CHAPTER 15-55
CONSTRUCTION OF REVENUE-PRODUCING BUILDINGS

15-55-01. Portions of campuses set aside for authorized revenue-producing buildings or other revenue-producing campus improvements.

Subject to and in accordance with the terms of this chapter, the state board of higher education, for and on behalf of the institutions under its supervision and control, from time to time, may set aside such portions of the respective campuses of said institutions as may be necessary and suitable for the construction thereon of such revenue-producing buildings or other revenue-producing campus improvements as, from time to time, may be authorized by the legislative assembly, and including additions to existing buildings or other campus improvements used for such purposes, and may construct such campus improvements and buildings or additions thereon and may equip, furnish, maintain, and operate such buildings and other campus improvements.

15-55-02. Board may borrow money and issue bonds - Conditions - Bonds tax free.

For the purpose of paying all or part of, but not to exceed, the cost of construction, equipment, and furnishing of any such buildings or any addition to existing buildings, or other campus improvements, or in order to refund any outstanding bonds or interim financing issued for such purpose, the state board of higher education may borrow money on the credit of the income and revenue to be derived from the operation of the said building or buildings or other campus improvements, and, in anticipation of such collections of such income and revenues, may issue negotiable bonds in such an amount as, in the opinion of the board, may be necessary for such purposes, all within the limits of the authority granted by the legislative assembly in each instance, and may provide for the payment of such bonds and the rights of the holders thereof as provided in this chapter. The bonds may bear such date or dates; mature at such time or times not exceeding fifty years from their date; be in such denomination or denominations; be in such form, either coupon or registered; carry such registration and conversion privileges; be executed in such manner; be payable in such medium of payment at such place or places; be subject to such terms of redemption with or without premium; bear such rate or rates of interest; and be subject to such other terms or conditions as may be provided by resolution or resolutions to be adopted by the board. The bonds may be sold in such manner and at such price or prices as may be considered by the board to be advisable. The average net interest cost to maturity for any bond issues sold at private sale may not exceed twelve percent per annum. There is no interest rate ceiling on those issues sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. Any grants agreed to be made by the United States of America or any agency or instrumentality thereof to reduce the interest cost of bonds, whether or not pledged to the payment of the bonds or interest thereon as part of the income and revenue to be derived from the operation of the buildings or improvements pledged to the payment of the issue, must be considered as a reduction in the interest costs of the bonds with respect to which the grant is made, for purposes of the rate limitations on interest costs provided herein. The bonds have all of the qualities and incidents of negotiable paper and are not subject to taxation by the state of North Dakota, or by any county, municipality, or political subdivision therein. The board, in its discretion, may authorize one issue of bonds hereunder for the construction, furnishing, and equipment of more than one building or other campus improvement and may make the bonds payable from the combined revenues of all buildings or other campus improvements acquired in whole or in part with the proceeds thereof, and when bonds are so issued, the words "the building", as herein used, refers to all the buildings or other campus improvements so acquired.

15-55-02.1. Refunding bonds.

Bonds may be refunded, but no bonds may be refunded under this chapter unless the bonds either mature or are callable for prior redemption under their terms within thirty years from the date of issuance of the refunding bonds, or unless the holder or holders of the bonds voluntarily surrender them for exchange or payment. Outstanding bonds of more than one issue

or series and bonds for refunding and other bonds to construct, furnish, or equip any building or addition or other campus improvement for which bonds are authorized may be combined into one issue or series and may provide for and restrict the combination of future series with the issue. Except as otherwise provided in this section, the bonds must have such details and must be authorized and issued in the manner provided in this chapter. Refunding bonds so issued may carry forward for the payment of the refunding bonds such security and sources of payment as were pledged to the payment of the bonds refunded, and a combined issue of refunding and other bonds may combine such security and sources of payment with a pledge of the revenues of buildings or other campus improvements acquired in whole or in part from the proceeds of the issue, including the security and sources of payment of any future series of refunding bonds or revenues of any building or other campus improvement acquired from the proceeds of a future series if and to the extent that provision is made for combination of future series with the issue. The word "building" as used in this section means all the buildings or other campus improvements the revenues of which are pledged. Any bonds issued for refunding purposes may be delivered in exchange for the outstanding bonds authorized to be refunded, sold at either public or private sale, or sold in part and exchanged in part. There is no interest rate ceiling on those issues issued solely for refunding purposes. The sale price may exceed the principal amount of refunding bonds and the excess may be used to provide for payment of redemption premiums of the bonds to be refunded and to provide for expenses of the issuance and sale of the bonds and the retirement of the outstanding bonds. All other proceeds of the sale must be, to the extent needed, immediately applied to the retirement of the bonds to be refunded, or the proceeds or investments thereof must be placed in escrow to be held and applied to the payment of the bonds to be refunded, or in the case of crossover refunding, must be invested in securities irrevocably appropriated to the payment of principal and interest on the refunding bonds until the date the proceeds are applied to the payment or redemption of the bonds to be refunded.

