CHAPTER 40-24
SPECIAL ASSESSMENT FUNDS AND DISBURSEMENTS THEREOF

40-24-01. Lien of special assessment - Attaches on approval of assessment list - Subject only to general tax lien.

A special assessment, together with all interest and penalties which accrue thereon, shall be and remain a lien upon the property upon which the assessment is levied from the time the assessment list is approved by the governing body until the assessment is paid fully. Such lien shall have precedence over all other liens except general tax liens and shall not be divested by any judicial sale. No mistake in the description of the property covered by the special assessment lien or in the name of the owner of such property shall defeat the lien if the assessed property can be identified by the description in the assessment list.

40-24-02. Payment of special assessments - Interest.

All special assessments levied under this title may be paid without interest within ten days after they have been approved by the governing body and thereafter shall bear interest at an annual rate not exceeding one and one-half percentage points above the average net annual interest rate on any warrants or bonds for the payment of which they are pledged on the total amount thereof remaining unpaid.

40-24-03. Lien between vendor and vendee of special assessments.

As between a vendor and vendee of real property, unless the purchase contract otherwise provides, the installments of all special assessments for local improvements which are required to be certified and returned to the county auditor in each year shall be and become a lien upon the real property upon which the same are assessed from and after the first day of December in such year.

40-24-04. Sewer special assessments extended over a period of not more than thirty years.

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

40-24-05. Water main and waterworks special assessments extended over a period of not more than thirty years.

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

40-24-06. Paving and repaving special assessments extended over a period of not more than thirty years.

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

40-24-07. Street improvement assessments extended over a period of not more than thirty years.

Special assessments for the expense of opening, widening, grading, graveling, or extending streets shall be payable in equal annual amounts, or in such annual amounts as will permit the

annual increase in payment of principal to approximate the annual decrease in the interest on amounts remaining unpaid, extending over a period of not more than thirty years.

40-24-08. Assessments for street beautification extended over a period of not more than ten years.

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

40-24-09. Payments in full of assessments - Payments to county treasurer or city auditor - Receipts.

The owner of any property against which an assessment shall have been made under this title for the cost of any improvement may pay in full or in part the amount remaining unpaid and the unpaid interest accumulated thereon. The payment in full shall discharge the lien of the assessment upon the owner's property. The payment may be made to the county treasurer upon all installments of the assessments which have been certified to the county auditor and may be made to the city auditor upon all portions of the assessment which have not been certified. Any person desiring to pay any portion of the assessment to the city auditor shall obtain from the city auditor a certificate of the amount due upon the assessment which has not been certified to the county auditor and shall present such certificate to the city auditor. The city auditor shall receive and collect such amount and issue a receipt to the person paying the assessment. The city auditor shall note upon the city auditor's records the payment of the assessment.

40-24-10. One-fifth of cost of improvement may be paid by general assessment within constitutional debt limit.

Any municipality, at the option of its governing body, may provide for the payment by general taxation of all the taxable property in the municipality of not more than one-fifth of the cost of any improvement financed by the levying of special assessments other than the opening and widening of streets or the laying of sewer or water connections from the main to the curb line. Any amount which the municipality shall determine to pay by general assessment shall be considered as a part of the debt of the municipality and shall not be valid unless such amount is within the constitutional debt limit of such municipality. Any incorporated city, by a two-thirds vote of the qualified voters thereof voting upon the question at a general or special election, may increase its limit of indebtedness three percent on the assessed valuation of taxable property in such city beyond five percent of the valuation thereof, and by a majority vote, in like manner, may increase its limit of indebtedness four percent of such valuation without regard to the existing indebtedness of such city for the purpose of constructing or purchasing waterworks for furnishing a supply of water to the inhabitants of such city, or for the purpose of constructing sewers; provided, that such increase or increases must be duly voted before the levy of any general taxes exceeding the existing debt limit may be made to pay part of the cost of any such improvement. In making any contract with reference to any special improvement, the governing body may take into consideration such portion of the cost of the improvement as will be paid by general assessment and may make appropriations and levy taxes and assessments therefor in annual installments extending over the same period of time as is provided in the special assessments for such improvement. The appropriation may be made at such time as occasion may require and shall be included in the municipality's first annual tax levy thereafter. The appropriation and levy, whether it is made as a part of the regular annual appropriation ordinance or otherwise, shall state the specific improvement for which the assessment is made and the tax levied, the amount thereof, and the district in which the improvement is made. The amount of such assessment and the moneys collected thereon shall become a part of the district fund upon which the warrants issued in payment for the improvement are to be drawn.

40-24-11. Certification of assessments to county auditor.

