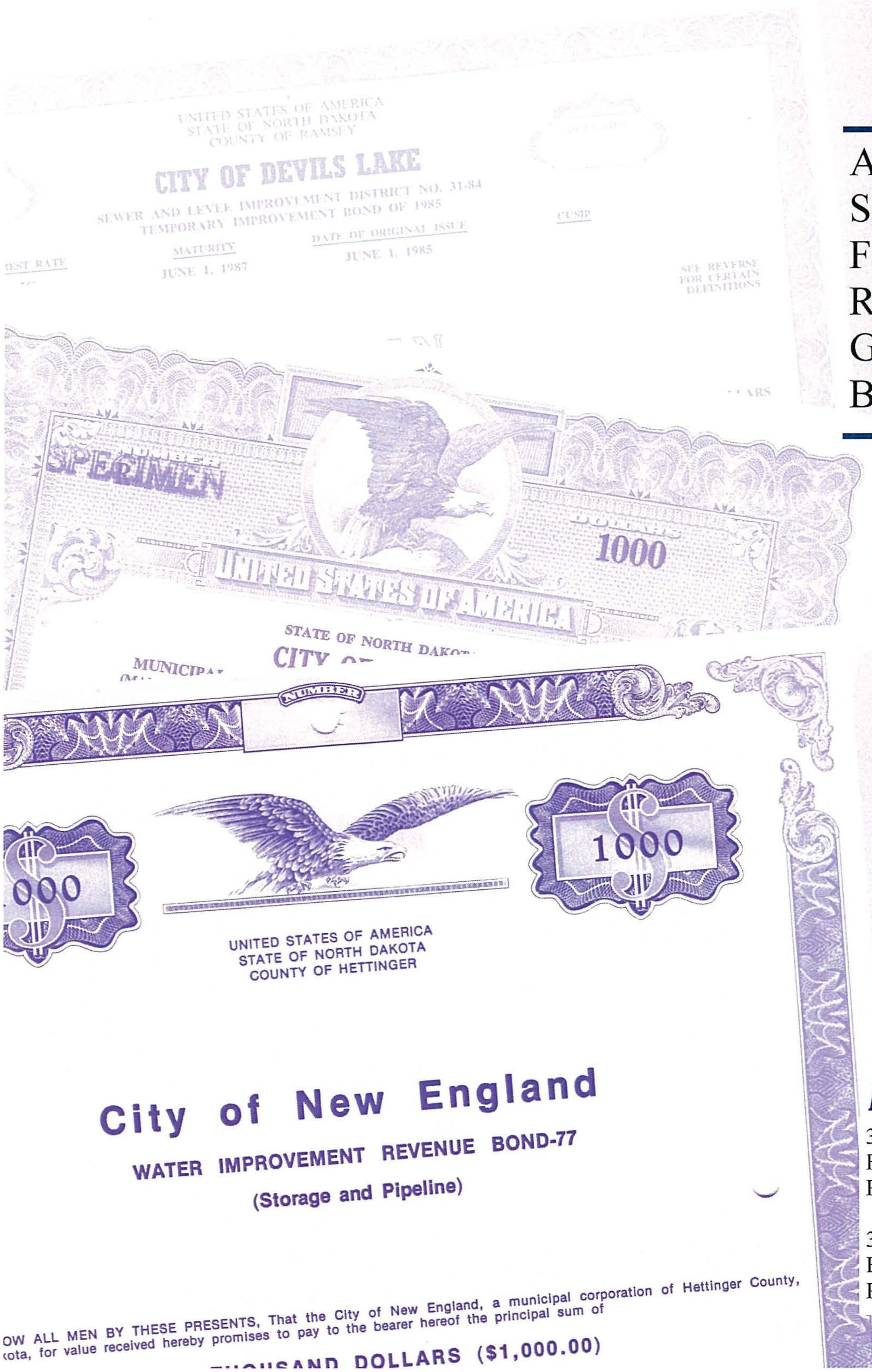
Financing Options *for* North Dakota Cities and Park Districts



Also includes a Summary of Federal Tax Rules for Governmental Bonds

ARNTSON STEWART WEGNER PC

3101 Broadway North, Suite B
Fargo, North Dakota
Phone: 701-280-0195

3801 Lockport Street, Suite 2
Bismarck, North Dakota
Phone: 701-255-1008

CONTENTS

The discussion herein is not intended to be legal advice, nor is it a substitute for obtaining legal advice from a licensed attorney.

FEDERAL TAX RULES AT A GLANCE

ARBITRAGE

(*Can you earn it?*)

General Rule: Investment of bond proceeds cannot earn more than ⅛ of 1% (.125%) above the bond yield. So, if the bond yield is 4.25%, the yield on the investment of the bond proceeds must be restricted to 4.375%. Otherwise, the bonds are "arbitrage bonds" and are taxable.

***Exceptions*:**

1. Project Funds – Amounts to be used to pay costs of a bond-financed project can be invested without regard to yield for three years if the issuer has certain expectations on the issue date regarding the expenditure schedule.

2. Bona Fide Debt Service Fund - Amounts in a bona fide debt service fund can be invested without regard to yield for 13 months. A fund is a bona fide debt service fund if: (i) it is used primarily to achieve a proper matching of revenues with principal and interest within each year, and (ii) it is depleted at least once each bond year, except for a reasonable carryover amount.

3. Debt Service Reserve Fund - If a debt service reserve fund is reasonably required, it can be invested without regard to yield to the extent the amount in the fund does not exceed the *least* of the following:
   A. 10 percent of the principal amount of the issue;
   B. Maximum annual debt service on the issue; or
   C. 125% of the average annual debt service.

4. De minimis Exception - The lesser of $100,000 or 5% of the bond proceeds can be invested at an unrestricted yield (minor portion).

REBATE

(*Can you keep it?*)

General Rule: Any arbitrage earnings (meaning earnings from the investment of bond proceeds above the bond yield under one of the exceptions) must be rebated or paid to the US Treasury.

***Exceptions*:**

1. Small Issuer Exception - Blanket exception from rebate if the issuer reasonably expects to issue not more than $5 million of bonds in the current calendar year (limit is $15 million for public school facilities). The bond issuer must have general taxing powers, the bonds must be governmental bonds, and at least 95% of the bond proceeds must be used for local governmental activities of the issuer.

2. Construction Proceeds - Arbitrage earnings are exempt from rebate if expended within 6, 18, or 24 months, meeting certain spend-down tests.

3. Bona Fide Debt Service Fund - Amounts earned on a bona fide debt service fund are not taken into account if the issue is a fixed rate governmental issue with a weighted average maturity of at least 5 years. Amounts earned on a bona fide debt service fund are also not taken into account if the gross earnings on such fund in a year are less than $100,000. The bond issue is deemed to satisfy the $100,000 earnings exception if annual debt service does not exceed $2,500,000.

***Unless an exception applies, rebate must be calculated and paid at least every 5 years and when the last bond of the issue is discharged.

BOND PROCEEDS

All of the following are considered Gross Proceeds and as such are subject to the arbitrage and rebate rules:

1. Sale Proceeds - the gross cash amount paid for the bonds by the purchaser, including amounts retained by an underwriter as underwriter's compensation.
2. Investment Proceeds - amounts received from investing the proceeds of the bond issue.
3. Replacement Proceeds - amounts expected to be used to pay debt service on a bond issue and may also include amounts securing the payment of debt service in the event the issuer experiences financial difficulties. For example, water revenues that are accumulated and pledged to pay debt service on a bond issue are considered replacement proceeds and thus subject to arbitrage and rebate rules.
4. Transferred Proceeds – amounts remaining from the proceeds of a prior bond that is refunded by a new bond issue become transferred proceeds of the new bond issue.
5. Proceeds – includes Sale Proceeds, Investment Proceeds and Transferred Proceeds.
6. Gross Proceeds – includes both Proceeds and Replacement Proceeds.

** Bond Proceeds are public funds and need to be deposited and invested in accordance with NDCC Ch. 21-04.

PRIVATE ACTIVITY BONDS (MIDA BONDS)

Gross income does not include interest on any state or local governmental bond. The exclusion does not apply to "private activity bonds," unless the private activity falls into one of seven good uses identified by Congress:

1. 501(c)(3) Bonds
2. Small Issue Manufacturing Bonds
3. Exempt Facility Bonds
4. Mortgage Bonds
5. Veterans' Mortgage Bonds
6. Student Loan Bonds
7. Redevelopment Bonds

Governmental bonds, however, may have private activity concerns. For example, a city office building financed with bond proceeds has one floor leased to private businesses. The bonds may be private activity bonds and thus taxable, depending on the amount of private use. The problem can generally be avoided by using tax-exempt bonds only to finance the governmental use portion of the building.

BANK QUALIFIED BONDS

The Internal Revenue Code provides that no deduction is allowed to a financial institution for that portion of its interest expense which is allocable to tax-exempt bonds.

Basically, if a bank purchases tax-exempt bonds, it will be denied a deduction for the interest expense paid to its depositors for that portion of depositors money that was used to buy the tax-exempt bonds. In sum, banks generally don't want to purchase tax-exempt bonds unless they are bank qualified bonds. Banks may deduct 80% of the interest expense allocable to tax-exempt bonds.

Bonds will be "bank qualified" if the reasonably anticipated amount of qualified tax-exempt obligations to be issued by the issuer during the calendar year does not exceed $10,000,000. Certain obligations are not taken into account, including current refundings to the extent they do not exceed the amount of the refunded bonds. Special rules govern bank qualified status for refunding bonds.

REFUNDING

Bonds can be refunded (refinanced) for various reasons, such as taking advantage of lower interest rates, stretching out the maturities to lower debt service and getting rid of unwanted covenants in the bond documents. Two types of refundings:

1. Current Refunding - bonds issued within 90 days of the date the existing bonds are called.

2. Advanced Refunding - bonds issued more than 90 days prior to the date the existing bonds are paid. Bonds issued after 1985 can be advance refunded only once.

REIMBURSEMENT

Bonds issued to finance previously made expenditures, so-called reimbursement obligations, are subject to substantial restrictions by the Internal Revenue Code. For example, a city may use general fund money to start paying for a project and then later issue bonds and use some or all of the bond proceeds to reimburse the general fund.

In order for the City to reimburse itself from the bond proceeds for a particular expenditure, three steps must be taken:

1. The governing body must adopt a resolution, within **60 days** after payment of the expenditure, indicating its intent to reimburse itself with bond proceeds.

2. The bonds must be issued not later than 18 months after the date the original expenditure is paid or the date the project is "placed in service"; but in no event more than 3 years after the original expenditure is paid.

3. The original expenditure must be a capital expenditure such as land, bricks and mortar, and equipment.

***Exceptions*:**

1. De minimis Exception - The reimbursement regulations do not apply to amounts not in excess of the lesser of $100,000 or 5% of the bond proceeds .

2. Preliminary Expenditures Exception (Soft Costs) - The reimbursement regulations do not apply to preliminary expenditures to the extent the amount of such expenditures do not exceed 20% of the aggregate issue price. Preliminary expenditures include: architectural, engineering, surveying, soil testing, reimbursement bond issuance, and similar costs. The preliminary expenditure must be incurred prior to commencement of the acquisition, construction, or rehabilitation of a project. Preliminary expenditures do not include land acquisition, site preparation, and similar costs incident to commencement of construction.

PART ONE

An Introduction to Financing Options for North Dakota Cities and Park Districts

INTRODUCTION

In 1913, the first income tax law following adoption of the 16th Amendment (which authorized a federal income tax) excluded from income the interest received by the holders of government issued bonds. That exemption continues today. So, gross income, for federal income tax purposes, does not include interest earned on any state or local bond.[1]

The principal advantage of tax-exempt bond financing is the lower interest rate in comparison to the interest rate on conventional debt. Because most investors in tax-exempt bonds do not pay federal or state income tax on interest payments received on the bonds, the investors are willing to accept a lower interest rate - generally 1.50% to 2.50% below conventional rates. The difference in interest rates results in substantial savings to the issuer. For example, 2% on $1,000,000 over 20 years equates to over $200,000 in interest savings.

The size of the United States municipal bond market is approximately $3 trillion in outstanding bonds as of December, 2011. Treating municipal bond interest as exempt from federal income tax was estimated to cost the federal government $49 billion in fiscal year 2013. Given the national debt, some in Congress oppose tax-exempt bond financing. Proposals and regulations to eliminate or at least curb the use of tax-exempt bonds continue.[2]

In addition to satisfying federal law, before a North Dakota municipality may finance improvements with tax-exempt bonds, it must comply with the provisions of the North Dakota Constitution and the North Dakota Century Code (the "NDCC"). Municipalities have only those powers expressly granted to them by the Constitution or the legislature, and those necessarily implied from the power expressly granted.[3] The long established statement of municipal powers is commonly known as Dillon's Rule.[4] Home rule cities are authorized to supersede state law in local matters. For home rule cities, the city charter and ordinances must be examined. Accordingly, tax-exempt financing always involves two steps: (1) meeting the requirements of federal tax law and (2) finding specific authority under state law.[5] Specific authority under state law includes compliance with matters such as open meeting laws.[6]

---

[1] 26 U.S.C. §103(a) (gross income does not include interest on any State or local bond). Interest on bonds of the State and political subdivisions is also exempt from state income taxation for corporation. NDCC §57-38-01.3(1)(d). Tax treatment for individuals is less clear since NDCC §57-38-01.2(1)(g) was repealed in 2009.

[2] *South Carolina v. Baker*, 108 S.Ct. 1355 (1988) (although Congress has always exempted state bond interest from taxation it can, if it wishes, subject interest on state and local bonds to federal income taxation; the tax-exempt status of bonds is not constitutionally protected).

[3] N.D. Const. Art. VII, §2. *Parker Hotel Co. v. City of Grand Forks*, 177 N.W.2d 764, 786 (N.D. 1970).

[4] "It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation, - not simply convenient, but indispensable." 1 Dillon, Law of Municipal Corporations, 448-449 (5th Ed. 1911).