The proceeds may, in the discretion or pursuant to covenant of the board, be invested in obligations of the United States of America, or in obligations fully guaranteed by the United States of America, but the obligations so purchased must have such maturities and bear such rates of interest payable at such times as will assure the existence of money sufficient to pay the bonds to be refunded when due or when redeemed pursuant to call for redemption, together with any interest and redemption premiums. The proceeds or obligations so purchased must be deposited in trust with the trustee for the refunded bonds, or with the banking corporation, association, or limited liability company which is the paying agent for the refunded bonds, or with the state treasurer, to be held, liquidated, and the proceeds of such liquidation paid out for the payment of the bonds to be refunded and interest and redemption premiums thereon as the refunded bonds become due or subject to redemption under call for redemption previously made, or upon earlier voluntary surrender thereof with the consent of the board. The determination of the board in issuing refunding bonds that the issuance and sale of refunding bonds is necessary for the best interests of the institution and that the limitations herein imposed upon the issuance of refunding bonds have been met is conclusive in the absence of fraud or arbitrary and gross abuse of discretion.

15-55-03. Bonds are special obligations and board may insert special provisions in bonds.

The bonds issued under the provisions of this chapter may not be an indebtedness of the state of North Dakota nor of the institution for which they are issued nor of the state board of higher education thereof, nor of the individual members, officers or agents thereof nor may any building or other campus improvement or the land upon which it is situated, or any part thereof be security for or be levied upon or sold for the payment of said bonds, but the said bonds must be special obligations payable solely from the revenues to be derived from the operation of the building or other campus improvement, and the board is authorized and directed to pledge all or any part of such revenues to the payment of principal and interest on the bonds. In order to secure the prompt payment of such principal and interest and the proper application of the revenues pledged thereto, the board is authorized by appropriate provisions in the resolution or resolutions authorizing the bonds:

1. To covenant as to the use and disposition of the proceeds of the sale of such bonds;
2. To covenant as to the operation of the building or other campus improvement and the collection and disposition of the revenues derived from such operation;
3. To covenant as to the rights, liabilities, powers, and duties arising from the breach of any covenant or agreement into which it may enter in authorizing and issuing the bonds;
4. To covenant and agree to carry such insurance on the building or other campus improvement, and the use and occupancy thereof as may be considered desirable and, in its discretion, to provide that the cost of such insurance shall be considered as part of the expense of operating the building or other campus improvement;
5. To vest in a trustee or trustees for the bondholders the right to receive all or any part of the income and revenues pledged and assigned to or for the benefit of the holder or holders of bonds issued hereunder and to hold, apply, and dispose of the same, and the right to enforce any covenant made to secure the bonds and to execute and deliver a trust agreement or agreements which may set forth the powers and duties and the remedies available to such trustee or trustees and may limit the liabilities thereof and prescribe the terms and conditions upon which such trustee or trustees or the holder or holders of the bonds in any specified amount or percentage may exercise such rights and enforce any or all such covenants and resort to such remedies as may be appropriate;
6. To fix rents, charges, and fees to be imposed in connection with and for the use of the building or other campus improvement and the facilities supplied thereby, which rents, charges, and fees shall be considered to be income and revenues derived from the operation of the building or campus improvement, and are hereby expressly required to be fully sufficient to assure the prompt payment of principal and interest on the bonds as each becomes due, and to make and enforce such rules and regulations with reference to the use of the building or campus improvement, and with reference to requiring any class or classes of students to use the buildings or other campus improvements as it may deem desirable for the welfare of the institutions and its students or for the accomplishments of the purposes of this chapter;
7. To covenant to maintain a maximum percentage of occupancy of the building or other campus improvement;
8. To covenant against the issuance of any other obligations payable from the revenues to be derived from the building or other campus improvement; and
9. To make covenants other than and in addition to those herein expressly mentioned of such character as may be considered necessary or advisable to affect the purposes of this chapter.

All such agreements and covenants entered into by the board are enforceable by appropriate action or suit at law or in equity, which may be brought by any holder or holders of bonds issued hereunder.

15-55-04. Board may enter into contract with federal agencies.

