

# MUNICIPAL GOVERNMENT

## CHAPTER 312

### HOUSE BILL NO. 1391

(Representatives Brabandt, Beadle, Froseth)  
(Senator Larsen)

AN ACT to amend and reenact section 40-08-05 of the North Dakota Century Code, relating to qualifications of city council members.

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

**SECTION 1. AMENDMENT.** Section 40-08-05 of the North Dakota Century Code is amended and reenacted as follows:

#### **40-08-05. Qualifications of council members.**

~~A person~~An individual is not eligible to the office of council member if the ~~person~~:

1. ~~Is~~individual is not a qualified elector of and resident within the ward for which the ~~person~~individual was elected, except that in cities where council members are elected at large and not required to be a resident of the ward for which the ~~person~~individual is elected pursuant to section 40-08-04.2, the ~~person~~individual must be a qualified elector of and a resident within the city; ~~or~~
2. ~~Has been convicted of malfeasance, bribery, or other corrupt practice or crime.~~

Approved April 2, 2013  
Filed April 2, 2013

## CHAPTER 313

### HOUSE BILL NO. 1346

(Representatives Hunskor, Drovdal, Guggisberg)  
(Senators Oehlke, Schaible, O'Connell)

AN ACT to amend and reenact subsection 2 of section 40-08-09 and section 40-09-17 of the North Dakota Century Code, relating to permitting a volunteer firefighter or ambulance crew member receiving compensation from a city to serve as a member of the city council or city commission.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 40-08-09 of the North Dakota Century Code is amended and reenacted as follows:

2. A member of the city council may serve as an ambulance ~~driver, crew member~~ employed by the city or under a contract with the city, and be remunerated for those services or as a volunteer firefighter or ambulance crew member for the city and be compensated for attending training or responding to emergency calls or may be reimbursed for expenses incurred in attending training or in responding to emergency calls.

**SECTION 2. AMENDMENT.** Section 40-09-17 of the North Dakota Century Code is amended and reenacted as follows:

#### **40-09-17. Restrictions on members of board.**

~~No~~

1. Except as provided in subsection 2, a member of the board of city commissioners ~~shall~~may not:
4. a. Be eligible to any other office the salary of which is payable out of the city treasury;
2. b. Hold any other office under the city government; and
3. c. Hold a position of remuneration in the employment of the city.
2. A member of a board of city commissioners may serve as an ambulance crew member employed by the city or under a contract with the city and be remunerated for those services or as a volunteer firefighter or ambulance crew member for the city and be compensated for attending training or responding to emergency calls or may be reimbursed for expenses incurred in attending training or in responding to emergency calls.

Approved March 27, 2013  
Filed March 27, 2013

## CHAPTER 314

### HOUSE BILL NO. 1468

(Representatives Beadle, Brabandt, Hanson, Louser, Steiner)  
(Senator Laffen)

AN ACT to amend and reenact subsection 2 of section 40-57-02 of the North Dakota Century Code, relating to authorized municipal industrial development bond projects.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 40-57-02 of the North Dakota Century Code is amended and reenacted as follows:

2. "Project" means any real property, buildings, and improvements on real property ~~or, including water and sewer lines and other underground infrastructure, and the buildings thereon on the real property,~~ and any equipment located on the real property or in the buildings, or elsewhere, or personal property, including working capital, which is used or useful in connection with a revenue-producing enterprise, or any combination of two or more revenue-producing enterprises, engaged or to be engaged in:
  - a. Assembling, fabricating, manufacturing, mixing, or processing of any agricultural, mineral, or manufactured products, or any combination thereof.
  - b. Storing, warehousing, distributing, or selling any products of agriculture, mining, or manufacture.
  - c. Providing child care facilities or hospital, nursing home, or other health care facilities and service.
  - d. Improvements or equipment used or to be used for the abatement or control of environmental pollution in connection with any new or existing revenue-producing enterprise.
  - e. Public career and technical education.
  - f. Any other industry or business not prohibited by the constitution or laws of the state of North Dakota.

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

Approved April 3, 2013  
Filed April 3, 2013

## CHAPTER 315

### HOUSE BILL NO. 1046

(Legislative Management)  
(Taxation Committee)

AN ACT to amend and reenact section 40-57.1-03 of the North Dakota Century Code, relating to city or county authority to reduce or revoke a previously granted property tax exemption or option to make payments in lieu of taxes; and to provide an effective date.