[5] Sometimes, state authority may exist but federal authority is lacking. For example, in 1999 the North Dakota legislature adopted the Livestock Production Loan Program which authorized the North Dakota Industrial Commission to issue revenue bonds in order to make loans to livestock producers. Governor Schaefer vetoed the legislation, being advised that bonds issued for the purpose of making loans to livestock producers would be "private activity bonds", and thus the interest on such bonds could not be exempt from federal income tax. S.L. 1999, ch. 559. An example of the opposite situation are qualified zone academy bonds, authorized by federal law for public school districts, but not specifically authorized for North Dakota public schools by the legislature. 26 U.S.C. §1397E.

[6] NDCC §§44-04-19 – 44-04-21.

Municipalities have many statutory methods of financing available to them and often more than one will work for a particular project. For example, a new water treatment plant could be financed through the issuance of general obligation bonds, special assessments bonds, revenue bonds or sales tax bonds. Public buildings can be financed through half a dozen different methods. While municipalities have multiple financing methods available, municipalities also have several options in terms of who will purchase its bonds.

Debt Instrument

Although tax-exempt financing most often takes the form of a bond, many types of arrangements qualify as tax-exempt. Section 103(c) of the Internal Revenue Code treats all obligations as "bonds" even if they are another type of instrument.[7] Any instrument that (1) is an obligation[8] of a state or a political subdivision, and (2) has an identifiable interest component[9], can be treated as tax-exempt. Some statutes refer generically to evidences of indebtedness.[10]

Debt instruments include:

- Bonds
- Promissory Notes (bank loans)
- Commercial Paper
- Warrants
- Finance Leases
- Contracts
- Installment Purchases
- Loan Agreements

The terms of a bond issue are subject to negotiation, including interest rate (fixed, variable, interest rate swap), prepayment provisions, maturity and security. There is no minimum loan amount for a tax-exempt financing.

Debt Limit

Debt Limit - General

The State of North Dakota and political subdivisions are limited in the amount of "debt" they can have outstanding at any point in time. The debt limit "is intended as a limit on general taxation, a protection to the taxpayers."[11] Debt has a specific meaning in the context of public finance. Generally, a borrowing is debt, and thus subject to the constitutional limit, if it irrevocably binds future governing bodies of the borrower and is payable from a general tax.

> The term 'debt' as used in the constitutional provision must be understood in its common and ordinary acceptance of the term. As said in Almond v. Mobley, 40 Ga. App. 305, 149 S.E. 293, debt of the public in its usual and popular sense means the amount for which the public would be presently liable if called upon to discharge the obligation. It is a general obligation which the state is pledged to pay in the future. The debt of the City is the pecuniary obligation imposed by contract, except the obligations to be satisfied out of the current revenue.[12]

Typically, a public vote is required before a municipality can incur debt. General obligation bonds, contractual obligations and tax levy bonds are debt. Bonds issued in excess of the debt limit are void.

---

[7] 26 U.S.C. § 103(c)(1) ("The term 'State or local bond' means an obligation of a State or political subdivision thereof.").
[8] *See* NDCC § 21-03.1-01(6) ("'Obligation' means an agreement of a public entity to pay principal and any interest thereon.").
[9] The amount of principal and interest to be paid on each date must be spelled out in a schedule.
[10] *See* N.D. Op. Att'y Gen. 74-368 (March 14, 1974) (Evidence of indebtedness "is a rather broad generic term, including, in appropriate circumstances such items as "bond", "notes", etc.").
[11] *Schieber v. City of Mohall*, 268 N.W. 445 (N.D. 1936).
[12] *Schieber v. City of Mohall*, 268 N.W. 445, 449 (N.D. 1936).

However, many types of borrowings are not considered debt for constitutional or statutory purposes. Revenue bonds and special assessment bonds are not debt.[13] Revenue bonds and special assessment bonds are considered special fund bonds. Special fund bonds are secured and payable solely from revenues to be realized from public property acquired with the proceeds of the obligation.[14] Also, appropriation bonds and lease financings are not debt as the city has no obligation to pay debt service beyond the current fiscal year.

Financings are often structured so as to not constitute debt. For example, the State of North Dakota has a debt limit of two million dollars.[15] The State has had no general obligation bonded debt since fiscal year 1998. Yet, today, the State has approximately 1.5 billion dollars in bonds outstanding.[16] Likewise, municipalities have issued special assessment warrants and revenue bonds in excess of their debt limits.

State Debt Limit

Pursuant to Article X, §13 of the North Dakota Constitution, the general obligation debt limit of the State of North Dakota is $2,000,000, with certain exceptions.

First, the State has authority to issue bonds in excess of $2 million provided such bonds are secured by first mortgages upon real estate in amounts not to exceed 65% of the real estate's value; or upon real and personal property of State-owned utilities, enterprises, or industries, in amounts not exceeding the property's value, and provided further, that the State shall not issue or guaranty bonds upon State-owned utilities, enterprises, or industries in excess of $10 million.

Second, the State has an unlimited ability to incur debt for the purpose of repelling invasion, suppressing insurrection, defending the State in time of war or to provide for the public defense in case of threatened hostilities. All general obligation bonds issued by the State must be for purposes authorized and clearly defined by law, and such law must levy an annual tax or make other provision sufficient to pay the interest semiannually and the principal within 30 years.

In addition to the authorizations set forth above, Article X, §14 of the Constitution authorizes the issuance of general obligation bonds for the purpose of promoting the economic growth of the State, the development of its natural resources, and prosperity and welfare of its people. The State may issue such bonds and use the proceeds thereof to make loans to privately or cooperatively owned enterprises to plan, construct, equip, improve, and extend facilities for converting natural resources into power and generating and transmitting such power, and to acquire real and personal property and water and mineral rights needed for such facilities. Such debt may not exceed 5% of the full and true value of all of the taxable property in the State.

Article X, §17 provides that no bond of the State is valid unless it has endorsed thereon a certificate signed by the auditor and the secretary of state showing that the bond is issued pursuant to law and is within the debt limit. Likewise, no bond of any political subdivision is valid unless endorsed with a similar certificate signed by the officer authorized by law to sign such certificate.

Political Subdivision Debt Limit

Article X, Section 15 of the North Dakota Constitution limits the amount of debt that a municipality may incur. The debt of a municipality may not exceed 5% of the assessed value of the taxable property within the municipality. Assessed value is defined as fifty percent of the true and full value of property.[17]

---

[13] *See* N.D. Op. Att'y Gen. Letter to Bowers (March 28, 1947) (Revenue bonds issues under Chapter 40-35 are not general obligations and are valid, notwithstanding any constitutional provision regarding the debt limit).
[14] *Marks v. Mandan*, 70 N.D. 474, 296 N.W. 39 (1941) (North Dakota has adopted the special funds doctrine).
[15] N.D. Const. Art. X, §13.
[16] State of North Dakota, Comprehensive Annual Financial Report (June 30, 2012). The breakdown is as follows: Housing Financing Agency – $840,715,000; University System – $296,116,000; Public Finance Authority – $240,181,000; Building Authority – $69,071,000; State Water Commission – $90,865,000; Student Loan Trust – $3,200,000; Department of Transportation – $35,555,000; Information Technology Department – $1,530,000; State Fair Association – $419,000.
[17] NDCC §57-02-01(3).

There are three constitutional exceptions to the debt limit:

1. A municipality may, by two-thirds vote, increase such indebtedness by 3% for a total of 8%.
2. A municipality by a majority vote may issue bonds upon any revenue-producing utility owned by such city, or for the purpose of purchasing or acquiring such a facility in amounts not exceeding the physical value of such utility.
3. A municipality may, by a majority vote, become indebted in an amount not exceeding 4% of the assessed valuation without regard to existing indebtedness for the purpose of constructing or purchasing waterworks or furnishing a supply of water to the inhabitants of such city, or for the purpose of constructing sewers.[18]

Political subdivision debt limits and exceptions are also set out by statute in NDCC Section 21-03-04. Since each political subdivision is authorized to incur debt, there may exist something known as "overlapping general obligation debt": a municipality's share of the debt of other political subdivisions sharing its geographical area. Overlapping tax supported debt is a factor bond investors consider in determining the debt burden carried by taxable real estate within a particular jurisdiction. For example, property in a city is potentially subject to general obligation bonds issued by the city, county, school district and park district.[19]

Article X, Section 16 provides that a municipality must impose a tax before it is allowed to incur debt. At or before the time of incurring debt, a municipality shall provide for the collection of an annual tax sufficient to pay the principal and interest on such debt, and all laws or ordinances providing for the payment of debt service are irrepealable until such debt is paid. Mill levy limitations do not apply to a tax to pay bonded indebtedness under Article X, Section 16.[20]

Article X, Section 17 provides that no bond of a city is valid unless the bond contains a certificate signed by the city auditor stating that the bond is issued pursuant to law and is within the debt limit. Article X, Section 17 is interpreted as applying only to bonds that are in fact "debt" in the constitutional sense.

A home rule city may establish debt and mill levy limitations in excess of those set by the Constitution or legislature for non-home rule cities.[21] All bonds in excess of the amount of indebtedness permitted by the constitution are void.

Debt and Mill Levy Calculation

Example: $710,000 General Obligation Highway Bonds

City's true and full valuation	$104,241,498
City's assessed valuation	$52,120,749
	x .05
Debt Limit:	$2,606,037
Outstanding general obligation debt	($0)
Available Debt Capacity:	$2,606,037

If the funds needed are within the city's debt capacity, the next step is to determine the number of mills required to meet the debt service. The taxable valuation for the city in the example is $4,877,382. A mill rate is used to compute property taxes. In North Dakota, property tax levies have always been expressed in mills.[22] One mill is equal to one-tenth of one cent ($0.001) (one-thousandth of a currency unit, also referred to as the millage

[18] The constitution does not contain a vote requirement for bonds for waterworks and sewers while the corresponding statutory provision requires a majority vote. NDCC §21-03-04.

[19] NDCC §21-03-05.

[20] NDCC §57-15-01.1(5)(a).

[21] N.D. Const. Art. VII, §6. N.D. Op. Att'y Gen. 76-17 (July 19, 1976).

[22] Laws of Dakota 1862, Chapter 69. NDCC §57-15-02 ("The rate of all taxes must be calculated by the county auditor in mills, tenths, and hundredths of mills.") (5 places, i.e. 11.48 mills = .01148).

rate). In the example above, one mill applied to the city's taxable valuation will raise approximately $4,877 ($4,877,382 x $.001). The issuance of $710,000 General Obligation Highway Bonds amortized over fifteen year requires approximately $56,000 for annual principal and interest payments. Accordingly, debt service on the bonds will take approximately 11.5 mills ($56,000 ÷ $4,877).

The cost of the 11.5 mills to a homeowner:

True & Full Value (Appraised value) 57-02-01(15):	$200,000
Assessed valuation percentage (57-02-01(3)):	x 50%
Assessed valuation:	$100,000
Valued at % of assessed value (57-02-27):	x 9%
Taxable Valuation (57-02-01(13)):	$9,000
Mill levy rate of 11.5: (millage rate)	x .0115[23]
Annual Tax Liability:	**$103.50**

Assuming valuations increase each year, the number of mills needed for annual debt service will decrease. Each year the city will certify the dollar amount needed for debt service ($56,000), and the County Auditor will convert the dollar amount to a mill levy on all taxable property.[24] The opposite is also true. If valuations decline, the number of mills needed for annual debt service will increase. And, there is no limit to the increase. General obligation bonds are payable from an unlimited excess mill levy. NDCC Section 57-15-10(3) provides that city tax levy limitations do not apply to taxes levied to pay principal and interest on bonded debt.

The Office of the State Tax Commissioner publishes the *Schedule of Levy Limitations* which is helpful when searching for specific tax authority.[25] It is important to remember that having tax levying authority does not mean that the levy can be pledged or borrowed against. The tax levy sections applicable to cities are attached in Part Four.

HOME RULE

(NDCC Chapter 40-05.1)

Home rule cities may supersede state law in local matters if provided for in the home rule charter and implemented by ordinance. A home rule city may establish debt and mill levy limitations in excess of those set by the Constitution or legislature for non-home rule cities.[26]

For example, a home rule city might finance a special assessment improvement district with a loan from the local bank rather than through the issuance of warrants and bonds.[27] Or, a city might a street improvement district with various improvements taking place over several years, but with a single protest hearing in the beginning. Minot and Grand Forks have issued revenue bonds, and provided for a deficiency tax levy to provide additional security, something that is not possible without home rule powers. The City of Fargo's home rule charter provides that no city-wide special assessment district shall be established absent a vote by the electors and approval by a sixty percent majority. Other creative options might be considered, such as a street utility or impact fees. The most common home rule financing option is sales tax revenue bonds, discussed below.[28]

---

[23] Or, stated another way, $9,000 x 11.5 = $103,500 ÷ 1,000 = $103.50.

[24] The interim Taxation Committee will study applying the tax rate against the true and full value of property. (S.C.R. 4030, 2013 Session).

[25] NDCC §57-15-08 provides the limitations on a city's general fund levy and NDCC §57-15-10 lists the exceptions to the tax levy limitations.

[26] N.D. Const. Art. VII, §6.

[27] N.D. Op. Att'y Gen. 2000-L-156 (November 2, 2000). However, a home rule city is prohibited from levying a special assessment on tax exempt entities to recover costs relating to city, police and fire protection services. N.D. Op. Att'y Gen. 2001-F-09 (November 2, 2001) (H.B. 1380, 2013 Session would have created NDCC Chapter 40-22.2 allowing special assessments for the costs of police and fire protection against tax-exempt charitable property.). See also H.B. 1051, 1999 Session.

[28] Prior to home rule, cities had no power to impose a sales tax. N.D. Op. Att'y Gen. 46-36 (November 2, 1946).

BANK LOANS

Municipalities have only those powers expressly granted to them by the Constitution or the legislature, and those necessarily implied from the power expressly granted.[29] The North Dakota Constitution requires that cities provide for the collection of an annual irrepealable tax sufficient to pay principal and interest due on a borrowing.[30] The requirement of imposing an annual tax prohibits a city from borrowing from a local bank over a period of years unless a specific statute authorizes the borrowing and the payment source.

