

15.1014.01000

**FISCAL NOTE STATEMENT**

Senate Bill or Resolution No. SB 2375

This bill or resolution appears to affect revenues, expenditures, or fiscal liability of counties, cities, school districts, or townships. However, no state agency has primary responsibility for compiling and maintaining the information necessary for the proper preparation of a fiscal note regarding this bill or resolution. Pursuant to Joint Rule 502, this statement meets the fiscal note requirement.

Sheila Sandness  
Senior Fiscal Analyst

2015 SENATE POLITICAL SUBDIVISIONS

SB 2375

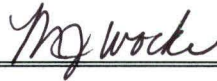
# 2015 SENATE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee Red River Room, State Capitol

SB 2375  
2/5/2015  
Job Number 23279

- Subcommittee  
 Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

Relating to a formation of a community facility district for public improvements

### Minutes:

Written testimony #1- Senator Bekkedahl  
Written testimony #2- Jeff Zaring  
Written testimony #3- Carter Froelich  
Written testimony #4- Steve Iverson  
Written testimony #5- Bonnie Staiger  
Written testimony #6- Eric Volk

**Chairman Burckhard** opened the hearing on SB 2375. All senators were present.

**Senator Bekkedahl** sponsor and he introduced the last bill submitted to this committee before the deadline and number two for bringing the longest bill submitted to this committee before the deadline. (Written testimony #1) (:30-5:35)

**Senator Judy Lee** I remember what was going on in Williston and there were much smaller impacts but certainly impacts in my area as well with residential developments for example that had the services in and the houses weren't being built. One of the responses after that was there was a much higher partnership payment, bonding from the City of West Fargo for example at 40%, so that the developer had a lot of skin into the game. So as a result the balance on special assessments was less to the person who was buying the property. The other thing is we are unique in North Dakota in assuming special assessments. National lenders say what when somebody is applying for a loan and then you say it cost this much but really its more because you have to pay for the water and sewer line. So, that background is the basis of my question which is, how about if you just don't publicly finance but expect it to be part of the purchase price of the property that the developer is developing?

**Senator Bekkedahl** (6:36-9:28) That is exactly what we're doing right now and have done since that 1982 bust situation. The City of Williston has now started to do this as well. But the City of Williston said we will not do special assessments for private development. We would get the infrastructure to the development area as long as it's in a place we can get it to cost effectively. What this is intending to do is continue to keep the burden off the back of the local citizens and the tax base and place it into a bond market that is solely at the

burden of the property owner or the developers making the project. The intent is to get them into a lower capital bond market for these improvement costs.

**Senator Anderson** How does this differ from the Industrial Development Revenue Bond approach?

**Senator Bekkedahl** I am assuming you're talking about the Municipal Industrial Development Bonds, the MIDA bonds. We've used those in Williston, we just used those on a housing project that was part of the Essential Housing Workforce and part was funded through the HIFF program as well. The MIDA bond financing the city is not on the hook for any of those development bonds. You do get a lower interest rate, you don't get the tax exempt rate, but you get a lower interest rate on those as I believe. But there are limits to the MIDA bonds in terms of how they are used for housing and also limits in the MIDA bond for how much you can procure for your community. I think there is dollar limits. I don't think this program has upper dollar limits as part utilization but I thought there was limitations on the dollar amounts of MIDA bonds that can be let by a community. This is designed to pattern off that.

**Jeff Zarling** (11:49-22:17) Written testimony # 2 (Large handout and booklet) Owner of Dallas Solutions Group. I stand today in support of the passage of SB 2375.

**Carter Froelich** (22:35-32:33) Managing Principle of the Development Plan and Financing Group. Written testimony # 3.

**Chairman Burckhard** Mr. Frohlich, could this be a tool for economic development corporations?

**Mr. Froelich** I think it could. It would be used as a supplement to economic development in terms of putting in the infrastructure. Not being fully vetted in all of the various mechanisms that we have currently in the state, I would have to learn more about that. The other thing I'd like everybody to know is that I am not an attorney, I'm a recovering CPA.

**Senator Anderson** If this district is established in a county and it covers a township or a city, is that property then in both taxing districts, out of the county township, city or just in this taxing district?