The board may enter into any agreements or contracts with the United States of America or any agency or instrumentality thereof which it may consider advisable or necessary in order to obtain a grant of funds or other aid to be used in connection with the proceeds of the bonds in paying the cost of the construction, furnishing, and equipment of the building or other campus improvement.

15-55-04.1. Lease of revenue-producing buildings.

The state board of higher education may, at such times as it deems necessary, enter into agreements with other persons, including any federal or state agency, for the lease of revenue-producing buildings, constructed or purchased under the provisions of this chapter, upon such terms and conditions as the board deems proper. However, any such lease entered into pursuant to this section must be limited to a maximum term of ten years.

15-55-05. Deposit and use of proceeds of bonds - Authorizing issuing of warrants - Contracts.

The proceeds from the sale of the bonds herein authorized must be deposited to the credit of the board and kept in a separate fund in the state treasury, in the Bank of North Dakota or in a bank which is a duly designated depository for state funds and is a member of the federal deposit insurance corporation. Provided, that when such funds are deposited in a bank other than the Bank of North Dakota or a bank which is not a duly designated depository for state funds, such bank must be required to pledge, as security for such deposit, securities in an amount equal to the sum by which such deposit exceeds the amount of federal deposit insurance corporation insurance. Securities which are eligible for such pledge are notes or bonds issued by the United States government, its agencies or instrumentalities, all bonds and notes guaranteed by the United States government, federal land bank bonds, or bonds issued by any state of the United States. In lieu of the deposit of such securities, a surety bond may be accepted from the bank designated as a depository in a sum equal to the amount of funds such bank may receive in excess of the amount guaranteed by the federal deposit insurance corporation. Such proceeds must be used solely for the purpose for which the bonds are authorized except that the board may invest such funds in direct obligations of, or obligations the principal of and interest on which are guaranteed by, the United States of America, or obligations of the state of North Dakota or of any municipality as defined in section 21-03-01 prior to or during building or other campus improvement construction except to the extent such investment is prohibited or restricted by any covenant made with or for the benefit of bondholders. The board is authorized to make all contracts and to cause the execution of all instruments which in its discretion may be deemed necessary or advisable to provide for the construction, furnishing, and equipment of the building or other campus improvement or for the sale of the bonds or for interim financing deemed necessary or advisable pending the sale of the bonds and pledging the proceeds of the bonds.

15-55-05.1. Interim financing.

The board may provide for interim financing pending completion of revenue-producing projects at state institutions of higher learning and financing the cost thereof and may authorize the issuance and sale of special interim warrants for that essential governmental purpose, such warrants to be paid with interest from:

1. The proceeds of definitive bonds issued in accordance with this chapter;
2. Warrants issued to refund outstanding warrants; or
3. The combined net revenues to be derived from the operation of buildings and campus improvements for which bonds are outstanding with which the definitive bonds to be issued for such project will be on a parity.

The board shall arrange for the proper preparation and sale of the warrants and shall issue the warrants in an aggregate principal amount not exceeding the sum of bonds authorized and necessary to finance completion of the project. Interim warrants are subject to call and prepayment on thirty days' prior written notice to the place of payment at par and accrued interest to date of prepayment at the option of the board; must mature not more than three years from their date; and may bear such rate or rates of interest as the board may provide, not exceeding an average net interest cost of twelve percent per annum on issues sold at private sale. There is no interest rate ceiling on warrant issues sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. Interim warrants may be sold on the basis of ninety-five percent of par plus accrued interest to date of delivery. All warrants for a particular project must mature within three years from the date of issuing the first warrants for the project. If warrants are issued to refund warrants, the refunded warrants must be paid and canceled upon the issuance of the refunding warrants, or the proceeds at the sale of the refunding warrants, excepting the accrued interest received, must be used to purchase direct obligations of the United States of America. Such obligations must mature at such time or times, with interest thereon or the proceeds received therefrom, to provide funds adequate to pay, when due or called for redemption prior to maturity, the warrants to be refunded together with the interest accrued thereon and any redemption premium due thereon. Such proceeds or obligations of the United States of America must, with all other funds legally available for such

purpose, be deposited in escrow with a banking corporation or national banking association located in and doing business in the state of North Dakota, with power to accept and execute trusts, or any successor thereto, which is also a member of the federal deposit insurance corporation and of the federal reserve system. The proceeds or obligations are to be held in an irrevocable trust solely for and until the payment and redemption of the warrant to be refunded. Any balance remaining in escrow after the payment and retirement of the warrants to be refunded must be returned to the board to be used and held for use as revenues pledged for the payment of the definitive bonds. Interim warrants have all of the qualities and incidents of negotiable paper and are not subject to taxation by the state of North Dakota or by any county, municipality, or political subdivision therein. Interim warrants are eligible for investment of funds the same as definitive bonds are or would be eligible for investment under section 15-55-08.