Bank loans typically involve the city signing a promissory note, with, for example a five year term, in order to purchase city property or equipment or make infrastructure improvements. The note contains a general promise to pay, binding on future governing bodies of the city. A general principal is that one governing body may not bind the appropriation authority of future governing bodies absent specific authorization. "We also note that there is a reluctance to construe statutes as authorizing a current board to obligate future boards or officers beyond the express terms of the authorizing statutes."[31] A city has no authority to sign a promissory note with a bank unless a specific North Dakota Century Code section authorizes the borrowing. The fact that the borrowing instrument is called a note or loan, rather than a bond, is irrelevant. Without NDCC authority, a bank borrowing creates potential liability for the officers who commit their political subdivisions to such a borrowing.

Liabilities incurred in excess of the appropriation therefore in the final budget are a joint and several liability of the members of the governing body who authorized the incurring thereof or who were present when they were authorized and did not vote against authorizing the same.[32] Similarly, unless specifically authorized by law, it is unlawful for a city officer to contract any debt if the payment of such requires a tax levy at a rate higher than is permitted by law. Such a contract is null and void.[33] City officers are individually liable unless they dissented from the decision to enter into the contract.[34]

Cities are granted the general power to borrow money.[35] Cities are also authorized to undertake certain projects. So, if the legislature has not specifically provided a method for financing a particular authorized project, it may be financed through the general power to borrow found in NDCC Chapter 40-05. For example, the North Dakota Attorney General determined that the City of McVille had the general power to construct, operate, and maintain a cable television station. The City also had the general power to borrow. Together, the city had the power to finance the cable television system through a loan from a local bank, provided that the loan was payable only from revenues of the cable television system.[36]

---

[29] N.D. Const. Art. VII, §2. *Parker Hotel Co. v. City of Grand Forks*, 177 N.W.2d 764, 786 (N.D. 1970).
[30] N.D. Const. Art. X, § 16.
[31] N.D. Op. Att'y Gen. 74-368 (March 14, 1974).
[32] NDCC §40-40-15.
[33] NDCC §57-45-07. *See also* N.D. Op. Att'y Gen. 82-52 (June 28, 1982).
[34] *See also* NDCC Chapter 21-01.
[35] NDCC §40-05-01(2) ("to contract debts and borrow money").
[36] N.D. Op. Att'y Gen. 93-F-10 (July 14, 1993).

PART TWO

Types of Bonds

GENERAL OBLIGATION BONDS
(NDCC Chapter 21-03)

General obligation bonds may be issued by municipalities for virtually any public purpose. Proceedings for general obligation bonds are commenced by initial resolution of the governing body or by a petition signed by one-fourth of the qualified electors in the municipality. The initial resolution must set forth the following information:[37]

1. The maximum amount of bonds proposed to be issued.
2. The purpose for which they are proposed to be issued.
3. The assessed valuation of all taxable property in the municipality as defined in section 21-03-01.
4. The total amount of bonded indebtedness of the municipality.
5. The amount of outstanding bonds of the municipality issued for a similar purpose.
6. Any other statement of fact deemed advisable by the governing body or voters proposing the same.

General obligation bonds are debt. A distinctive feature associated with most general obligation bonds is the requirement of a 60% voter approval. The century code requires a minimum interval between elections.[38] The election must be conducted and the returns canvassed as in the case of elections of members of the governing body of the municipality.[39] The century code requires that the ballot for a bond election must be separate from other ballots used on the same day for other elections.[40] Bonds must be signed by the executive officer and countersigned by the auditor.[41]

As a result of the 60% voter approval requirement, general obligation bonds are the least often used. Because general obligation bonds pledge all of the taxable property in the issuer's jurisdiction as security for payment of principal and interest on the bonds, they are considered to be the best credit available from a political subdivision and produce the lowest interest rate cost. General obligation bonds have a maximum maturity of 20 years. Prior to the delivery of any general obligation bonds, the municipality must levy an irrevocable ad valorem tax upon all taxable property in the municipality.[42] However, if the governing body has other available funds and makes an irrevocable appropriation to use those funds to pay principal and interest on the bonds, the governing body may direct the county auditor to reduce the amount otherwise to be included in the tax rolls.[43]

---

[37] NDCC §21-03-09.
[38] NDCC §16.1-01-11 states that whenever an election for a bond issue has failed to receive the required number of votes for approval by the electors, the matter shall not again be submitted to a vote until a period of at least three months has expired, and there shall be no more than two elections on a single matter within 12 consecutive calendar months.
[39] *See* NDCC Chapter 40-21 (Municipal Elections).
[40] NDCC §21-03-13. While the statute seems to require a separate piece of paper, in practice the section has been applied to mean simply that the question must be set forth distinct from other questions on the same ballot. *See generally*, N.D. Op. Att'y Gen. (November 8, 1979). *See also* NDCC §16.1-06-08.
[41] NDCC §40-01-06. See also NDCC §40-16-03 (duties of city auditor relating to bonds and evidences of indebtedness.
[42] NDCC §21-03-15 and ND Const. Art. X, §16.
[43] The Attorney General has opined that oil revenues may not be used to directly repay general obligation bonds. N.D. Op. Att'y Gen. 2002-L-59 (October 18, 2002). While it is true that oil revenues may not be irrevocably pledged for multiple years to repay general obligation bonds, such revenues can certainly be appropriated to pay debt service on an annual basis and thereby accomplish the same result.

There is no mill levy limitation for the issuance of general obligation bonds.[44] However, a city may not have general obligation bonds outstanding in a principal amount greater than 5% of its assessed valuation of taxable property. A city is authorized to increase the debt limit to 8% by 2/3 public vote. Any bond issued in excess of the applicable debt limit is void.

There are several exceptions to the voter approval requirement as set forth below. Certain general obligation bonds are subject to a publication and protest requirement. In these situations, the NDCC basically requires a reverse referendum process, in that the resolution authorizing the bonds must be published once and any owner of taxable property may, within 60 days after publication, protest against the proposed bond issue. If protests are signed by owners of taxable property having an assessed valuation equal to 5% or more of the assessed valuation of all taxable property within the city, all further proceedings are barred.

In North Dakota, general obligation bonds in excess of $100,000 are required to be advertised for sale by bids.[45] The only exception is for general obligation bonds sold to the Bank of North Dakota, the State Board of University and School Lands, the North Dakota Public Finance Authority,[46] trust funds administered by public officials, and agencies of the federal government and for refunding bonds. Prior law required a city to provide notice to the State Tax Commissioner or the Bank of North Dakota of the bond sale.[47] The notice requirement was repealed in 1993.

General Obligation Bonds Requiring A 2/3 Public Vote:

Revenue Producing Enterprise Engaged In Any Business Or Industry (NDCC §40-57-19)

The Municipal Industrial Development Act authorizes cities to issue general obligation bonds to assist in the construction of a project for a revenue producing enterprise engaged in virtually any business or industry. Two-thirds of the electors in the municipality must vote in favor of issuing the bonds. The project must represent an investment to the city of fifty thousand dollars or more and the net worth of the industrial or commercial enterprise owning the project must be at least five times the amount that the municipality will invest in the real property, buildings, and improvements to the project. The general obligation provision has been used only once since the legislature enacted the law in 1961.[48]

General Obligation Bonds Requiring A 60% Public Vote:

Public Buildings (NDCC §21-03-06(2)(a))

General obligation bonds may be issued by a city for the purchase, construction and improvement of the following (including purchasing sites and providing equipment and furnishing for):

1. City Halls.
2. Fire Protection Buildings.
3. Waterworks Buildings.
4. Police Stations.
5. City Markets.
6. Public Baths.

---

[44] NDCC §57-15-10(3).
[45] Bond sale requirements are as follows: (A) Public or Competitive Sale for General Obligation Bonds (NDCC §21-03-25) and Certificates of Indebtedness (NDCC §21-02-11) with an exception for (i) bonds sold to the state board of university and school lands, the Bank of North Dakota, the North Dakota Public Finance Authority or federal agencies; (ii) bonds not exceeding $100,000; and (iii) refunding bonds; and (B) Private or Negotiated Sale for Special Assessment Bonds (NDCC §40-27-08), Revenue Bonds (NDCC §40-35-09; NDCC §40-36-13(2)), MIDA Bonds (NDCC §40-57-10), and most others.
[46] The name of the North Dakota Municipal Bond Bank was changed to the North Dakota Public Finance Authority effective August 1, 2005. S.L. 2005, ch. 89.
[47] NDCC §21-03-31.
[48] $300,000 Barnes County, North Dakota, General Obligation Industrial Development Bonds (June 1, 1975) (issued to benefit International Multifoods / AGP Grain Ltd.).

7. Hospitals.[49]
8. Libraries.
9. Museums.
10. Auditoriums.
11. Armories.
12. Gymnasiums.
13. Music Halls.

In addition, cities and townships may jointly acquire and use public buildings, and incur indebtedness for such purpose.[50]

Other Public Purposes
(NDCC §21-03-06(2)(b), (c), (d), (e), (f), (h), (i), (j), (k), (l) & (m))

1. All necessary equipment and facilities for fire protection.
2. Water, Sewer, Garbage and Airport facilities.[51]
3. Heat, Light and Power facilities (including purchase of a public utility).
4. Purchase or Acquire a Public Transportation System[52] (cities having a population of more than 5,000).
5. Park Facilities, Streets, Highways and Cemeteries.
6. All types of Vehicles, Machinery, Equipment and Materials.
7. Parking Lots and Garages.
8. Bridges.[53]
9. Flood Control.
10. To provide matching funds for a capital construction project at a state institution of higher education located within the city for which an appropriation has been made by the legislative assembly.

General Obligation Bonds Requiring A Majority Public Vote:

Revenue Producing Utility (NDCC §21-03-04(2))

Any city, when authorized by a majority vote of the electorate, may issue bonds upon any revenue-producing utility owned by such city, for the purchase or acquisition of such utility, or the building or establishment thereof, in amounts not exceeding the physical value of such utility, industry, or enterprise.

Water and Sewer Systems (NDCC §21-03-04(3))

Any city, if authorized by a majority vote of the electorate, may issue bonds for water or sewer system purposes. Such bonds not exceed 4% of the city's assessed valuation. The 4% debt limit for these purposes is over and above the general 5% debt limit.

Electric Light, Telephone, Natural and Artificial Gas Plants,
Pipelines, Distribution Systems (NDCC §40-33-07)

Upon a majority vote of the electors, a municipality may issue bonds pursuant to Chapter 21-03 for the purpose of purchasing or constructing any municipal plant, system or line.

---

[49] Hospitals include nursing homes. 1970-1972 N.D. Op. Att'y Gen. 250, N.D. Op. Att'y Gen. 95-L-99 (April 24, 1995).
[50] NDCC §48-04-03.
[51] NDCC §40-34-02(2) provides that "general liability bonds" may be issued pursuant to Chapter 21-03 for the cost of a sewage or garbage disposal system.
[52] *See also* NDCC §§40-33-26 through 40-33-29 (purchase, acquisition or establishment of a public transportation system financed with a combination of general obligation bonds and revenue bonds).
[53] *See also* NDCC §24-08-07 and §24-01-01.1(26).

General Obligation Bonds Without A Public Vote:

Payment of Deficiency in Special Assessment Fund (NDCC §21-03-06(2)(g))

A city may issue general obligation bonds without an election for the purpose of covering any deficiency in the fund of any special improvement district whenever the special assessments are insufficient to pay the bonds issued for the improvement. Bonds issued under subsection (2)(g) are exchanged for matured warrants of the special assessment fund having the deficiency. The par value of the general obligation bonds may not exceed the par value of the warrants.[54]

Payment of Final Judgments (NDCC §21-03-06(7)(a) and NDCC §32-12.1-13)

A city may issue general obligation bonds, without a public vote, for the purpose of paying any final judgment obtained against the city. If the governing body does not deem it advisable to pay such judgment out of current revenues, a city can use general obligation bonds. The bonds may be issued to the judgment creditor in payment of such judgment.

A related section, NDCC §32-12.1-13, provides that a city may pay up to 75% of the amount of a final judgment entered against a city by the issuance of general obligation bonds. The governing body, by a resolution adopted by the affirmative vote of two-thirds of its members, may enter into an agreement with the holder of the judgment to compromise the amount of the judgment to no more than 75% of the unpaid amount of the judgment.

Refunding Bonds (NDCC §21-03-06(7)(b) & (c))

A city may issue bonds to refinance or refund existing general obligation bonds in order to reduce debt service costs or extend maturities.

Payment of Deficit on other Bonds (NDCC §21-03-06(7)(b))

A city may issue general obligation bonds to provide necessary funds for the payment of the principal and interest on bonds of the city, due or about to become due, for the payment of which the city has not sufficient funds, but only to the extent of such deficit.[55]

Federal-Aid Highway Project (NDCC §21-03-07(3))

A city may issue general obligation bonds for the purpose of providing funds to meet its share of the cost of any federal-aid highway project. Prior to issuing bonds, the initial resolution authorizing issuance of the bonds must be published in the official newspaper followed by a 60 day protest period. Such bonds may not be issued if protests have been signed by the owners of taxable property having an assessed valuation equal to 5% or more of the assessed valuation of all taxable property in the city.

The cost of the project may include any necessary relaying of utility mains and conduits, curbs and gutters, and the installation of utility service connections and streetlights. The portion of the total cost of the project to be paid by the city may not exceed a sum equal to 30% of the total cost.

Street Improvement (NDCC §21-03-07(4)(a))

A city may issue general obligation bonds for the purpose of providing funds to pay the cost of any street improvement to be made in or upon any federal or state highway or any other street designated by ordinance as an arterial street. Prior to issuing bonds, the initial resolution authorizing issuance of the bonds must be adopted by a two-thirds vote and must be published in the official newspaper followed by a 60 day protest period. Such bonds may not be issued if protests have been signed by the owners of taxable property having an assessed valuation

[54] NDCC §21-03-25.