**Carter Froelich** The way the bill is structured is that it would be in one or the other. We would either be within the district would be formed through an action of the county, or alternatively it would be formed through an action of the city. We hadn't really contemplated where it would straddle the lines so in other words if I was in an unincorporated area, we would have to go to the county for their approval to establish the district. If it was in an incorporated areas of the city, we would have to talk to them or it could perhaps be associated with an annexation into a city at which point the district would not be formed until it is actually and potentially the city.

**Senator Anderson** Explain to me how it works if this housing development now has a 1,000 kids in it, and how the school district gets their money when it's no longer in the taxing district that its county?

**Carter Froelich** If I understand your question correctly, the district would finance infrastructure that infrastructure would support development of homes, residents would move in and there would be an impact on the schools if I am correcting you. The schools would continue, and the only thing we would be doing is placing an additional assessment for tax on the area included in within the boundaries of the district. All other revenue sources that the cities, counties and state typically collects, school districts would continue to be collected and all the monies would go to the appropriate agencies as business as usual.

**Senator Anderson** If I understand this, then this taxing district would tell the county auditor that I need so many dollars to pay my bonds and that would be added on to the taxes in that particular taxing district and it would be an addition to all the other taxes they would ordinarily pay.

**Carter Froelich** that is correct.

**Senator Dotzenrod** On page 7, line 14 there is a term owner. I understand in line 17 the word owners because this is the section that has the order forming the district. So, you have the owners, the election among the owners who would be the qualified electors in this district, but, the term owner on 14, who is that, is this the district developer? I don't know if I understand it correctly.

**Carter Froelich** That is correct.

**Steven Iverson** (37:10-40:34) Here on behalf of myself and my company is L2H Development, in support of SB 2375. Written testimony # 4.

**Chairman Burckhard** Does this contribute to urban sprawl in any way do you think or no?

**Steven Iverson** I don't think that is a yes or a no answer. Potentially, any time you do land development converting farm land or vacant land into residential developments, in largely rural areas that we live in, sprawl is a potential unintended consequence. I think to address sprawl you had better served at looking and working with municipalities that you're operating in. They will control that better and do smart growth and not allow leap frogger, or sprawl development. Of course just inherent to the ability of doing development it may happen but it's not going to exacerbate or add to the problem.

**Bonnie Staiger** (42:13-44:43) Written testimony # 5. Representing ACEC. We have struggled with this bill and we are standing in opposition. We want especially Senator Bekkedahl to know that our opposition relates to some technical issues and not necessarily the substance or the ultimate end of this bill. We have struggled to try to wrap ourselves around it as I am sure others have as well. It was not easy or wasn't possible for us to gather up all of the random thoughts that we had into some kind of formal testimony. However, we did find some technical issues that we feel and if we were going to support the bill at all, we would need to have these included and I think they would help the bill. (Referenced her handout)

**Senator Anderson** Why do you see that this bill which just creates a different political subdivision within North Dakota would not already come under all the other requirements we have for bidding, architectural use, engineers and so forth? Why do you think that this might be different?

**Bonnie Staiger** We don't feel that is the issue. The bidding requirements in everything are already defined either in the bill or in other parts of the statute. We just want to clarify the roles of those people that are involved in the mechanics of getting these started. Although, I must say, there is a concern among some folks in the ACEC, that this does create another political subdivision. That is not a universal concern and that is why we did not bring that forward as testimony.

**Senator Anderson** I can't match up the pages and the row numbers with anything that makes any sense to me. Maybe we have to look at that a little more. For example, the second one says insert in page 2, row 3. My page 2, row 3 says 'general obligations bonds' Section 40:64-19 and that is secured by a pledge of taxes levied by the district. I don't see where engineer's goes in there.

**Bonnie Staiger** The definitions in Section 1 are listed alphabetically, and so I am suggesting that 'insert on page 2 prior to row 3, would be the definition of engineer. So, that it remains in alphabetical order.

**Senator Anderson** I guess I don't understand when we have legislation that talks about cities or counties or other political subdivisions, we don't define engineers there. Engineers are defined someplace else. I don't understand where you're coming from with those issues.

**Bonnie Staiger** The bill refers to designing, drawing up plans, engineering services. It refers to landscape services, and so we felt that it was important for these definitions to be referenced in this new code. It is not uncommon for definitions in the code to be repeated as necessary.