Such warrants may not constitute a general obligation indebtedness of the state of North Dakota nor of the institution for which they are issued nor of the state board of higher education nor of the individual members, officers, or agents thereof; are payable solely as provided in this section; and the warrants issued and sold must so state.

15-55-06. Designations of agent and depositories - Disposition and use of revenues - Funds created.

All income and revenues derived from the operation of any building or other campus improvement financed or the revenues of which are pledged in the manner provided in this chapter must be collected by such officer or agent of the institution where the building or other campus improvement is located as the state board of higher education from time to time may designate and must be accounted for by such officer or agent, deposited, and remitted as in this section provided. The said board, in its resolution authorizing the bonds or in the trust agreement or agreements executed and delivered by the board, shall provide for the disposition of and accounting for all such revenues by such officer or agent, including the designation of a depository or depositories, the payment of expenses of operation and maintenance, the remittance of revenues to the paying agent designated in the bonds for payment of principal of and interest on the bonds when due, and the investment and disposition of revenues not immediately required for payment of expenses, principal, and interest. The board may designate as a depository for such revenues and funds either the state treasury or the Bank of North Dakota or the trustee under the trust agreement for the bondholders or a bank which is a duly designated depository for state funds or as provided in section 15-55-05. The said board may, in its resolution authorizing the bonds or in the trust agreement or agreements executed and delivered by the board, provide for an expense fund to be retained by the collecting officer for the purpose of paying and may direct the collecting officer to pay the accrued or anticipated expenses of operation and maintenance of the building or campus improvement, and if the board so directs or if such expense fund is so provided, the collecting officer may pay such expenses as so directed by the board or from said fund. The funds required to be remitted to the state treasurer, if any, and any funds derived from revenues pledged to the bondholders must be held by the collecting officer or in the depository for such funds designated by the board in a special fund or funds, to be applied solely to the payment of the principal and interest on said bonds, and the establishment of a reserve for future payments until all of said bonds and interest thereon have been fully paid; provided, that to the extent not prohibited or restricted by any covenant made with or for the benefit of the bondholders, the board may invest any such funds in direct obligations of, or obligations the principal of and interest on which are guaranteed by, the United States of America, or obligations of the state of North Dakota or of any municipality as defined in section 21-03-01 and may devote revenues not currently required for payment of principal and interest, for the creation or maintenance of a debt service reserve, or for expenses of operation and maintenance to such purposes as the board from time to time may designate, including replacing the furnishings and equipment of such building or buildings or campus improvements and improving said building or buildings or campus improvements.

15-55-07. Endorsement of bonds - Attorney general to approve - Incontestable - Exception.

All bonds issued under the provisions of this chapter must have endorsed thereon a statement to the effect that the same do not constitute an obligation of the state of North Dakota, the state board of higher education, nor the individual members, officers, or agents thereof, nor of the institution upon the campus of which the building or campus improvement is located, and that the said bonds are payable solely and only out of the revenues to be produced and received from the operation of said building or campus improvement. Such bonds must be submitted to the attorney general of North Dakota for examination and when such bonds have been examined and certified as legal obligations by the attorney general in accordance with such requirements as the attorney general may make, are incontestable in any court in this state unless suit thereon is brought in a court having jurisdiction thereof within thirty days from the date of such approval. Bonds so approved by the attorney general are prima facie valid and binding obligations according to their terms and the only defense which may be offered thereto in any suit instituted after such thirty-day period has expired is forgery, fraud, or violation of the constitution.

15-55-08. Who may invest in bonds.

Any bank or trust company organized under the laws of this state may invest its capital and surplus in bonds issued under this chapter. Any state board, bureau, institution, or industry having the power to invest public funds or the funds of such board, bureau, institution, or industry may invest said funds in bonds issued pursuant to this chapter in the same manner and under the same restrictions as are provided by law for other investments. The officers having charge of any sinking fund of any county, city, town, township, or school district thereof may invest the sinking fund of such county, city, town, township, or school district in bonds issued under the provisions thereof. The bonds are authorized collateral security for the deposit of any public funds and for the investment of trust funds.

15-55-09. Construction of chapter not to permit obligating of state.

Nothing in this chapter may be construed to authorize or permit the state board of higher education, or any officer or agency of the state, to create any state debts, or to incur any obligations of any kind or nature, except as are payable solely and only from the special funds to be created from the revenues of the building or buildings or other campus improvements erected or constructed under the terms and provisions of this chapter, nor may the state of North Dakota or any funds or moneys of this state other than the special funds derived from the income of said building or buildings or campus improvements respectively ever be deemed obligated for the payment of the said bonds or any part thereof.