[55] It is not clear if general obligations bonds may be issued only for deficits in other general obligation bonds or for any other type of bond of the municipality.

equal to 5% or more of the assessed valuation of all taxable property in the city. The general obligation bonds may be issued if the governing body determines that the cost of the project should be paid by the city and should not be assessed upon property specially benefited.

Bridge, Culvert, Overpass, Underpass (NDCC §21-03-07(4)(b))

A city may issue general obligation bonds for the purpose of providing funds to pay the cost of the construction of a bridge, culvert, overpass, or underpass at the intersection of any street with a stream, watercourse, drain or railway. Prior to issuing bonds, the initial resolution authorizing issuance of the bonds must be adopted by a two-thirds vote and must be published in the official newspaper followed by a 60 day protest period. Such bonds may not be issued if protests have been signed by the owners of taxable property having an assessed valuation equal to 5% or more of the assessed valuation of all taxable property in the city. The general obligation bonds may be issued if the governing body determines that the cost of the project should be paid by the city and should not be assessed upon property specially benefited.

Urban Renewal Project / Tax Increment Financing (NDCC §21-03-07(4)(c))

A city may issue general obligation bonds for the purpose of providing funds to pay the cost of any improvement incidental to the carrying out of an urban renewal project pursuant to NDCC §40-58-13(4). Prior to issuing bonds, the initial resolution authorizing issuance of the bonds must be adopted by a two-thirds vote and must be published in the official newspaper followed by a 60 day protest period. Such bonds may not be issued if protests have been signed by the owners of taxable property having an assessed valuation equal to 5% or more of the assessed valuation of all taxable property in the city. The general obligation bonds may be issued if the governing body determines that the cost of the project should be paid by the city and should not be assessed upon property specially benefited.

Public Buildings (NDCC §21-03-07(5))

Cities are authorized to issue general obligation bonds for the purchase, construction or repair of public buildings after a 60 day notice of opportunity to protest has been published in the official newspaper. Such bonds may not be issued if the protests received represent property of a value of 5% or more of the assessed valuation of the taxable property in the city. If the protests are insufficient, the city may issue the bonds subject to a 5 mill levy limitation. The maximum principal amount of bonds that can be issued is limited by the amount of debt service (principal and interest) the 5 mills can service. In the event assessed valuations decline to the point that the 5 mills would not provide adequate debt service, the city would be required to levy excess mills to meet the deficiency.

However, if the mill levy had been in place and was subsequently discontinued, it may not again be levied without a majority vote of the public.[56]

Fire Stations (NDCC §21-03-07(5))

Cities are authorized to issue general obligation bonds for the purchase, construction or repair of fire stations after a 60 day notice of opportunity to protest has been published in the official newspaper. Such bonds may not be issued if the protests received represent property of a value of 5% or more of the assessed valuation of the taxable property in the city. If the protests are insufficient, the city may issue the bonds subject to a 5 mill levy limitation. The maximum principal amount of bonds that can be issued is limited by the amount of debt service (principal and interest) the 5 mills can service. In the event assessed valuations decline to the point that the 5 mills would not provide adequate debt service, the city would be required to levy excess mills to meet the deficiency.

However, the 5 mill levy itself needs a 60% public vote approval before being instituted. Once instituted, general obligation bonds can be issued without a vote.[57]

---

[56] NDCC §§57-15-44 & 57-15-10(22).

Bypass Routes, Interchanges & Intersections (NDCC §21-03-07(8))

A city having a population of twenty-five thousand or more may issue general obligation bonds for the purpose of providing funds to participate in a project for any bypass routes, interchanges or other intersection improvements on a federal or state highway system which is situated in whole or in part outside of the corporate limits of the city. The governing body shall first determine by resolution that the project is in the best interest of the city for the purpose of providing access and relieving congestion or improving traffic flow on municipal streets.

Prior to issuing bonds, the initial resolution authorizing issuance of the bonds must be published in the official newspaper followed by a 60 day protest period. Such bonds may not be issued if protests have been signed by the owners of taxable property having an assessed valuation equal to 5% or more of the assessed valuation of all taxable property in the city. Further, the portion of the total cost of the project to be paid by the city may not exceed a sum equal to 30% of the total cost.

Emergency Condition (NDCC §21-03-07(9))

A city, by resolution adopted by a two-thirds vote, is authorized to issue general obligation bonds without an election for the purpose of providing funds to pay costs associated with an emergency condition. Prior to issuance of the bonds, the Governor must have issued an executive order or proclamation of a state of disaster or emergency pursuant to NDCC Chapter 37-17.1.[58]

Prepaying Outstanding Special Assessments (NDCC §21-03-07(10))

Pursuant to a resolution adopted by a two-thirds vote of the governing body, a city is authorized to issue general obligation bonds to be paid by an unlimited tax levy for the purpose of prepaying outstanding special assessments against property owned by the city.[59] For example, a park district may issue special assessment bonds and spread part of the cost against property owned by the city. Because North Dakota law allows the park district to add 1.5% beyond the bond interest rate to the interest rate charged to the city, it is often advantageous for the city to simply issue its own bonds to prepay the specials.

Purchase of Special Assessment Warrants (NDCC §40-27-02)

The governing body of a municipality may vote to purchase outstanding special assessment warrants of the municipality before or after their maturity. The statute is a depression era law to allow general obligation bonds to bail out a special assessment bond issue that either has or is about to default.

CERTIFICATES OF INDEBTEDNESS
(NDCC Chapter 21-02)

Cash Flow

For the financing of current budgets, North Dakota law permits political subdivisions, including cities, to issue certificates of indebtedness against anticipated revenues in the form of levied but uncollected taxes.[60] A certificate of indebtedness issued against uncollected taxes may not exceed the amount of uncollected taxes which have been levied during the year in which the borrowing is made, plus uncollected taxes remaining upon the tax lists of the four proceeding years. The county auditor is required to sign the certificate stating that the amount of the certificate is within the amount of levied but uncollected taxes. A tax is deemed to have been levied when it

---

[57] NDCC §§57-15-42 & 57-15-10(20).

[58] Another section deals with any emergency caused by the destruction or impairment of municipal property, or by epidemic or by a judgment for damages against the municipality. In such cases, if the municipality has not reached its debt limit, the governing body may order its executive officer to borrow money sufficient to meet the emergency. Any amount so borrowed must be for a time not to extend beyond the close of the fiscal year. NDCC §40-40-18.

[59] NDCC §57-15-41.

[60] *See also*, NDCC Chapter 21-01.

has been voted by the governing body of the city and certified to the county auditor.[61] No vote is required to issue certificates of indebtedness. The certificates are paid by the taxes against which they are issued, when such taxes are collected. A certificate issued wholly or in part against levied and uncollected taxes is a general obligation of the municipality to the extent of the levied and uncollected taxes.

Federal law is very restrictive in terms of affording working capital tax-exempt status. Accordingly, the NDCC specifically requires that municipalities shall review federal tax laws and regulations to determine whether certificates of indebtedness can be tax-exempt under federal law.[62]

Distributions of State and Federal Money

Cities are authorized to borrow in anticipation of receiving state or federal money by issuing certificates of indebtedness. For example, a city may borrow for construction costs pending receipt of an energy impact grant. A city might also borrow with a certificate of indebtedness against future distributions of the oil and gas production tax. A CI is normally a short term obligation, but the statute does not specify a maximum maturity.

Certificates of Indebtedness exceeding $100,000 must be advertised for sale by bids, unless sold to a state agency.

Hospitality Tax Revenue Bonds

(NDCC Chapter 40-57.3)

Municipalities are authorized to impose a one percent lodging and restaurant tax. Municipalities are further authorized to issue bonds and pledge the tax to payment of principal and interest.[63] If the tax collections fall short, the bondholders have no recourse to other revenues or taxes of the city.

Bonds issued under Chapter 40-57.3 may finance the purchase, equipping, improving, construction, maintenance, repair, and acquisition of buildings or property consistent with visitor attraction or promotion.

Special Assessment Warrant and Bonds

(NDCC Chapters 40-22 – 40-27)

Improvements by special assessment method are the most intensive in terms of procedural requirements and tend to generate the greatest amount of confusion in terms of financing options. Municipalities are authorized to defray the expenses of the following types of improvements by special assessments:[64]

A. Water
B. Sewer (sanitary and storm)
C. Streets[65]
D. Boulevards and Other Public Places
E. Flood Protection
F. Parking Facilities[66]

For a detailed review of special assessments, please see, *Special Assessments in North Dakota.*

---

[61] NDCC §40-40-10 (a municipality shall send the budget to the county auditor no later than October tenth).
[62] NDCC §21-02-15.
[63] NDCC §40-57.3-03.
[64] In addition to these categories, NDCC §40-33-05 authorizes a municipality to pay the cost of purchasing, erecting, enlarging, improving, extending or leasing any municipal plant, system or line by issuing special assessment warrants. Municipal plant includes electric, telephone, water, heating, and gas pipeline transmission.
[65] "Municipal street system" in NDCC §40-22-01(2) is synonymous with "streets" referred to in NDCC §40-05-01(8) & (22) and NDCC §40-22-06.
[66] *See also* NDCC Chapters 40-60 and 40-61.

Revenue Bonds
(NDCC Chapters 40-35 and 40-36)

Revenue bonds are typically issued to finance the cost of an "undertaking", such as for water, sewer and refuse systems. In addition, North Dakota law also allows revenue bonds to be issued to finance the cost of the following undertakings:

A. Public transportation Systems[67]
B. Airports
C. Gas or Electric Utilities
D. Parking Lots and Trailer Courts
E. Hospitals (includes nursing homes)[68]
F. Parks[69]

Revenue bonds are issued pursuant to an authorizing resolution adopted by the governing body. The governing body must approve the resolution or ordinance by the affirmative vote of a majority of its members "after appropriate notice." Presumably, "appropriate notice" means compliance with open meeting law requirements.[70] There is no public vote, protest, publication or hearing requirement.[71] The authorizing resolution pledges the gross or net revenues of the particular system to pay the principal and interest on the bonds. Typically, the resolution provides that revenues in excess of amounts needed to pay current debt service on the bonds may be used by the city for other expenditures authorized by law.[72] The political subdivision covenants to prescribe and collect rates, fees, tolls or charges for the services, facilities or commodities furnished and covenants to properly maintain the system.

North Dakota Century Code Section 40-35-14 prohibits the governing body from encumbering, mortgaging or in any way pledging real or personal property of the municipality.[73] Security for the bonds is entirely dependent on the revenues generated by the system. Since only revenues are pledged, these bonds are not considered debt for constitutional debt limit purposes.[74] Bondholders may only compel compliance with the covenants placed in the authorizing resolution. Therefore, the bondholders may demand a rate covenant, requiring that the municipality set rates sufficient to collect any where from 110% to 125% of annual principal and interest

---

[67] *See also* NDCC §§40-33-26 through 40-33-29 (purchase, acquisition or establishment of a public transportation system financed with a combination of general obligation bonds and revenue bonds).

[68] N.D. Op. Att'y Gen. 97-L-185 (November 19, 1997).

[69] Municipalities are also authorized to issue bonds for the purpose of acquiring lands or buildings for community centers, playgrounds, recreation centers, and other recreational and character building purposes and for equipment thereof. NDCC §40-55-05.

[70] NDCC §44-04-20.

[71] The only exception being the issuance of revenue bonds for a new electric light and power plant or distribution system, in excess of twenty percent of the book value thereof, which requires approval by a majority of the electors. NDCC §§40-35-06 and 40-35-07. N.D. Op. Att'y Gen. 83-16 (April 20, 1983). It should also be noted that NDCC §40-33-02 generally requires voter approval for the improvement or extension of a city's waterworks system. However, an election is not required if: (1) the cost of the project will be paid with system revenues and the cost does not exceed $5,000 or (2) 80% of more of the cost of the project is to be paid by revenues or by special assessments. As to the second exception, the Attorney General has opined that the "cost" of a project does not include funds available to pay for the project, such as grants. N.D. Op. Att'y Gen. Letter to Berg (March 9, 1988). See also N.D. Op. Att'y Gen. 70-55 (July 16, 1970). N.D. Op. Att'y Gen. 2005-L-43 (Dec. 8, 2005). Numerous municipalities have contracted to purchase water from rural water systems. Such contract requires a public vote. NDCC §40-33-16.

[72] NDCC §40-33-12(2) provides that a city may transfer a cash surplus in the municipal utilities fund to any other city fund if the amount does not exceed 20% of the gross receipts of the municipal utilities for the fiscal year during which the transfers are made.

[73] Municipalities are authorized to enter into long-term lease and leaseback arrangements of water and sewer systems, so called sale-in, lease-out (SILO) transactions. S.L. 2003, ch. 342. NDCC §40-05-01(78). These 99 year lease transactions were designed to transfer water and sewer systems to banks and other entities that could take depreciation on the systems. Before any North Dakota cities entered into such a transaction, Congress barred SILOs as abusive tax shelters.

[74] *See Stark v. City of Jamestown*, 37 N.W.2d 516 (N.D. 1949).

payments on the bonds plus operation and maintenance expenses.[75] While rate covenants are common, they may be counterproductive. In a struggling community, raising rates may actually decrease revenues as users drop service and/or move. Financial advisors and some nonprofits will help small communities analyze rates to determine the amount of rate increase required to finance a project. The Supreme Court found that an ordinance permitting delinquent water charges to be assessed as taxes against the property was a proper means of exercising the general power to set rates and conditions for the sale of water.[76]

A debt service reserve fund ("DSR") is normally required, usually in the amount of 10% of the par amount of the bonds. Bond purchasers may also require a second reserve, for repair and maintenance. Given the limited security for a revenue bond, the interest rate is higher than that for a general obligation bond or a special assessment bond. Revenue bonds may have a maximum maturity of 40 years.

Revenue bonds are refinanced or refunded pursuant to NDCC Chapter 40-36.

