislative council showing the conclusions of audit reports filed under this subsection.
- ~~11.~~ A renaissance fund organization may invest in any residential or commercial property involved in a zone project.

Approved April 11, 2003

Filed April 14, 2003