15-55-10. Limitation on buildings and other campus improvements and issuance of bonds.

No building or other campus improvement may be erected or constructed under this chapter, and no bonds may be issued for the payment of the cost of any building or other campus improvement under this chapter, unless authorized by legislative act, nor may any building or other campus improvement be erected at a cost exceeding the amount fixed by the legislative assembly as the maximum to be expended for the building or other campus improvement undertaken under this chapter. The legislative authorization may be aggregated and the appropriation of the proceeds of the bonds for the construction of the buildings or improvements are not subject to cancellation under section 54-44.1-11. Authorization for the issuance of bonds by the legislative assembly expires four years after the effective date of the authorization unless bonds have been issued for the construction of buildings or improvements in the amounts so authorized or a contract for the design of the building has been signed by the state board of higher education before the expiration date or the authorization specifies a different expiration date. Refunding bonds may be issued by the state board of higher education under this chapter without legislative act to refund, at or before the maturity of or pursuant to

any privilege of prepayment reserved in or granted with respect to, any bonds issued to pay the cost of buildings or other campus improvements designated and authorized by legislative act.

15-55-11. Issuance and sale of tax-exempt bonds authorized - Amount.
Omitted.

15-55-12. Bonds not a general obligation of state or its institutions.
Omitted.

15-55-13. Additional revenue-producing buildings authorized.
Omitted.

15-55-14. Rental income from unencumbered revenue-producing buildings or other campus improvements may be applied to bond retirement.

The state board of higher education, when issuing bonds under the provisions of this chapter and the powers herein granted, has additional powers as follows:

1. When the state board of higher education has issued bonds as provided in this chapter for the purpose of securing funds for all or part of the cost of construction, equipment, and furnishing of any new revenue-producing building or other campus improvement for any of the state-supported institutions of higher learning of the state of North Dakota, or for the purpose of refunding any such bonds, said board is hereby authorized to cover, from time to time, into the interest and principal payment fund for bonds issued, or into a fund for operation and maintenance of the building or other campus improvement so financed or into a fund for repair or replacement of the building or other campus improvement, its equipment and furnishings, the rental or income from revenue-producing buildings or other campus improvements which are not encumbered or impressed with any lien and which are located upon the campuses of such institutions.
2. In case of destruction of such revenue-producing buildings or campus improvements by fire, tornado, cyclone, or other cause, the proceeds from insurance on such revenue-producing buildings or campus improvements shall be covered into the bond payment fund for the payment of bonds issued under this chapter unless such insurance may be and is used for the repair or replacement of the building or campus improvement, its equipment and furnishings.
3. The rental income from said revenue-producing buildings or other revenue-producing campus improvements, and the proceeds of insurance thereon may be irrepealably pledged to the payment of the principal and interest of the bonds issued as in this chapter provided, or to the expenses of operation and maintenance or repair or replacement of the building or campus improvement, its equipment and furnishings.
4. The bonds issued under the provisions of this chapter may not be an indebtedness or obligation of the state of North Dakota or of any of the state institutions nor of any board, bureau, or officer of the state of North Dakota, but such bonds must be payable solely out of income and revenue as provided in this chapter.

The rental income from the revenue-producing buildings or other revenue-producing campus improvements, as defined herein, of any educational institutions of higher learning of the state shall be covered only into a fund for a revenue-producing building or other revenue-producing campus improvement for such educational institution and not to any other institution.

15-55-15. Bond issues - Amounts and purposes (1955).
Omitted.

15-55-16. Bond issues - Amounts and purposes (1957).
Omitted.

15-55-17. Bond issues - Amounts and purposes (1959).
Omitted.

15-55-18. School district retirement of bonds for junior colleges and off-campus educational centers.
Repealed by S.L. 1999, ch. 154, § 2.

15-55-19. Powers and procedure.
Repealed by S.L. 1999, ch. 154, § 2.

15-55-20. Financial records required.
Each institution under the control of the state board of higher education which has constructed student housing, a food service facility, or a student union under the provisions of this chapter shall maintain records of financial accounts to provide a record of revenues received and expenses incurred in the use of such revenue-producing building. The definition of "expenses incurred" includes, but is not limited to, the estimated value of heat, electricity, water, repairs, insurances, and janitorial and maintenance services provided. From the information recorded in such records, appropriate financial statements must be prepared and included in the institutions' published and audited annual or biennial financial reports.

15-55-21. Expenses to be paid from gross revenues.
Repealed by S.L. 1987, ch. 3, § 17.