In addition to revenue bonds issued under Chapter 40-35, the Century Code authorizes municipalities to issue bonds under Chapter 40-34 for the cost of a sewage and garbage disposal system. The cost of a sewage or garbage disposal system may be financed by the issuance of general obligation bonds (pursuant to Chapter 21-03) or first mortgage bonds. The first mortgage bonds are secured by revenues of the system and by a mortgage or deed of trust upon the improvement or system. The first mortgage bonds may not exceed sixty percent of the cost of the improvement. Also, the first mortgage bonds may not be issued except if authorized by the affirmative vote of three-fifths or more of the members of the governing body of the municipality. Chapter 40-34 sets out a procedure for foreclosing the mortgage in the event of a default and thereafter revesting title and ownership of the utility in the municipality. Finally, there is a provision for a deficiency tax levy.[77]

Additional Bonds Test

The authorizing resolution will set forth the revenue to debt service ratio or the "additional bonds test" which must be met if the municipality desires to issue additional bonds payable from the same revenue producing system. An additional bonds test should take into account not only historical revenues but future revenues anticipated to be collected based upon the improvement to be financed. For example, a city may finance upgrades to its water system by issuing revenue bonds. As extensions and upgrades to the water system are needed over the years, subsequent improvements could be financed by bonds that share equally in the revenues of the water system. Otherwise, it would be difficult to sell the subsequent bonds for the water system improvements as those bondholders would be in second position, getting paid only after the original bondholders are paid.

Sales Tax Revenue Bonds

If provided for in the home rule charter and implemented by ordinance, home rule cities may issue bonds payable from a pledge of sales tax receipts.[78] To a bond purchaser, a sales tax revenue bond is truly a revenue bond, i.e. payment is limited to amounts generated by the sales tax, with no ability to levy for any shortfall. It is unclear whether sales tax bonds count against the municipality's debt limit.[79]

Cities have allowed other political subdivisions to take advantage of sales tax revenues in a bonding context through a joint powers agreement. For example, certain public school districts have issued general obligation bonds which are paid from city sales tax. So long as the sales tax collections are sufficient, these school districts

---

[75] *See generally*, NDCC §40-05-01(36) ("...to fix and regulate the rates, use, and sale of water.).
[76] *Meyer v. City of Dickinson*, 451 N.W.2d 113 (1990).
[77] NDCC §40-34-08.
[78] See N.D. Op. Att'y Gen. 86-11 (March 7, 1986) (ordinance imposing sales tax is administrative in character and not subject to the power of referendum).
[79] *State, ex rel. Lesmeister v. Olson*, 354 N.W.2d 690 (1984). "We believe that allowing a special fund exemption for bonds funded from excise taxes would, in effect, nullify the debt limitation and remove the protections which the people of the State of North Dakota reserved unto themselves in Article X, Section 13, of the Constitution. We hold that bonds funded by any general State tax, excise or ad valorem, constitute a "debt" of the State within the meaning of the constitutional debt limitation."

will not need to levy any mills to pay those general obligation bonds. In the 2007 session, the legislature prohibited a city from transferring sales tax revenues to a public school district.[80]

LEASE FINANCING
(NDCC §40-05-01(55))

In the context of municipal finance, lease financing includes various types of agreements, such as installment purchase contracts, installment sales contracts and purchase orders, in addition to leases. A "financing lease" is distinguished from a "true lease", which involves no acquisition of title to property by a municipality. Lease purchase financings result in the acquisition of the building or equipment at the end of the lease term. In a financing lease, the city would receive the building or property at the end of the lease, either automatically or with a payment of a nominal purchase options.[81]

The North Dakota Century Code does not contain a lease financing chapter for cities or any other political subdivision.[82] The authority to enter into a lease acquisition is expressed or implied in the municipality's general powers. The reasoning behind the implied authority being that if the city can buy buildings and equipment and can lease buildings and equipment, it seems logical that they can be acquired through tax-exempt lease purchase financing. In the case of municipalities, the legislature has granted power "to acquire by lease ... both real and personal property..." [83]

The absence of statutory authority to enter into tax-exempt lease purchase financing has raised questions but to date has not been acted on by the legislature or submitted to the North Dakota Supreme Court. Because there is no specific statutory authorization, the incurring of such obligation cannot constitute debt of the municipality in the constitutional sense, so long as a nonappropriation clause is put in the lease document. If the obligation were to be determined debt, it would have to be voted on under NDCC Chapter 21-03.

A nonappropriation clause states that, notwithstanding the fact that the municipality agrees to lease the building or equipment for a period of years, it nonetheless reserves the right to not appropriate for the lease payment and in effect forfeit the leased property. Put another way, the political subdivision has the option to terminate the lease at the end of the fiscal period during the term of the lease by not appropriating the funds needed to meet the next lease payment. A city must be careful to consider the risk of loss of the leased property in relation to the compulsion to appropriate. In other words, if a city is lease financing the purchase of a fire station, a court might determine that the leased property, the fire station, is so essential that the city is forced to appropriate. In that case, the lease may be treated as debt.[84]

Companies that engage in tax-exempt lease financing transactions sell certificates of participation in the rentals paid by the municipality in the market as tax-exempt securities. In order to protect the purchasers of the certificates of participation, the lease financing broker with whom the municipality deals, attempts and sometime succeeds in placing language in the lease documents that prevent the municipality from electing not to appropriate for payment of the lease rent. Tax-exempt lease financings are highly technical transactions and should be treated as such. A municipality should not enter into a tax-exempt lease financing unless the lease document has been reviewed by its attorney in consultation with bond counsel. If a municipality enters into a lease with such restrictive provisions in it, such as a non-substitution clause, a court could determine the nonappropriation clause

---

[80] NDCC § 40-05.1-06.1.

[81] *See Wallwork Lease & Rental Co., Inc. v. JNJ Investments, Inc.*, 303 N.W.2d 545 (1981).

[82] The North Dakota Attorney General has commented on the lack of specific lease finance authority in the context of a park board: "It would appear, off hand, that the purchasing of an item on an installment contract by a taxing district would, in effect, be a method of financing not included within the statutory provisions governing financing in taxing districts." N.D. Op. Atty Gen. Letter to Wold (July 29, 1987) (*quoting* N.D. Op. Atty Gen. Letter to Feste (May 15, 1963).

[83] NDCC §40-05-01(55).

[84] "Thus, the holding in Lang v. City of Cavalier, supra, makes clear that some municipal property may be placed at risk of loss in financing improvements. Questions as to the extent of property that may be placed at risk and the degree of risk of loss to which it may be subjected are matters of legislative judgment and discretion on the part of municipal authorities, subject to reasonable exercise and judicial review for reasonableness." *Haugland v. City of Bismarck*, 429 N.W.2d 449 (1988).

to be effectively nullified. The obligation could be declared debt and if so, would be void under North Dakota statutory and constitutional law.

Finally, the North Dakota Century Code, with a few exceptions, does not permit a city to add extra mills to pay make the lease payment. Payment of debt service must be budgeted for each year. There is no mechanism to increase revenues to provide for the lease payment.

The following is an example of a nonappropriation clause:

> *Lessee is obligated only to pay such Rental Payments under this Agreement as may lawfully be made from funds budgeted and appropriated for that purpose during Lessee's then current budget year. Should Lessee fail to budget, appropriate or otherwise make available funds to pay Rental Payments following the then current Original Term or Renewal Term, this Agreement shall be deemed terminated at the end of the then current Original Term or Renewal Term.*

Often, the city agrees to make every attempt to have the lease payment included in the budget:

> *Lessee reasonably believes that funds can be obtained sufficient to make all rent payments during the term of the Lease and hereby covenants that it will do all things lawfully within its power to obtain, maintain and properly request and pursue funds from which the rent payments may be made. The chief executive officer of the unit shall request the required appropriation from the governing board and exhaust all available administrative reviews and appeals in the event such portion of the budget is not approved.*

A non-substitution clause such as this should cause concern:

> *To the extent permitted by law, if the provisions of this Section 5 [nonappropriation] are utilized by Lessee, Lessee agrees not to purchase, lease or rent equipment performing functions similar to those performed through the use of the Equipment, or to obtain from any source the services or information which the Equipment was to perform or provide, for the balance of the appropriation period following Lessee's exercise of its termination right hereunder.*

Law Enforcement Facilities

A city, upon a 2/3 vote of the governing body, may enter into leases for court facilities, correction centers, jails and other law enforcement facilities for a term of up to twenty years. A city may dedicate and levy up to 10 mills for such purposes. The maximum principal amount of bonds that can be issued is limited by the amount of debt service (principal and interest) the 10 mills can service. However, the statute provides that the lease payments are a general obligation of the city backed by the full faith and credit of the city.[85] Accordingly, in the event assessed valuations decline to the point that the 10 mills would not provide adequate debt service, the city would be required to levy excess mills to meet the deficiency.

Fire Equipment

The legislature has granted authority to cities to purchase fire equipment not in excess of $10,000 pursuant to a long term contract.[86] While the NDCC authorizes a binding contract, as compared to an annual appropriation lease, the repayment source must still come from the general budget, as no excess mills are authorized.

Lease Revenue Bonds

Federal law allows tax-exempt bonds to be issued by certain "on behalf of" entities. For example, individuals might establish a North Dakota non-profit corporation and thereafter the corporation will issue tax-exempt bonds on behalf of the city. The corporation's board of directors may or may not consist of the same individuals serving on the governing body of the city. The corporation then uses the bond proceeds to construct a building, for

---

[85] NDCC §57-15-59.
[86] NDCC §40-05-09.

example, and then leases that building to the city through a lease/lease-back structure. The city pays an annual rent to the corporation which is used to pay debt service on the bonds. These bonds are known as appropriation bonds because the city is not obligated to lease the building beyond the current fiscal year and can walk away from the deal at any time. Payment of debt service is subject to annual appropriation and must be budgeted for each year. There is no mechanism to increase revenues to provide for debt service (i.e. no additional mills are authorized). Typically, the only security for the bondholder is a leasehold mortgage on the building being financed. In the event of a default, the bondholders could not force the city to appropriate the debt service, but could only foreclose on the facility and then attempt to lease the facility to another party for the remainder of the lease term.

Several school districts, park districts, and counties have used lease revenue bond financing. At least one city has used lease revenue bond financing.[87] The North Dakota Attorney General has approved a building authority financing in the context of a public school district.[88] The 2013 legislature restricted use of lease revenue bonds for school districts.[89]

TAX INCREMENT BONDS

(NDCC Chapter 40-58) (Urban Renewal Law)

The legislature authorizes cities to finance public improvements for "slum" and "blighted" areas through the issuance of tax increment financing (TIF) revenue or general obligation bonds. Public improvements include demolition, repair, and reconstruction of buildings, construction of new buildings, road and street improvements, street lighting, sidewalk, storm water and sanitary sewers, utilities, parks and similar infrastructure facilities. TIF revenue bonds are payable solely from the tax increment which is derived from the property tax differential between the original taxable value of property in a development or renewal area compared to each subsequent year's taxable value for that property. The applicable mill rate is applied to the difference in taxable values to arrive at the tax increment.

The original taxable value of property in the TIF district remains "frozen" for the period of the financing. Local governmental units receiving property taxes, such as public school districts, receive money based upon the "frozen" taxable value. If the taxable value increases, the tax increment is diverted to a special fund dedicated to debt service on the bonds. In general, public school districts are limited to 185 mills. So, while school districts certify their budgets to the county auditor in dollars, they are limited to a statutory number of mills, which will generate fewer dollars as applied to a frozen taxable value.

In 1985, cities were given the option of granting a tax exemption for up to 15 years instead of issuing bonds to finance improvements.[90] For smaller projects the amount of the increment may not justify the sale of bonds. The exemption is limited to the amount of the tax increment.

In 1989, the legislature specifically declared economic development a public use and purpose and authorized TIF to facilitate the development of industrial or commercial properties.[91] Industrial or commercial property means unused or underutilized real property that is zoned or used as an industrial or commercial site. A city has the power of eminent domain for TIF projects. The North Dakota Supreme Court has held that NDCC Chapter 40-58 serves a public use for purposes of taking private property.[92] On November 7, 2006, the North Dakota

[87] City of Fargo Building Authority, $4,930,000 Lease Revenue Bonds, Series 2002A (April 30, 2002). The bonds were issued to finance improvements to the City Hall/Civic Auditorium which is leased by the building authority to the city.
[88] N.D. Op. Att'y Gen. 2008-L-05 (April 23, 2008).
[89] H.B. 1286 (2013).
[90] NDCC §40-58-20(11).
[91] S.L. 1989, ch. 499.
[92] "We conclude the stimulation of commercial growth and removal of economic stagnation sought by N.D.C.C. Chapter 40-58 are objectives satisfying the public use and purpose requirement of N.D. Const. Art. I, §16 and U.S. Const. Amend. V." City of Jamestown v. Leevers Supermarkets, 552 N.W.2d 365 (1996). The U.S. Supreme Court recently decided that eminent domain is justified to transfer private property to another private party solely for the purpose of economic

Constitution was amended by initiated measure to restrict the ability of government to take private property for economic development purposes.[93]

As with any tax-exempt financing, federal tax issues must be considered.[94]

The implementation of a TIF district requires the governing body to adopt a resolution of necessity for the project. A public hearing is required and the governing body must approve a development or renewal plan. The development or renewal plan cannot be adopted unless the city has adopted a general plan for the municipality. Certain powers may be exercised by an urban renewal agency or housing authority. The development or renewal plan can extend to up five miles outside the city limits.

To provide greater backing for TIF, a city is authorized to issue general obligation bonds to finance the improvements upon a 2/3 vote of the governing body. The issuance of general obligation bonds is subject to a public protest period, but a vote is not required.[95] The general obligation bonds are payable from the tax increment but have the backing of an unlimited mill levy against all property in the city in case the tax increment is insufficient. It is also possible to issue special assessment bonds payable from the tax increment. In other states, TIF bonds are sometimes payable from a sales tax increment as opposed to a property tax increment.