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

<sup>164</sup> **SECTION 1. AMENDMENT.** Section 40-57.1-03 of the North Dakota Century Code is amended and reenacted as follows:

#### **40-57.1-03. Municipality's authority to grant or revoke tax exemption or payments in lieu of taxes - Notice to competitors - Limitations.**

1. After negotiation with a potential project operator, a municipality may grant a partial or complete exemption from ad valorem taxation on all buildings, structures, fixtures, and improvements used in or necessary to the operation of a project for a period not exceeding five years from the date of commencement of project operations. A municipality may also grant a partial or complete exemption from ad valorem taxation on buildings, structures, fixtures, and improvements used in or necessary to the operation of a project that produces or manufactures a product from agricultural commodities for all or part of the sixth year through the tenth year from the date of commencement of project operations.
2. In addition to, or in lieu of, a property tax exemption granted under this section, a municipality may establish an amount due as payments in lieu of ad valorem taxes on buildings, structures, fixtures, and improvements used in the operation of a project. The governing body of the municipality shall designate the amount of the payments for each year and the beginning year and the concluding year for payments in lieu of taxes, but the option to make payments in lieu of taxes under this section may not extend beyond the twentieth year from the date of commencement of project operations. To establish the amount of payments in lieu of taxes, the governing body of the municipality may use actual or estimated levels of assessment and taxation or may establish payment amounts based on other factors. The governing body of the municipality may designate different amounts of payments in lieu of taxes in different years to recognize future project expansion plans or other considerations.
3. By November first of each year, the municipality that granted the option to make payments in lieu of taxes shall certify to the county auditor the amount of payments in lieu of taxes due under this section in the following year. After receiving the statement from the municipality, the county auditor shall certify

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<sup>164</sup> Section 40-57.1-03 was also amended by section 1 of Senate Bill No. 2314, chapter 316.

the payments in lieu of taxes to the county treasurer for collection at the time when, and in the manner in which, ad valorem taxes must be certified. Upon receipt by the county treasurer of the amount of payments in lieu of taxes under this section, the county treasurer shall apportion and distribute that amount to taxing districts on the basis on which the general real estate tax levy is apportioned and distributed. The municipality may enter into a written agreement with the local school district and any other local taxing districts that wish to enter the agreement for an alternate method of apportionment and distribution. If such an agreement is entered into, the county treasurer shall apportion and distribute the money according to the written agreement. All provisions of law relating to enforcement, administration, collection, penalties, and delinquency proceedings for ad valorem taxes apply to payments in lieu of taxes under this section. However, the discount for early payment of taxes under section 57-20-09 does not apply to payments in lieu of taxes under this section. The buildings, structures, fixtures, and improvements comprising a project for which payments in lieu of taxes are allowed under this section must be excluded from the valuation of property in the taxing district for purposes of determining the mill rate for the taxing district.

4. Negotiations with potential project operators for tax exemption or payments in lieu of taxes must be carried on by the city council or commission if the project is proposed to be located within the boundaries of a city, and by the board of county commissioners if the project is proposed to be located outside the corporate limits of any city. A partial exemption must be stated as a percentage of the total ad valorem taxes assessed against the property. Unless the governing body of the municipality determines that there is no existing business within the municipality for which the potential project would be a competitor, the potential project operator shall publish two notices to competitors, the form of which must be prescribed by the tax commissioner, of the application for tax exemption or payments in lieu of taxes in the official newspaper of the municipality at least one week apart. The publications must be completed not less than fifteen nor more than thirty days before the governing body of the municipality is to consider the application. The municipality shall determine whether the granting of the exemption or payments in lieu of taxes, or both, is in the best interest of the municipality, and if it so determines, shall give its approval.
5. By motion approved by the governing body of the municipality before the beginning of a taxable year for which a property tax exemption or the option to make payments in lieu of taxes under this section previously has been approved by the governing body, a property tax exemption may be revoked or reduced and payments in lieu of taxes may be revoked or increased for that taxable year for reasons specified in a negotiated agreement or if the governing body finds that:
  - a. Information provided by the project operator during the negotiation and deliberation of a property tax exemption or the option to make payments in lieu of taxes has proven to be inaccurate or untrue;
  - b. Use of the property by the project operator does not comply with the reasonable expectations of the governing body at the time the property tax exemption or the option to make payments in lieu of taxes was approved;
  - c. The property has been improved to a substantially greater extent than the governing body reasonably anticipated at the time the property tax

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exemption or the option to make payments in lieu of taxes was approved:  
or

d. There has been a change of ownership of the property since the property tax exemption or the option to make payments in lieu of taxes was approved.