**Senator Bekkedahl** This is one of the consequences of taking legislation that is developed nationally over multi states, and trying to bring it in to our regime and I fully expect a lot of opposition to certain parts of the bill because of that. I am totally amenable to making the changes that bring it in to congruence with North Dakota state law, and the people that you represent. This was never intended to displace or replace water districts. These entities would rely on the water districts to supply the water to these development area be that a city, a county or a rural resource district. I am trying to work the bill the best I can.

**Eric Volk** (49:16-55:43) Executive Director of North Dakota Rural Water; Representing 28 rural water systems and 4 tribal water systems. We are not opposed to better or new ways of financing public improvements and just had a couple of issues with some of the water language that was included, that Senator Bekkedahl has mentioned several times. Written testimony # 6.

**Senator Bekkedahl** The real intent of this was if this is an extension of the city and the city has already serving that water area, the city is the provider for the water to the district. They don't make their own water systems, they don't sell their own water; they don't infringe upon that at all. If it is in a rural district area, a water resource district, they have entertained in discussions about whether they can provide the water which would be integral to even moving forward. If you don't have water to these things, it's not going to happen. So that discussion has to happen and there is nobody trying to displace that and hopefully the rural water resource district would sell the water to these developments if it's in their territorial area. All of that I think is the intent of the bill. So nobody is trying to displace or remove, or remove any jurisdictions. I am fully aware of all the issues having dealt with WAS, and the City of Williston. We're purchasing hookups right now from rural water, our annexation area at a cost of \$4500 per hook-up. Then having to come in and actually put in higher level service to that area because rural water doesn't put in service lines for fire, so it's a significant cost to us and we worked through that, we are on board with it, and I hope we can do the same thing here. Hopefully if you can work with these people, they are the experts on this language, we can work that out.

**Mike Dwyer** Representing North Dakota Water Resource Districts and we are in the very same position as the previous witness. Several water resource districts sponsor rural water systems and we have an attorney involved in our association, Sean Fredricks who has traded e-mails back and forth with the sponsors and we certainly intend to come up with or hope to come up with amendments that protect the service areas of these water systems and we are in the very same position. We want to make sure that we work out amendments that do the right thing for the water systems and allow this to go forward if that is your choice.

**Chairman Burckhard** closed the hearing on SB 2175.

# 2015 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee  
Red River Room, State Capitol

SB 2375  
2/19/2015  
Job Number 24121

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Mary Jo Wocken*

## Explanation or reason for introduction of bill/resolution:

Relating to a formation of a community facility district for public improvements

## Minutes:

"Click to enter attachment information."

**Chairman Burckhard** opened the committee for discussion on SB 2375. All senators were present.

**Chairman Burckhard** Would tomorrow be a better time to finish this up?

**Senator Bekkedahl** That would be fine with me. I was just explaining to the committee last Friday that I took all the information to John Walstad the code reviser at the Legislative Council, on re-writing that and he has literally spent the whole week on it. In between going to other committee hearings and things he has to do, as well. So, Mr. Walstad promised Senator Bekkedahl yesterday afternoon he would have it done last night, get it to the Legislative Council this morning for final review, and then out to us later in the morning. We can do it this afternoon or tomorrow morning.

**Chairman Burckhard** Lets meet tomorrow at 10:00 AM for the last bill. The committee was dismissed until 2.20.15.



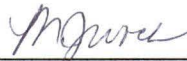
# 2015 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee  
Red River Room, State Capitol

SB 2375  
2/20/2015  
24213

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to construction contracts

## Minutes:

Written testimony #1 15.1014.01003 Hoghouse draft  
Written testimony #2 15.1014.01001 John Walstad

**Chairman Burckhard** opened the committee for discussion on SB 2375. All senators were present.

**Senator Bekkedahl** brought forward his amendments for SB 2375. Your first packet that has a large paperclip on it is the amendments that John Walstad (Testimony #2) went through on the document as requested. This is just for you to know that it was made. We're not going to go through this packet. What I would like to go through today to follow up on that is the second packet which is only paper clipped together, it should say Hoghouse draft or Hoghouse amendments (Testimony #1) on it. When I spoke to Mr. Walstad this morning he said there are edits contained in this document that are not in proper legislative council form because when they send documents for us to look at and change, they are sending a pdf file not editable documents. They want to control that issue. So there will be changes in this that essentially are the changes that the water boards wanted, changes that the city attorneys, bond attorney's wanted and any change that we had in testimony that said we don't like this incorporated into this document now.