Before financing improvements for industrial or commercial properties, the governing body of the city must have an agreement with the project developer and most hold a public hearing. Potential competitors are given the chance to object to the improvement project. The city may approve the agreement only if it determines that the agreement will not result in unfair competition and that the agreement is in the best interests of the municipality as a whole. TIF financing for industrial or commercial properties is limited to the following public costs:

1. the cost of acquiring, or the market value, of all or a part of the industrial or commercial property;
2. costs of demolition, removal, or alternation of buildings and improvements on the industrial or commercial property, including the cost of clearing and grading land;
3. cost of installation, construction, or reconstruction of streets, utilities, parks and other public works or improvements necessary for carrying out the development or renewal plan; and
4. all interest and redemption premiums paid on bonds, notes, or other obligations issued by the municipality to provide funds for the payment of eligible public costs of development.[96]

---

development that will perhaps increase tax revenues and improve the local economy. *Susette Kelo, et al. v. City of New London, Connecticut, et al.*, 125 S.Ct. 2655 (2005).

[93] N.D. Const. Art. I, §16.

[94] TIF bonds have the potential of being declared taxable private activity bonds. A TIF bond will not constitute private activity if the incremental property taxes are "generally applicable." An example that might cause problems is if the taxpayer has a special contractual agreement with the city, such as assuming personal liability for the TIF bonds.

[95] NDCC §§40-58-13(4) and 21-03-07(4)(c).

[96] NDCC §40-58-20.1(3).

The following is an example of how the tax increment is calculated:

	Current Year	Following Completion of Improvements
True and Full Value[97]:	$150,000	$1,800,000
Assessed Valuation[98]:	75,000	900,000
Taxable Valuation[99]:	7,500	90,000
Mill Rate:	300	300
Property taxes:	2,250	27,000
Increment: ($90,000 - $7,500)	82,500	
	x 300 mills	
Tax Increment	$24,750	

In the example, $24,750 would be available to pay principal and interest on bonds for a particular year (or be applied against the tax exemption granted to the developer) and $2,250 would go to the various local governments.

The 2011 legislature amended the century code to provide that "blighted area" does not include any land that has been assessed as agricultural property within the last 10 years unless it was located within city limits for at least 10 years.

AUTHORITIES

Municipalities are authorized to form various types of authorities, some of which are empowered to issue bonds to finance their activities. Examples include: municipal airport authorities (NDCC Chapter 2-06), municipal housing authorities (NDCC Chapter 23-11), municipal steam heating authorities (NDCC Chapter 40-33.1), municipal power agencies (NDCC Chapter 40-33.2), municipal pipeline authorities (NDCC Chapter 40-33.3), municipal parking authorities (NDCC Chapter 40-61), regional railroad authorities (NDCC Chapter 49-17.2), and public health units (NDCC Chapter 23-35).

Under certain conditions a city may create a municipal port authority.[100] The port authority may issue revenue bonds or general obligation bonds for its purposes, such as constructing transportation, storage and other facilities. General obligation bonds must be approved by a majority vote. A city may also establish a commerce authority.[101] A commerce authority is authorized to issue revenue bonds or general obligation bonds. In the case of both port authorities and commerce authorities, if the population of the municipality is over 10,000, the NDCC provides for an unlimited levy to cover any deficiency in the payment of bond principal or interest.

City Housing Authorities

In 2005, the law regarding housing authorities was amended to provide that a city with a population under 5,000 may establish a housing authority to include housing for moderate income persons. Persons of moderate income is defined to as "individuals or families whose income is not adequate without governmental assistance to cause private enterprise to provide a substantial supply of decent, safe, and sanitary housing at rents or prices within their financial means.[102]

A housing authority may issue revenue bonds to finance housing projects. Such bonds are sometimes referred to as "essential function bonds," because the legislature declared that revenues bonds for housing are issued for an

---

[97] True and Full Value is defined as the value determined by considering the earning or productive capacity, if any, the market value, if any, and all other matters that affect the actual value of the property to be assessed. NDCC §57-02-01(15).
[98] Assessed Valuation means 50% of the true and full value. NDCC §57-02-01(3).
[99] Taxable Valuation is a percentage of the assessed valuation. NDCC §§57-02-27 and 57-02-01(13).
[100] NDCC Chapter 11-36.
[101] NDCC Chapter 11-37.
[102] NDCC §23-11-01(13).

essential public and governmental purpose.[103] In order to provide more security to the holders of housing revenue bonds, a city may covenant to pay operation and maintenance expenses of a housing project in the event that the gross revenues of the housing authority are insufficient.[104] Presumably, a city would need to amend its budget if called upon to pay operation and maintenance costs.

General Obligation Housing Bonds

In 2007, the legislature added a provision which allows a housing authority to pledge the general obligation of the city to the payment of housing revenue bonds.[105] The housing authority must find that the revenues of the housing project will equal or exceed one hundred ten percent of the principal and interest due on the bonds each year. Further, the maturity of the bonds may not exceed thirty-five years. Finally, the principal amount of the bonds and the general obligation pledge must be approved by the governing body of the city. The city must hold a public hearing on the housing bonds and the general obligation pledge. A city does not actually issue general obligation bonds. Rather, the general obligation pledge means the city agrees to pay from any legally available source should the city be called upon to make payments on the housing revenue bonds.

Emergency Borrowing and Expenditure

Municipalities are authorized to borrow and/or make expenditures in certain emergency situations.

A. Pursuant to NDCC §21-03-07(9), a city, by resolution adopted by a two-thirds vote, is authorized to issue general obligation bonds without an election for the purpose of providing funds to pay costs associated with an emergency condition. Prior to issuance of the bonds, the Governor must have issued an executive order or proclamation of a state of disaster or emergency pursuant to NDCC Chapter 37-17.1.

B. NDCC Section 40-40-18 addresses any emergency caused by the destruction or impairment of any municipal property necessary for the conduct of the affairs of the municipality, or by epidemic or threatened epidemic, or by a judgment for damages against the municipality. In such cases, if the municipality has not reached its debt limit, the governing body by two-thirds vote of members present may order its executive officer to borrow money sufficient to meet the emergency. Any amount so borrowed must be for a time not to extend beyond the close of the fiscal year. The resolution authorizing any emergency expenditure must recite the facts showing the existence of an emergency. As an alternative to borrowing, the governing body may vote by two-thirds of the members present to take the amount necessary to meet the emergency from any other fund or funds.

C. The governing body of any city by a two-thirds vote may levy an annual tax of up to 2 and one-half mills for snow removal, natural disaster, or other emergency conditions.[106] The levy must be discontinued when the amount of unexpended funds raised by the levy plus the amount due the fund from outstanding taxes equals the amount produced by a levy of five mills on the taxable valuation or five dollars per capita, whichever is greater.

D. The governing body of a city is authorized to accept a loan for purposes of emergency management.[107]

E. Pursuant to NDCC §37-17.1-20 the governor may obtain, on behalf of local governments including cities, federal community disaster loans.[108]

---

[103] NDCC §23-11-21.
[104] NDCC §23-11-24(23)(a).
[105] NDCC §23-11-24(23)(b).
[106] NDCC §§57-15-48 and 57-15-06.7(23).
[107] NDCC §37-17.1-18(2).
[108] Prior law authorized a tax levy equal to the amount required to match federal funds. S.L. 1997, ch. 18. S.L. 1999, ch. 498 (repealing the tax levy).

MIDA BONDS
(NDCC CHAPTER 40-57)

Cities, counties and the North Dakota Public Finance Authority[109] are authorized to issue tax-exempt bonds and provide the proceeds to certain borrowers such as 501(c)(3) organizations, small manufacturers and exempt facility operators under the Municipal Industrial Development Act of 1955 (MIDA Bonds).[110] MIDA Bonds are also authorized for public career and technical education and low income residential rental property programs.

MIDA Bonds can be issued for a variety of purposes, including the acquisition of real property, buildings, improvements and equipment used in connection with a revenue-producing enterprise. The law also allows the financing of working capital in certain situations. The 2013 legislature added water and sewer lines and other underground infrastructure as a qualifying purpose.

Typically, in a MIDA Bond issue, cities issue bonds and provide the proceeds to a borrower for the purpose of constructing a project. Traditionally, the project operator conveyed the project to the city with the city leasing the project back to the operator. In 2003, the legislature amended the MIDA Bond Act to allow the city to simply loan the bond proceeds to the project operator. Additional security, including mortgages, security interests and personal guarantees may, however, be required by bondholders.

Several restrictions and requirements apply, including the following:

A. The project must be located wholly within the boundaries of the issuer unless the issuer enters into an agreement with another jurisdiction in which part or all of the project is located.

B. The issuer is not liable for the debt service payments on the bonds and a bondholder can never compel the exercise of the city's taxing power to make debt service payments.

   The MIDA Bond Act contains one exception to the general rule that a municipality is not liable on the bonds. NDCC Section 40-57-19 allows a city to issue general obligation bonds payable from an excess mill levy on all taxable property upon a 2/3 majority vote of the public for the purpose of aiding existing projects or financing entirely new projects. Only one GO MIDA Bond has been issued in North Dakota.[111] The constitutionality of the GO MIDA Bond provision has not been tested.[112]

C. Following notice which must be published once a week for two successive weeks[113], a public hearing is held at which time the governing body of the city shall determine whether the bond issue is in the public interest and whether issuing the bonds will result in an unfair advantage for the proposed project to the substantial detriment of existing enterprises.[114]

For many years, MIDA Bonds were used to finance all types of North Dakota commercial ventures including motels, shopping centers, professional office buildings, lumberyards, florists, bowling alleys and power plants. However, in 1986, Congress restricted the types of private business activity that could qualify for tax-exempt financing. Today, a bond issue that benefits private business is categorized as a "private activity bond" and must fall within one of seven Congressionally approved private uses before it can be issued.

---

[109] S.L. 2005, ch. 90.
[110] MIDA Bonds are also known as Industrial Development Bonds (IDBs) or Industrial Revenue Bonds (IRBs).
[111] $300,000 Barnes County, North Dakota, General Obligation Industrial Development Bonds (June 1, 1975) (issued to benefit International Multifoods / AGP Grain Ltd.).
[112] Article X, Section 18 of the North Dakota Constitution states: "The state, any county or city may make internal improvements and may engage in any industry, enterprise or business, not prohibited by article XX of the constitution, but neither the state nor any political subdivision thereof shall otherwise loan or give its credit or make donations to or in aid of any individual, association or corporation except for reasonable support of the poor, nor subscribe to or become the owner of capital stock in any association or corporation."
[113] Successive weeks means any day in a week if at least five days intervene between the publications. NDCC §1-01-44.
[114] NDCC §40-57-04.1.

Under current law, for MIDA Bonds to be tax-exempt under federal law, they must be qualified 501(c)(3) bonds, qualified small issue bonds or qualified exempt facility bonds.[115] Qualified small issue bonds are issued for manufacturing facilities in an amount of up to $10,000,000. Use of MIDA Bonds for manufacturing facilities is severely limited by a capital expenditure rule. Capital expenditures paid or incurred during the six year period surrounding the bond issue (i.e. three years forward and three years back) for a particular facility are limited to $20,000,000. Other restrictions also apply, and sometimes these bonds are difficult to market if the entity is a startup business.

Qualified exempt facility bonds are issued for projects that Congress has deemed quasi-public, such as airports, docks, solid waste disposal and mass commuting facilities.

Despite the federal restrictions on MIDA Bonds, a number of financings continue to be completed by 501(c)(3) entities, including hospitals, nursing homes, and other non-profit organizations. A partial list of organizations benefiting from MIDA Bond financing is listed in Part Four.

MISCELLANEOUS PROVISIONS

Joint Powers Agreements

Cities are authorized to enter into joint powers agreements with other governments for the cooperative or joint administration of any power or function that is authorized by law or assigned to one or more of them.[116] The joint powers legislation was part of the so called tool check amendment.[117] The joint powers arrangement may include establishment of a separate administrative or legal entity. However, no essential legislative powers, taxing authority, or eminent domain power may be delegated to the separate entity. A joint powers agreement may provide for the manner in which the parties will finance the cooperative or joint undertaking.

Restrictions on Use of Public Buildings

Cities should be familiar with the short NDCC Chapter regarding restrictions on use of public buildings.[118]

Public Improvement Bids and Contracts

Public improvements estimate cost $100,000 or more must have an architect's or engineer's plans and must be competitively bid.[119]

Public Private Partnerships (P3)

Cities are authorized to enter into agreements with private operators for the constructing, improving, rehabilitating, operating, managing, and owning of a fee-based facility.[120] A fee-based facility means a facility that provides a service and generates users fees or rentals, and may be a library, city hall, water or sewage treatment plant, or other public improvement. A lease of public facilities may be for up to fifty years. If a private entity constructs a facility pursuant to a development agreement with a city, the project is not subject to competitive bidding requirements.[121] The 2013 legislature declined to expand the scope of the Chapter.[122]

---

[115] An important exception exists for enterprise zone facility bonds issued within a federally designated empowerment zone. North Dakota has one empowerment zone, encompassing all of Steele County and a portion of Griggs County. Enterprise zone facility bonds may be issued in the zone for almost any type of business.

[116] NDCC Chapter 54-40.3. *See also* NDCC Chapter 54-40 (Joint Exercise of Governmental Powers) (joint issuance of bonds).

[117] S.L. 1993, ch. 401.

[118] NDCC Chapter 48-08.

[119] NDCC Chapter 48-01.2

[120] NDCC Chapter 48-02.1.

[121] N.D. Op. Att'y Gen. 2008-L-08 (May 22, 2008). The legislative history states that the bill "allows the public sphere, if it chooses, have [sic] the private sector fulfill a particular infrastructure need. This occurs where the public sector is unable or

Guaranteed Energy Saving Contracts

A city is permitted to enter into a guaranteed energy savings contract with a qualified provider if it finds that the amount it would spend on the energy conservation measures is not likely to exceed the amount to be saved in energy and operation costs over a period of not exceeding 15 years.[123] The contract must contain a written guarantee that the energy and operating cost savings will meet or exceed the costs of the system. The guaranteed energy savings contract may provide for payments over a period not exceeding 15 years. Energy conservation measures include insulation, window or door modifications, automatic energy control systems, and lighting, heating, air-conditioning, or ventilating systems. Lease financing with a third party may be applicable if the vendor requires cash up front rather than payments over 15 years.