6. During the negotiation and deliberation of a property tax exemption or the option to make payments in lieu of taxes under this chapter, a municipality shall include, as nonvoting ex officio members of its governing body, a representative appointed by the school board of each school district affected by the proposed action and a representative appointed by the board of township supervisors of each township affected by the proposed action.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2013, regardless of the date a property tax exemption or the option to make payments in lieu of taxes was approved.

Approved April 10, 2013  
Filed April 10, 2013

## CHAPTER 316

### SENATE BILL NO. 2314

(Senators Grindberg, Dotzenrod, Oehlke)  
(Representatives Belter, Streyle, Williams)

AN ACT to amend and reenact section 40-57.1-03 of the North Dakota Century Code, relating to determination of whether a project is a primary sector or retail sector business before a city or county may grant a property tax exemption for that project; to provide for a legislative management study; and to provide an effective date.

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

<sup>165</sup> **SECTION 1. AMENDMENT.** Section 40-57.1-03 of the North Dakota Century Code is amended and reenacted as follows:

#### **40-57.1-03. Municipality's authority to grant tax exemption or payments in lieu of taxes - Notice to competitors - Limitations.**

1. After negotiation with a potential project operator, a municipality may grant a partial or complete exemption from ad valorem taxation on all buildings, structures, fixtures, and improvements used in or necessary to the operation of a project for a period not exceeding five years from the date of commencement of project operations. A municipality may also grant a partial or complete exemption from ad valorem taxation on buildings, structures, fixtures, and improvements used in or necessary to the operation of a project that produces or manufactures a product from agricultural commodities for all or part of the sixth year through the tenth year from the date of commencement of project operations. Before a municipality may grant a partial or complete exemption from ad valorem taxation under this section:
  - a. The governing body of the municipality must have received the certification of the department of commerce division of economic development and finance that the project is a primary sector business, as defined in subsection 3 of section 40-57.1-02; or
  - b. The city council or commission, if the project is proposed to be located within the boundaries of a city of fewer than forty thousand population, or the board of county commissioners, of a county of fewer than forty thousand population and if the project is proposed to be located in the county but outside the corporate limits of any city, may grant a partial or complete exemption from ad valorem taxation for a project operating in the retail sector if that governing body has obtained the approval of exemption of property under this subdivision from a majority of the qualified electors of the city or county voting on the question at a city or county election held in conjunction with a statewide general election and if that governing body has established by resolution or ordinance the criteria that will be applied by the governing body to determine whether it is appropriate to grant a

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<sup>165</sup> Section 40-57.1-03 was also amended by section 1 of House Bill No. 1046, chapter 315.

partial or complete exemption from ad valorem taxation under this section for a project operating in the retail sector. The ballot for elector approval of exemption of property under this subdivision must present the question at the election for a yes or no vote on the question:

Shall the governing body of [name of county or city] be empowered to grant property tax exemptions upon application of new or expanding retail sector businesses?

Only a governing body of a city or county that meets the requirements of this subdivision may grant a partial or complete exemption from ad valorem taxation under this section for a project operating in the retail sector. Criteria established by the governing body under this subdivision, at a minimum, must be intended to require:

- (1) Evaluation of the potential positive or adverse consequences for existing retail sector businesses in the municipality from granting the exemption;
  - (2) Evaluation of the short-term and long-term effects for other property taxpayers in the municipality from granting the exemption;
  - (3) A written agreement with the project operator, including performance requirements for which the exemption may be terminated by the governing body of the municipality if those requirements are not met; and
  - (4) Evaluation of whether the project operator would locate the project within the municipality without the exemption.
2. In addition to, or in lieu of, a property tax exemption granted under this section, a municipality may establish an amount due as payments in lieu of ad valorem taxes on buildings, structures, fixtures, and improvements used in the operation of a project. The governing body of the municipality shall designate the amount of the payments for each year and the beginning year and the concluding year for payments in lieu of taxes, but the option to make payments in lieu of taxes under this section may not extend beyond the twentieth year from the date of commencement of project operations. To establish the amount of payments in lieu of taxes, the governing body of the municipality may use actual or estimated levels of assessment and taxation or may establish payment amounts based on other factors. The governing body of the municipality may designate different amounts of payments in lieu of taxes in different years to recognize future project expansion plans or other considerations.
3. By November first of each year, the municipality that granted the option to make payments in lieu of taxes shall certify to the county auditor the amount of payments in lieu of taxes due under this section in the following year. After receiving the statement from the municipality, the county auditor shall certify the payments in lieu of taxes to the county treasurer for collection at the time when, and in the manner in which, ad valorem taxes must be certified. Upon receipt by the county treasurer of the amount of payments in lieu of taxes under this section, the county treasurer shall apportion and distribute that amount to taxing districts on the basis on which the general real estate tax levy is apportioned and distributed. The municipality may enter into a written