Annually, the city auditor shall certify to the county auditor all uncertified installments of assessments which are to be extended upon the tax lists of the municipality for the current year in the manner provided in section 40-24-12. The annual certification shall continue until the amount of moneys on deposit in the fund established pursuant to section 40-24-18 is sufficient to cover outstanding principal of and interest on any obligations issued to fund such projects, and in addition thereto, to repay the city for any payments made by the city to fund deficiencies in the fund established pursuant to section 40-24-18.

40-24-12. City auditor to insert amount of improvements in county real estate book or other forms - Regulations governing.

The city auditor shall notify the county auditor not later than August twentieth in each year of any special assessments which were made in the municipality in addition to those reported in the previous year. The county auditor shall make and deliver to the city auditor on or before September twentieth each year a copy of the real estate assessment book or other forms for the current year covering all additions in which any special assessments have existed and where any will appear for the current year as advised by the city auditor. The city auditor shall insert in the proper columns under the appropriate headings the amount of each of the installments of the assessments on the lots or subdivisions of lots or tracts of land which are to be extended upon the tax lists of the municipality for the current year. The city auditor shall show the total amount of special assessments certified to the county auditor for the current year. When a division of property has been made since the original assessment, the city auditor shall make or cause to be made, with the assistance and advice of the special assessment commission, the proper division of the special assessments on the lots or tracts of land as the same are divided and assessed for the general taxes as furnished by the county auditor. The city auditor shall certify the special assessments to the county auditor by November first of each year.

40-24-13. Governing body to provide compensation for special assessment commission in making divisions of special assessments.

The governing body shall provide suitable compensation to the members of the municipal special assessment commission for services rendered in making the divisions of special assessments on property which was divided subsequent to the original assessment.

40-24-14. Extension of special assessments on tax lists - Collection - Payment over to municipality.

The county auditor shall extend the special assessments upon the tax lists of the municipality for the current year, and such assessments with interest and penalties shall be collected as general taxes are collected and paid over to the city auditor and shall be placed by the city auditor in the respective funds for which they were collected.

40-24-15. Special assessment record book kept by county auditor - Assessments certified for more than one year.

The county auditor shall keep in the county auditor's office a special assessment record. When any municipality causes the installments of special assessments for a period of more than one year to be certified, the county auditor shall cause the special assessments so certified to be recorded in such book for the respective years and in the amounts shown in the certificate of the city auditor. In such event the certificate of the city auditor shall include a list of all lots and tracts of land upon which such assessments are levied, designating the purpose of the assessment, the fund to which it belongs, and the installment of such assessment for each year against each lot or tract, including interest thereon.

40-24-16. County treasurer to certify and receipt for amount of special assessments collected - Contents of certificate - Procedure for abatement.

Special assessments of any kind certified to the county auditor by the city auditor shall be paid to the county treasurer and included in the statement required by section 57-02-07.1 and

the receipt required by section 57-20-08. If the county treasurer receives less than the full amount of taxes and special assessments due at any time on any lot or tract of real estate, the county treasurer shall allocate the amount received between taxes and special assessments in proportion to the respective amounts of taxes and special assessments due. When prorating any tax payment received prior to October fifteenth, the term "due", as it pertains to real estate taxes, shall include only the first installment of real estate taxes. Special assessments shall not be subject to abatement or refund by proceedings under chapter 57-23, but shall be reviewed and corrected only in the manner and upon the conditions provided in chapter 40-26. The county treasurer, at the time set by law for the payment to the city auditor of all the taxes and special assessments collected during the preceding month, shall certify the amounts of special assessments collected. The certificate shall state specifically the lot or known subdivision thereof as it appears on the tax books of the county treasurer, and the block, addition, amount collected, and the amount credited to each lot or known subdivision thereof, and the year for which the sum was collected. The certificate shall be furnished to the city auditor.

40-24-17. Interest and penalties added to special assessments - County treasurer to collect and pay over.

The county treasurer shall add to all special assessments the same interest and penalties that are added in the case of general taxes and at the same time. The county treasurer shall collect the interest and penalties with the special assessments and shall pay all such interest and penalties collected over to the city auditor.

40-24-18. Special improvement moneys to be kept separate - Designation and numbering of funds - Diversion of moneys prohibited.

All special assessments and taxes levied and other revenues pledged under the provisions of this title to pay the cost of an improvement shall constitute a fund for the payment of such cost, including all principal of and interest on warrants and other obligations issued by the municipality to finance the improvement, and shall be diverted to no other purpose. The city auditor shall hold all moneys received for any such fund as a special fund to be applied to payment for the improvement. Each such fund shall be designated by the name and number of the improvement district in or for which said special assessments, taxes, and revenues are collected. When all principal and interest on warrants and other obligations of the fund have been fully paid, all moneys remaining in a fund may be transferred into the general fund of the municipality.

40-24-19. Warrants and improvement bonds - Issuance - When payable - Amounts - Temporary warrants and temporary improvement bonds - Interest - Interest coupons - Negotiability - Eligibility as investments.