Public Recreation System

Any two or more cities, school districts or park districts may jointly establish, maintain and conduct a public recreation system.[124] Municipalities are also authorized to issue bonds for the purpose of acquiring lands or buildings for community centers, playgrounds, recreation centers, and other recreational and character building purposes and for equipment thereof.

Judicial Review of Bond Proceedings

North Dakota law offers a mechanism to have a court review proceedings related to a bond issue for approval or disapproval.[125]

---

where the public's needs can be met more efficiently. These infrastructure needs may be a library, courthouse, school, city hall, water or waste water treatment plant, etc."

[122] S.B. 2220 (2013 Session).

[123] NDCC §48-05-11.

[124] NDCC Chapter 40-55. *See also* N.D. Op. Att'y Gen. Letter to Hatlestad (November 28, 2007).

[125] NDCC Chapter 21-02.1. *See also* NDCC Chapter 21-09 (Bond Validating Act) and Chapter 1-07 (Validation of Municipal Securities).

PART THREE

Park Districts

Park Districts are governed by NDCC Chapter 40-49. Cities may take advantage of Chapter 40-49 and create a park district by a two-thirds vote of the governing body.[126] Cities that have not created a park district may exercise the same powers as are granted by the legislature to a board of park commissioners.[127]

Park districts are known as "park district of the city of_____" and have broad powers to acquire, construct and maintain parks. The term "park" is defined to include "public grounds used or acquired for use as airfields, parade grounds, public recreation areas, playgrounds and athletic fields, memorial or cemetery grounds, and sites or areas devoted to use and accommodation of the public as distinguished from use for purpose of municipal administration."[128]

In carry out park district powers, a board of park commissioners is governed by the provisions of law applicable to municipalities of the kind in which the park district is established.[129] The debt limit for a park district is one percent of the district's assessed valuation.[130]

Park Districts have the following financing options:

1. Special Assessments[131] (NDCC §40-49-12(4))
2. Revenue Bonds (NDCC §40-49-24)
3. General Obligation Bonds (NDCC §40-49-12(6))
4. Certificates of Indebtedness (NDCC §40-49-12(9))
5. Lease Revenue Bonds
6. Sales Tax (joint powers agreement with city)
7. Public Private Partnership

Park districts, along with the state, cities, counties and townships, are authorized to enter into agreements with private parties for the construction of public improvements, such as a library, city hall and water or sewer plant.[132] The North Dakota Attorney General has reviewed at least one such public-private partnership.[133]

---

[126] Prior to 1993, the century code did not provide for the dissolution of a park district. An Attorney General's opinion stated that the governing body of a city may dissolve a park district by passing an ordinance by a two-thirds vote. N.D. Op. Att'y Gen. Letter to Fitzner (June 29, 1992). Thereafter the legislature addressed dissolution of a park district. NDCC §40-49-07.2.
[127] NDCC § 40-05-01(9).
[128] NDCC § 40-49-04.
[129] NDCC § 40-49-18.
[130] NDCC § 40-49-14 and NDCC § 21-03-06(6). While Section 40-49-14 refers to "one percent of the taxable property", Section 21-03-06(6) refers to "one percent of the value of the taxable property", and "value of taxable property" is defined as the assessed value of all taxable property. NDCC § 21-03-01(6).
[131] *See* N.D. Op. Att'y Gen. 82-71 (October 15, 1982), authorizing a park district to assess only park property.
[132] NDCC Chapter 48-02.1.
[133] N.D. Op. Att'y Gen. 2008-L-08 (May 22, 2008).

Park districts are authorized to establish a system of public recreation and may jointly provide such with municipalities and school districts.[134]

The Office of the State Tax Commissioner publishes the *Schedule of Levy Limitations* which is helpful when searching for specific tax authority. The tax levy sections applicable to park districts are attached in Part Four.

[134] NDCC Chapter 40-55. *See also* N.D. Op. Att'y Gen. Letter to Hatlestad (November 28, 2007).

PART FOUR

State of North Dakota
Office of State Tax Commissioner

Cory Fong, Commissioner
Bismarck, North Dakota

July 2011

Schedule of Levy Limitations

Applicable To The Authority Of The Political Subdivisions Of The State Of North Dakota To Levy Ad Valorem Taxes On Property

Contents

1600 - City

Levy No.	Fund Or Purpose	Maximum Rate Or Amount	Law	Remarks (x) Indicates levies in add. to Gen. Fund Levy
1601	General	38.00 Mills	N.D.C.C. § 57-15-08	General city purposes, in cities having population of over 5,000 an additional one-half mill for each additional 1,000 but not to exceed 40.00 mills; plus, upon majority vote by qualified electors voting on the question an additional levy not to exceed 10.00 mills
	or			
	Home Rule Cities		See N.D.C.C. § 40-05.1-06(2)	
	Interim Fund	75 percent of Current Appropriation	N.D.C.C. § 57-15-27	For carrying over to next fiscal year to meet cash requirements
1603	Excess Levy	50 percent of Basic Legal Limitation	N.D.C.C. § 57-17-02	For one year and not to exceed one succeeding year; upon approval by 60 percent of votes cast in the election
1604	Emergency - For Snow Removal, Natural Disaster or Other Emergency	2.50 Mills	N.D.C.C. §§ 57-15-48 57-15-10(23)	(x) Upon two-thirds vote of governing body. Fund size not to exceed $5.00 per capita or amount produced by 5.00 mills
1605	Old Age and Survivor Insurance, Federal Social Security, and Employee Retirement	30.00 Mills	N.D.C.C. §§ 40-46-26; 52-09-07(3); 57-15-28.1(5)	(x) Also see N.D.C.C. § 52-09-27 and ch. 52-10
1606	Airport or Municipal or Regional Airport Authority	4.00 Mills	N.D.C.C. §§ 2-06-07; 57-15-36; 57-15-10(18)	(x) In cities where no levy for airport has been made by other taxing body. Levy based upon amount certified by the airport authority
1607	Share of Special Improvements	None	N.D.C.C. §§ 40-24-10; 57-15-10	(x) N.D.C.C. § 57-15-10(1). Also see N.D.C.C. §§ 1-06-06; 40-56-03
1608	Special Assessments and Drain Assessment on City Property	None	N.D.C.C. §§ 40-23-07; 57-15-41; 61-21-52; 21-03-07(10)	(x) N.D.C.C. § 57-15-10(1). Nonprofit cemetary is exempt from special assessments (2009 amendment to § 40-23-07).
1609	Deficiency or Expected Deficiency of Special Improvements	None	N.D.C.C. §§ 40-26-08; 57-15-10(2)	(x)
1610	Deficiency Sewer & Water Connections Assessment Fund	None	N.D.C.C. §§ 40-28-05; 57-15-10(2)	(x)
1611	Deficiency or Expected Deficiency, Sidewalk Special Fund	None	N.D.C.C. §§ 40-29-14; 57-15-10(2)	(x)
1612	Deficiency or Expected Deficiency, Curbing Special Fund	None	N.D.C.C. §§ 40-31-08; 57-15-10(2)	(x)
1613	Public Library Service	4.00 Mills or as increased by 60 percent majority vote of electors	N.D.C.C. §§ 40-38-02; 40-38-11(5); 54-24.2-02.2; 57-15-10(5)	(x) May be established upon petition of 51 percent of voters or upon majority vote of electors. See N.D.C.C. § 40-38-01. A joint library board may levy taxes within the service area which is outside city limits within the limitations and according to procedures provided by law for a county library fund levy, and may levy taxes within the service area that is within city limits within the limitations and according to the procedures provided by law for a city library fund levy.

1600 - City (Continued)				
Levy No.	**Fund Or Purpose**	**Maximum Rate Or Amount**	**Law**	**Remarks** (x) Indicates levies in add. to Gen. Fund Levy
				A public library is not eligible to receive state aid to public libraries if the governing body has diminished, from the average of the three preceding fiscal years, the appropriation in dollars derived from the mill levy for public library services under section 40-38-02. If the governing body is levying the maximum number of mills it can levy without an election and the appropriation is diminished solely because of a reduction in taxable valuation, the public library is eligible to receive funds.
1614	Cemetery	2.00 Mills	N.D.C.C. § 57-15-27.1	(x)
1615	Advertising	1.00 Mill	N.D.C.C. §§ 57-15-10.1 57-15-10(17)	(x)
1616	Planning Commission	1.00 Mill	N.D.C.C. §§ 40-48-07 57-15-10(14)	(x)
1617	Planning Commission Comprehensive Study	1.00 Mill	N.D.C.C. §§ 40-48-07 57-15-10(14)	(x) Levy may be in addition to the planning commission 1.00 mill under this section and to the general fund levy for five years to initiate or undertake a comprehensive study
1618	Public Recreation System	2.50 Mills or 8.50 Mills when approved by voters	N.D.C.C. §§ 40-55-08; 40-55-09	(x) Upon vote of electors
1619	Public Building Site, Construction or Furnishings or Urban Renewal Program Participation	5.00 Mills	N.D.C.C. §§ 57-15-44; 21-03-07(5); 57-15-10(22)	(x) Question to discontinue levy shall be submitted to the qualified electors at next regular election upon petition of 25 percent or more of qualified electors voting in last regular city election. Petition may be filed not less than 60 days before election. Levy may not be levied again without majority vote of qualified electors voting on the question at a later regular election
1620	Urban Renewal Projects	None	N.D.C.C. §§ 40-58-08(8); 40-58-15(2)	(x) N.D.C.C. § 57-15-44
1621	Interest and Principal Payments on Bonds Issued for Public Buildings, Improvements, Equipment, etc.	None	N.D.C.C. §§ 21-03-15; 40-34-08	(x) N.D.C.C. § 57-15-10(3)
1622	General Obligation Bonds for Municipal Industrial Development Projects	None	N.D.C.C. § 40-57-19	(x) N.D.C.C. § 57-15-10(3)
1623	Bonds for Purchase of Special Assessment Warrants		N.D.C.C. § 40-27-05	(x)
1624	Construction Fund	5.00 Mills	N.D.C.C. § 57-15-38 years	(x) Upon vote of electors. Not to exceed ten successive
1625	Fire Department Building or Equipment Reserve Fund	5.00 Mills	N.D.C.C. §§ 57-15-42; 57-15-10(20)	(x) Upon approval of 60 percent of those voting on the question. Amount in fund cannot exceed amount produced by a 30.00 mill levy
1626	Fire Department Station	5.00 Mills	N.D.C.C. §§ 21-03-07(5); 40-05-09.1; 57-15-10(20)	(x) Upon vote of electors. (Also see Levy No. 1656 for Cities.)

1600 - City (Continued)				
Levy No.	**Fund Or Purpose**	**Maximum Rate Or Amount**	**Law**	**Remarks** (x) Indicates levies in add. to Gen. Fund Levy
1627	Band	1.00 Mill	N.D.C.C. §§ 57-15-10; 40-37-03	(x) Band established upon 60 percent majority vote of electors. See N.D.C.C. § 40-37-03
1628	Armory or Memorial Hall Maintenance, Repair, Alteration and Reconstruction	2.00 Mills	N.D.C.C. § 40-59-01; 57-15-10(16)	(x) Upon vote of electors
1629	Emergency Medical Service	10.00 Mills	N.D.C.C. § 57-15-51	(x) Upon majority of qualified electors of the city voting on the question. A taxing district that levies a special emergency medical services or ambulance service levy shall ensure that every ambulance service that has portions of its service area in that taxing district receives a portion of the revenue from this tax. See § 23-27-04.7 for allocation to ambulance services.
1630	Programs and Activities for Older Persons	2.00 Mills	N.D.C.C. § 57-15-56; 57-15-06.7(25)	(x) Only if county does not levy for this purpose. Upon a majority vote of qualified electors voting on the question
1631	Insurance Reserve Fund	5.00 Mills	N.D.C.C. §§ 32-12.1-08; 57-15-28.1(2)	(x) May be used for payment of workforce safety and insurance premiums, judgments, and claims of the political subdivision
1632	Judgment for Injury Claim	5.00 Mills	N.D.C.C. §§ 32-12.1-11; 57-15-28.1(3)	(x)
1633	Compromise of Judgment for Injury Claim	None	N.D.C.C. § 32-12.1-12	(x)
1634	Interest and Principal Payments on Bonds Issued to Pay Compromise of Judgment for Injury Claim	None	N.D.C.C. § 32-12.1-14	(x)
1635	Forestry Purposes	2.00 Mills	N.D.C.C. § 57-15-12.1(1)(2)	(x) By board action. Additional 3.00 mills upon approval of majority of voters. Service charge alternative upon approval of majority of qualified electors voting on the question
1636	Weed Control	2.00 Mills plus 2 mills by vote of governing body	N.D.C.C. § 4.1-47-16; 4.1-47-25	(x) Cities of 3,000 population or more additional To be eligible to receive state cost-share dollars, a city must budget an amount equal to the revenue that could be raised by a levy of at least three mills for noxious weed control or eradication.
1637	(Reserved for Future Use)			
1638	Aid for Public Transportation System	5.00 Mills	N.D.C.C. § 57-15-55 57-15-10(25)	(x) Upon majority vote of qualified electors voting on the question
1639	Pension for City Employees	5.00 Mills	N.D.C.C. §§ 40-46-02; 40-05-01(69); 57-15-10(12)	(x)
1640	Discontinuance of Employees' Pension Plan	None	N.D.C.C. § 40-46-25 40-05-01(69)	(x)
1641	To Assist Organized Firemen's Relief Association	.50 Mill	N.D.C.C. § 57-15-43 57-15-10(21)	(x)

1600 - City (Continued)