agreement with the local school district and any other local taxing districts that wish to enter the agreement for an alternate method of apportionment and distribution. If such an agreement is entered into, the county treasurer shall apportion and distribute the money according to the written agreement. All provisions of law relating to enforcement, administration, collection, penalties, and delinquency proceedings for ad valorem taxes apply to payments in lieu of taxes under this section. However, the discount for early payment of taxes under section 57-20-09 does not apply to payments in lieu of taxes under this section. The buildings, structures, fixtures, and improvements comprising a project for which payments in lieu of taxes are allowed under this section must be excluded from the valuation of property in the taxing district for purposes of determining the mill rate for the taxing district.

4. Negotiations with potential project operators for tax exemption or payments in lieu of taxes must be carried on by the city council or commission if the project is proposed to be located within the boundaries of a city, and by the board of county commissioners if the project is proposed to be located outside the corporate limits of any city. A partial exemption must be stated as a percentage of the total ad valorem taxes assessed against the property. Unless the governing body of the municipality determines that there is no existing business within the municipality for which the potential project would be a competitor, the potential project operator shall publish two notices to competitors, the form of which must be prescribed by the tax commissioner, of the application for tax exemption or payments in lieu of taxes in the official newspaper of the municipality at least one week apart. The publications must be completed not less than fifteen nor more than thirty days before the governing body of the municipality is to consider the application. The municipality shall determine whether the granting of the exemption or payments in lieu of taxes, or both, is in the best interest of the municipality, and if it so determines, shall give its approval.
5. During the negotiation and deliberation of a property tax exemption or the option to make payments in lieu of taxes under this chapter, a municipality shall include, as nonvoting ex officio members of its governing body, a representative appointed by the school board of each school district affected by the proposed action and a representative appointed by the board of township supervisors of each township affected by the proposed action.
6. A city or county may not supersede or expand the provisions of this section under home rule authority.

**SECTION 2. LEGISLATIVE MANAGEMENT STUDY.** During the 2013-14 interim, the legislative management shall study methods to assure that an accurate and reliable means is developed to measure effectiveness and accountability of property tax exemptions and other economic development incentives granted by cities and counties and to determine whether other taxpayers in the city or county ultimately derive a measurable benefit from granting of the incentives. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for property tax exemptions granted by a municipality to initially become effective for taxable years beginning after December 31, 2014.

Approved April 15, 2013  
Filed April 16, 2013

## CHAPTER 317

### HOUSE BILL NO. 1166

(Representative Keiser)  
(Senator Cook)

AN ACT to amend and reenact subsection 2 of section 40-63-04 of the North Dakota Century Code, relating to the business or investment income tax exemption for the purchase, lease, or rehabilitation of property within a renaissance zone; and to provide an effective date.

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

<sup>166</sup> **SECTION 1. AMENDMENT.** Subsection 2 of section 40-63-04 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~Any~~<sup>A</sup> taxpayer that purchases, leases, rehabilitates, or makes leasehold improvements to residential, public utility infrastructure, or commercial property for any business or investment purpose as a zone project is exempt from ~~any~~ tax on income derived from the business or investment locations within the zone for five taxable years, beginning with the date of purchase, lease, or completion of rehabilitation.
  - a. The maximum amount of income that a taxpayer may exempt from tax under this subsection for any taxable year is five hundred thousand dollars. The limitation in this subdivision applies to the sum of the exempt income derived from the taxpayer's business and investment interests in all zone projects.
  - b. If a zone project consists of a physical expansion of an existing building owned and used by the taxpayer for business or investment purposes, the amount of income exempt from tax under this subsection is limited to an amount equal to the income derived from the business, or from the investment use of the building, during the taxable year multiplied by a ratio equal to the square footage added by the expansion divided by the total square footage of the building after expansion.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for zone projects approved after July 31, 2013.

Approved April 24, 2013  
Filed April 24, 2013

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<sup>166</sup> Section 40-63-04 was also amended by section 3 of Senate Bill No. 2325, chapter 449.