The municipality, at any time after making a contract for the construction of any improvement to be financed in whole or in part by assessments, under authority of any chapter of this title, or prior thereto but after the period for filing protests against the making of such improvement has expired and the protests filed, if any, have been heard and determined to be insufficient, and in anticipation of the levy and collection of such assessments and of any taxes or revenues derived from service charges pledged to pay for such improvement, may issue warrants or improvement bonds on the fund created for such improvement. The municipality is responsible to the holders of the warrants or improvement bonds for the proper advertisement and award of a contract or contracts or provision by other means for the completion of the improvement; for the acquisition of all land, easements, licenses, and permits required for such completion; and for the valid and final levy of special assessments upon all properties within the improvement district to be benefited by the improvement, in an aggregate principal amount equal to the total cost of the improvement as finally ascertained, less the portions thereof, if any, determined to be paid from taxes, service charges, and any other source. The issuance of the warrants or improvement bonds constitutes a representation and covenant binding upon the municipality that the aggregate benefits to be derived from the making of the improvement by the properties to be assessed therefor are not less than the aggregate amount of the special

assessments so required to be levied. The warrants or improvement bonds shall be issued and shall mature in such amounts as in the judgment of the governing body will be provided for, at or before the maturity dates specified, by the taxes and assessments to be levied and spread and the revenues pledged therefor. In lieu of issuing definitive warrants or improvement bonds on any such fund, the governing body may by resolution authorize the issuance and sale of temporary warrants or temporary improvement bonds maturing in not to exceed three years from the date of issue of the first such warrant or temporary improvement bonds, to be repaid with interest from the proceeds of definitive warrants or improvement bonds maturing as hereinabove required, which the governing body shall issue and sell at or before the maturing date of said temporary warrants or temporary improvement bonds, in the amount required, with moneys theretofore received in such fund, to pay the total cost of the improvement and all temporary warrants or temporary improvement bonds theretofore issued on the fund, with interest then accrued thereon. The warrants or temporary improvement bonds must bear interest at a rate or rates and must be sold at a price, not less than ninety-eight percent of par, resulting in an average net interest cost not to exceed twelve percent per annum payable annually or semiannually, except that there is no interest rate ceiling on an issue sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. The definitive warrants or improvement bonds may bear interest at a rate or rates higher or lower than those borne by the temporary warrants or temporary improvement bonds, as determined by the governing body in effecting the sale thereof. In the sale of temporary warrants or temporary improvement bonds, the municipality may by resolution of the governing body agree to issue to the holder or holders thereof definitive warrants or improvement bonds upon specified terms as to interest, maturity, redemption provisions, and all other pertinent details, in the event that the municipality is unable to sell definitive warrants or improvement bonds to others upon more favorable terms. Coupons representing the interest for each year or lesser period may be attached to the warrants, whether definitive or temporary, or improvement bonds or temporary improvement bonds. All such warrants or bonds shall be negotiable within the meaning of and for all the purposes specified in title 41, and, to the same extent as general obligation bonds of the issuing municipality, are valid investments of the funds of any guardian, trustee, and other fiduciary of any kind or nature, any bank or other financial institution, any charitable, educational, or eleemosynary institution, and any public corporation or official, municipality, school district, or other political subdivision, including bond sinking funds, special improvement funds, municipal utility funds, and funds of the state of North Dakota and its instrumentalities and agencies.

40-24-20. Contents of warrants.

Improvement warrants shall state upon their face for what purpose they were issued and the fund from which they are payable and shall be signed by the executive officer and countersigned by the city auditor under the seal of the municipality.

40-24-21. Warrants may be used as payment to contractor.

Special improvement warrants may be used in making payments on contracts for the improvements for which the special improvement fund was created at not less than the par value thereof.

40-24-22. Payment and cancellation of warrants by city auditor.

The city auditor shall pay special improvement warrants and the interest coupons appurtenant thereto as they mature and are presented for payment out of the district funds on which they are drawn respectively and shall cancel the warrants when paid, except that definitive improvement warrants, when refunded pursuant to the provisions of sections 40-27-06 to 40-27-12, shall not be canceled but shall be retained by the municipality, in trust for the holders of the refunding improvement warrants or bonds issued thereunder, as therein provided. Definitive warrants shall be issued in lieu of temporary warrants at or before the time when any such warrants are to be so refunded.

40-24-23. Matured improvement warrants or interest coupons may be used to pay special assessments.

Any matured special improvement warrant or interest coupon may be used in the payment of special assessments levied for the payment of the improvement for which the warrant or interest coupons were issued. The warrants or coupons so used shall be canceled and retired by the city auditor.

40-24-24. Validation.

Repealed by S.L. 1981, ch. 277, § 2.