Levy No.	Fund Or Purpose	Maximum Rate Or Amount	Law	Remarks (x) Indicates levies in add. to Gen. Fund Levy
1642	Alternate Firemen's Relief Association Plan		N.D.C.C. § 18-11-10	(x) The governing body of a city that has adopted this plan shall levy a tax on all taxable property within a city sufficient in amount to equal 8 percent of the current salary of a first class fireman as last determined and approved by the governing body of the city for each active member of the fire department relief association at the time the levy is made
1643	Police Station and Correctional Facility Fund	2.00 Mills	N.D.C.C. §§ 57-15-53; 57-15-10(24)	(x) No further levy to be made while fund equals or exceeds equivalent of 10.00 mills on net taxable value of city
1644	Police Pensions	3.00 Mills	N.D.C.C. §§ 40-45-02; 40-05-01(69); 57-15-10(11)	(x) In cities having established police retirement system based upon actuarial tables
1645	Police Pensions	1.00 Mill	N.D.C.C. § 40-45-01 57-15-10(10)	(x) In cities having population in excess of 5,000 and having organized paid police department
1646	Discontinuance of Police Pension Plan	None	N.D.C.C. § 40-45-27	(x)
1647	Judgments	5.00 Mills	N.D.C.C. §§ 40-43-01; 57-15-10(4)	(x)
1648	Transportation of Public School Students	5.00 Mills or difference between estimated State Transportation Payment to School District and actual cost incurred by district	N.D.C.C. §§ 57-15-55.1 15.1-30-05; 57-15-10(25)	(x) Majority vote of qualified electors voting on the question
1649	Judgments for Property Condemned for Special Improvements	None	N.D.C.C. § 40-22-05	(x) N.D.C.C. § 57-15-10
1650	x x x	x x x	x x x	x x x
1651	Municipal Parking Facilities		N.D.C.C. § 40-60-02(2)	(x)
1652	Aid to Municipal Parking Authority		N.D.C.C. §§ 40-61-03.1; 40-61-10	(x)
1653	Municipal or Regional Airport Authority Deficiency or Expected Deficiency in Principal or Interest Payments on Revenue Bonds for Restrictive Deeds from Federal Government	None	N.D.C.C. § 2-06-10	(x)
1654	Economic, Industrial & Planning Surveys & Career and Technical Education and On-the-Job Training	1.00 Mill	N.D.C.C. §§ 40-57.2-04; 57-15-10(15)	(x) Upon 60 percent majority vote of electors

1600 - City (Continued)

Levy No.	Fund Or Purpose	Maximum Rate Or Amount	Law	Remarks (x) Indicates levies in add. to Gen. Fund Levy
1655	Bridge Construction when Bonded Indebtedness is Exceeded	None	N.D.C.C. § 24-08-07	(x) Also see N.D.C.C. § 24-01-01.1(26)
1656	Contracting for Fire Protection Service	15.00 Mills	N.D.C.C. § 40-05-09.2; 57-15-10(9)	(x) Upon 60 percent majority vote of electors
1657	Plant Pest Control	1.00 Mill for one year	N.D.C.C. §§ 4-33-11; 57-15-28.1(1)	(x) Upon approval of 60 percent of voters voting on question of reimbursing general fund for expenditures for Plant Pest Control
1658	Municipal Arts Council	5.00 Mills	N.D.C.C. §§ 40-38.1-02; 57-15-10(7)	(x) Upon vote of the electors
1659	Railroad Purposes	4.00 Mills	N.D.C.C. §§ 49-17.2-21; 57-15-28.1(4)	(x)
1660	(Reserved for Future Use)			
1661	For Exempt Property's Proportionate Share of Fire Protection Services		N.D.C.C. §§ 57-02-08(10); 57-02-08(11)	(x) N.D.C.C. § 57-15-10(6)
1662	Animal Shelter	.50 Mill	N.D.C.C. §§ 57-15-10(27) 40-05-19	(x) Upon 60 percent of electors voting on question
1663	Job Development Authority	4.00 Mills	N.D.C.C. §§ 40-57.4-04; 57-15-10(28)	(x) Governing body of a city, by resolution, may create or discontinue authority. Hearing must be held. Instead of establishing a job development authority, may contract with an industrial development organization
1664	Programs & Activities for Handicapped Persons	.50 Mill	N.D.C.C. §§ 57-15-10(29); 57-15-60	(x) Levy may be imposed or removed by majority of qualified voters voting on the question
1665	Lease for Court, Correction, and Law Enforcement Facilities	10.00 Mills	N.D.C.C. § 57-15-59	(x) Upon two-thirds vote governing body may enter into lease for term of one year or more, but not to exceed 20 years
1666	Port Authority	4.00 Mills	N.D.C.C. §§ 11-36-14; 57-15-10(31)	(x) In cities for which no levy has been made by a taxing district within the corporate limits of the city
		Unlimited levy for bond principal or interest deficiency if municipality population is over 10,000		(x) Levy on all taxable property in the municipality
1667	Commerce Authority	4.00 Mills	N.D.C.C. § 57-15-10(32)	(x)
		Unlimited levy for bond principal or interest deficiency if political subdivision population is over 10,000		(x) Levy on all taxable property in the political subdivision
1699	Tax Increments		N.D.C.C. § 40-58-20	See Guideline G-34 - Taxation Manual

1700 - City Park District

Levy No.	Fund Or Purpose	Maximum Rate Or Amount	Law	Remarks (x) Indicates levies in add. to Gen. Fund Levy
1701	General Included in General Fund: Public Recreation System Insurance Reserve Employee Health Care Program Forestry Purposes Handicapped Persons Programs and Activities Pest Control	35.00 Mills	N.D.C.C. § 57-15-12; 4-33-11(1); 32-12.1-08	General purposes. See N.D.C.C. §§ 40-49-04; 40-49-06; 40-49-12; 40-55-09; 57-15-12.1. Forestry - additional 3.00 mills upon approval of electors in addition to and not restricted by any mill levy limit. May not exceed mills levied in taxable year 2000 including any additional levy approved by electors; the insurance reserve fund; employee health care program; public recreation system, including any additional levy approved by electors; forestry purposes except any additional levy approved by electors; pest control; handicapped persons programs and activities. May increase to any number of mills approved by a majority of the electors up to a maximum of 35.00 mills
1702	(Reserved for Future Use)			
	Interim Fund	75 percent of current appropriation	N.D.C.C. § 57-15-27	For carrying over to next fiscal year to meet cash requirements
1704	Interest and Principal Payments on Bonds Issued for Park Development	None	N.D.C.C. § 21-03-15	(x) N.D.C.C. § 57-15-12
1705	Special Assessment on Park Property	None	N.D.C.C. §§ 40-23-07; 57-15-41; 21-03-07(10)	(x)
1706	(Reserved for Future Use)			
1707	(Reserved for Future Use)			
1708	(Reserved for Future Use)			
1709	Employees' Pension	Tax not exceeding the amount necessary for district's annual contribution to employees' pension fund	N.D.C.C. §§ 40-49-22; 57-15-12.2(1)	(x)
1710	Old Age and Survivors Insurance, Federal Social Security, and Employee Retirement	30.00 Mills	N.D.C.C. §§ 52-09-07(3); 52-09-08, 57-15-28.1(5)	(x) Also see N.D.C.C. § 52-09-27 and ch. 52-10
1711	Railroad Purposes	4.00 Mills	N.D.C.C. §§ 49-17.2-21; 57-15-28.1(4)	(x)
1712	(Reserved for Future Use)			
1713	(Reserved for Future Use)			
1714	Judgment for Injury Claim	5.00 Mills	N.D.C.C. §§ 32-12.1-11; 57-15-28.1(3)	(x)
1715	Compromise of Judgment for Injury Claim	None	N.D.C.C. § 32-12.1-12	(x)
1716	Interest and Principal Payments on Bonds Issued to Pay Compromise of Judgment for Injury Claim	None	N.D.C.C. § 32-12.1-14	(x)

1700 - City Park District (Continued)

Levy No.	Fund Or Purpose	Maximum Rate Or Amount	Law	Remarks (x) Indicates levies in add. to Gen. Fund Levy
1717	Forestry Purposes (additional levy only)	3.00 Mills	N.D.C.C. §§ 57-15-12.1; 57-15-12.2(3)	(x) By Board action, upon approval of majority of voters – service charge alternative upon approval of majority of qualified electors voting on the question
1718	(Reserved for Future Use)			
1719	Parks & Recreational Facilities	5.00 Mills	N.D.C.C. §§ 57-15-12.2(3); 57-15-12.3	(x) Levied by Board action. To discontinue, it must be submitted to qualified electors. If electors vote to discontinue levy, it may not again be levied without majority vote of qualified electors voting on the question
1720	(Reserved for Future Use)			
1721	(Reserved for Future Use)			
	Note:		N.D.C.C. § 40-49.1-03(3)	A combined board of park commissioners may levy taxes within the portion of the combined park district outside city limits within the limitations provided by law for county park commissioners and may levy taxes within the portion of the combined park district within city limits within the limitations provided by law for city park districts. The plan must be approved by the electorate in each affected city and county. Effective for taxable years beginning after December 31, 2005.

MIDA BONDS

Altru Health Systems
American Crystal Sugar Company
American Lutheran Homes, Inc.

Baptist Home, Inc.
Barnes County Senior Cit. Council
Barrington Manor
Basin Electric Power Cooperative
Benedictine Living Communities, Inc.
Benedictine Assisted Living, Inc.
Bethany Homes
Bethel Lutheran Home
Better Living for Garrison
Beulah Community Nursing Home
BHS Long Term Care, Inc.
BK Apartments Limited Partnership
Bismarck Art & Galleries Association
Bismarck Cancer Center
Bismarck State College Foundation
Bluestem Center for the Arts
Bridgeview Estates, Inc.
Broadway Park
Burleigh County 4-H Council

C. & W. Manhattan Associates
Cargill, Incorporated
Cass-Clay Creamery, Inc.
Catholic Diocese of Fargo
Catholic Health Initiatives
Cavalier County Memorial Hospital
Century Park
Christian Unity Medical Center
Cloverdale Foods Company
Community Action Agency Reg. 6
Cooperative Power Assn.
Cooperstown Medical Center

Dacotah Foundation
Dakota Hospital
Dakota Medical Foundation
Dickinson State Univ. Foundation
Diocese of Fargo (Shanley H.S.)
Dow Chemical Company

Easter Seals Goodwill ND, Inc.
Elm Crest Manor
Essentia Health Obligated Group
Evang. Lutheran Good Sam. Society
Evergreen Housing

Fargo-Moorhead YMCA
Franciscan Sisters Health Care, Inc.
Fraser, Ltd.

Gardner Apartments
Garrison Memorial Hospital
Good Samaritan Hospital Assoc.
Good Shepherd Home
Grand Forks Homes, Inc.
Great River Energy
Griggs County Hospital
Gwinner Estates

Harvest Board LLC
Hazen Memorial Hospital Association
Heartland Care Center
Heartview Foundation
Hebron Brick Company (Dacco Inc.)
Heritage Centre of Jamestown, Inc.
Hillsboro Manor Housing, Inc.
Hillsboro Medical Center
Hilltop Home of Comfort, Inc.
Hospice of the Red River Valley
Housing, Industry Training, Inc.

Innovis Health, LLC
International Centre
Jamestown College
Kelly Inns, Ltd.
Knife River Care Center

Lake Agassiz Housing Corporation
Lake Region Lutheran Home
Lantis Enterprises (Hillcrest Care)
Linton Hospital
LM Glasfiber
Lutheran Charity Association
Lutheran Health Systems
Lutheran Home of the Good Shepherd
Lutheran Hospitals and Homes
Lutheran Social Services Housing
Lutheran Sunset Home

Maple Manor Care Center, Inc.
Marian Manor HealthCare Center
Marillac Manor, Inc.
MDU Resources Group, Inc.
MDI Limited Partnership
Medcenter One, Inc.
Medcenter One Living Centers
Mercy Hospital of Williston
Meritcare Hospital
Metro Sports Foundation
Minn-Dak Farmers Cooperative
Minnesota Power, Inc.
Minot Family YMCA
Missouri Slope Lutheran CC Found
Missouri Slope Lutheran Care Center
Missouri Valley Family YMCA
Mountrail Bethel Home, Inc.

Nash-Finch Company
Noodles by Leonardo, Inc.
North Dakota Association of Counties
North Dakota Cowboy Hall of Fame
North Dakota Hospital Assoc.
NDSU Development Foundation
NDSU Research & Technology Park
Northlands Rescue Mission, Inc.
Northwestern Public Service Co.
Northwood Deaconess Health Center

Oak Grove Lutheran School
Omniquip International, Inc.
Otter Tail Corporation
Owens Industries, Inc.
Pan-O-Gold Baking Co.
Parkside Lutheran Home
Pembilier Nursing Center
Pembina County Memorial Hospital
Plains Art Museum
Prairie Public Broadcasting, Inc.
Pride, Inc.
Pride Wilton
Rosewood Court, Inc.

St. Alexius Medical Center
St. Aloisius
St. Joseph's Hospital
St. Luke's Home
St. Luke's Hospitals of Fargo
St. Vincent's Nursing Home, Inc.
Sisters of the Presentation BVM
Siouxland Dressed Beef Co.
Special Olympics North Dakota
Southeastern ND Comm Action Ag
Southwest Healthcare Services
Square Butte Electric Cooperative
Streamline Foundation
Sunset Care Corporation
Supervalue, Inc.

Tharaldson Ethanol Plant I, LLC
Theodore Roosevelt Medora Found.
Town Centre Square Housing
Towner County Medical Center, Inc.
Tractor & Equipment Co.
Trinity Bible College
Trinity Medical Center
Trollwood Land Limited Partnership
Trollwood Square
Trollwood Village

UND Aerospace Foundation
UND Research Foundation
UND Sports Facilities, Inc.
United Hospital (Altru Health)
United Power Association
Unity Medical Center
University of Mary
Urban Plains Center

Valley Homes and Services
Valley Memorial Homes
Villa Nazareth
Walhalla Community Hospital Assoc
West River Health Services
West River Regional Medical Center
Western Health Network

The discussion herein is not intended to be legal advice, nor is it a substitute for obtaining legal advice from a licensed attorney.