**Mr. Walstad** said with the permission of the chairman we could go through this section by section and have a committee discussion. The formal written language would be completed by this afternoon and then it will be sent to the committee to look it over before we take a vote on it.

**Chairman Burckhard** It is my understanding that on Monday we'll be in session at 8AM, and probably be done by 9AM and then we would meet as a committee to finish this up after 9 AM on Monday.

**Senator Bekkedahl** I believe we have some Tax and Finance bills still on the docket in Monday's committee work schedule, but I would make myself available whenever it would fit the committee's schedule.

**Senator Judy Lee** Anytime Monday works for me so that is fine. This is such an enormous change I would like to not have a final vote on this today anyway, even though it isn't in final form, because if especially if there is some way that this could be emailed to a few of the people who did come in and testified and had concerns about it. I would like to be able to do that today and so they have a chance to look it over.

**Senator Bekkedahl** That is what I would like to see happen to be honest with your input. It will be sent to them in a document they can't change but at least they will have a filed document to look at as well. I know the parks are interested in the language in this.

**Senator Bekkedahl** walked the committee through the amendments in the bill.

Section 1 is basically as many of our bill just deals with definitions. Mr. Walstad had made some definition changes that are consistent with North Dakota statute where it says clerk on the first one. Clerk means the individual appointed, that was something he added. He also changed in the original document there was language about municipalities, he changed those to city council, commissioner or board of county commissioner. Those are just housekeeping changes that brings us into compliance.

On page 3, there is a definition after line 25, that needs to be added in, that is permissible public infrastructure improvements that they do not include. This was some of the dispensations that the water attorney wanted, Shawn Fredricks (Job Number 24256) (Testimony #2- 2.20.15) with Ohnstad and Mitchell. That is directly language exactly from him. That has been inserted in here.

On page 4, you see different language up there establishing and maintaining, replenish and reserves, those are points that were made by the city bond attorney who also is with Ohnstad and Twitchell, John Shockley. Line D, E.

Next section, line 21, district formation 40-64-02 again that is language that the city bond attorneys requested because that follows the protocols in statute right now.

Next page, any writing that doesn't look like it is in the format that we have from Legislative Council, means that it was additional language again.

Next page, the formation that is all language that the city bond attorney's for the state of North Dakota wanted to see in there. It just comports with what we do now.

On the next page, 40-64-05 powers of a community facilities district you see that tracts with what we, lines in Legislative Council now. There was some changes to words again from municipalities to city or city to municipality.

Continuing on until I get to the page that says line 15. Sentence 2 says this chapter does not authorize... This again has to do with what some of the objections were from the water systems. You will see the language added in c,d,e. That is where they added that language. The intent is to make sure that these people do not own, operate and sell water to the district. There totally dependent on those services from an outside source, either

rural water districts, or city water systems. They are totally dependent as well in the sewer and drainage areas.

The next page, professional succession that is language in all of our statutes. When you have these entities create. Section 40- 64-07 Records, Board of Directors and open meetings law that again follows what is in statute in ND requiring what these people have to do every board that is formed in ND has these open meeting requirements and what records have to be kept.

40-64-08 on the next page talks about the participation by the city or the county. The governing body of the city or county by resolution may summarily order the participation by the city or county in the costs of any public infrastructure purpose. That is there because in some instances, ex. cited(9:11- 9:32).

Other districts or improvement. You will see including but not limited to zoning subdivision, other policed powers, that was put in by the bond attorney's as well.

**Senator Grabinger** Back on the participation by the city and counties. Do the cities and counties still retain the ability to demand that the pipes be put in bigger and stuff like that under this? Is it in this taxing district ?

**Senator Bekkedahl** They do because this is totally set up to where they have to work with the governing agencies that poll this as part of the utilities.

The next page then we're talking about other districts, or improvements still, change in district boundaries or general plan again those are languages that were required by John Shakley and Omstad Twitchell. He felt protected the cities or other corporate subdivisions that existed prior to this.

Page 17, 40-64-12 budget. That again is language from John Shockley of Ohnstad & Twitchell. He felt needed to be in there so it was the same as all of the other entities that we deal with in the state on the part of a political subdivision level.

Page 18, shows no changes.

Page 19, Revenue bonds on the next page shows no changes other than some additional language in Line 1, at the top of the page. "After the bonds are issued the district board shall enter into its minutes of record of the bonds sold and their numbers and dates and unless otherwise noted by the bond election shall". That was language again from John Shockley, who is the bond attorney. That is standard language that he told us that they use in every bond issues that they do. Cities already do it this way. He is trying to mirror it what cities do.

Page 20, The special assessments, the assessment lien bonds. This is the area of legislation that allows the district to set up a special assessment district and certify it through the county just as a city would or a county would or anybody else would. The difference being that this is like a glorified home owners association because you have board of these districts that is entitled to this opportunity but the only guarantee to those special assessment bonds, are the properties developed within the district. So if you have a

special assessment deficiency, it's up to that district to pay that deficiency and not the rest of the city or the county. This is the break that everybody is looking for that says the counties and cities don't have to backstop what is being put in their or special assessments. We do it now. If there is a special assessment deficiency now in a special assessment district that the city or county creates we have to come back in as a city later and levy the entire population within our district or property owners in that district for that deficiency levy. In this instance they cannot do that. They can only rely on the payment source within that district.

**Senator Judy Lee** At the time that things were challenging in Williston, 30+ years ago, during the oil bust, we had similar kinds of things happening at home. There was a lot of development of water and sewer lines being placed in because of housing. At the same time the interest rates were out of sight. That was really was also a player in this whole picture. So we had residential subdivisions that were developed with their infrastructure but they didn't have any buildings on it. But the city didn't pay the assessment, they were back, or due, and after 5 years then the city, would own the land. So that is when really the two year tax exemption program came in because they had to brought up to speed if you paid in order for it to develop and by that time the financial situation in the country was different. The interest rates starting coming down in the country as well, so I get it and its part of the picture but we were not liable. We would've gotten the land back which had value, as a city, we didn't pay it; we would have been able to sell it again if we had to do that. So tell me how that is different from the way you're talking about doing this?

**Senator Bekkedahl** In our situation in Williston what happened was the developments were put in with special assessments for the underground and the above ground improvements for these subdivisions never had any vertical construction put on them so there was no tax base generated from it. So, when the developers left the community, and the process happened where it came back for back taxes, at that point the city was the guarantor of the bonds and had to pay back the bonds with the deficiency levy which had at one point was 43% of our budget expenditures. It was a pretty high number. But, you're exactly right, eventually the market turned out, it just didn't happen fast enough for us. So by the time the 5 years happened, the bonds had to paid, and we then had to make the payments because we were the property owner at that point. In this case, that would not happen, because the mortgage holders of these bonds, or whoever the bond holders are, these bonds in this district, would essentially just have to hold the property until the value came back and sell the property off to try and regain their bond payments. So the bonds go into default at that point, they go to the bondholders, the property goes to the bond holders.

**Senator Judy Lee** So the bondholders are the ones who are liable, not the property owners who bought scattered lots within a subdivision?

**Senator Bekkedahl** Right, if those property owners continue to own that property through this default situation, there would still be payments from them to the bond holders to make their property good. Does that make sense?

**Senator Anderson** Why doesn't this subdivision just get named Bekkedahl and get incorporated with the city and take advantage of all the laws we already have in place, instead of a new 20 pages of legislation to set these up?

**Senator Bekkedahl** The best answer I can give you, is this is the way it's worked in other places, then that is what they are trying to mirror. I am not saying it is right.

**Senator Judy Lee** Is it happening in this state, I am just asking?

**Senator Bekkedahl** No not in this state. Primarily Arizona, Texas and Florida are the three largest states that have used this.

**Senator Judy Lee** Which I might add are three of the four states that had the biggest dump when the market went upside down and they over built in their area and had all kinds of properties that sold for a fraction of their former value.

**Senator Bekkedahl** Which is one of the areas. The good thing about this is that in those areas it went to the private bond holders and they had to wait for their recovery and the cities and counties were never touched by any encumbrance. So that separation it actually worked the way it was supposed to there. I don't deny this is a difficult process to go through.

**Senator Bekkedahl** On page 20 as I have it on the bottom of the page with their numbering, there is no change there but we went through what the purpose of it is with the special assessments.

Page 21, again there is additional language on line 13, where collection of delinquent assessments or sale-of-delinquent property procedures under the title apply. That was language added by again the bond attorney's.

Page 22, Terms of the bonds, that is just again the statutory language as how the bonds are sold, and how they are handled in the terms of the bonds and the length of them.

The district taxes, annual financial estimate and budget which is 40:60-4-19 has language in there again mirrors how the political subdivisions already do these things.

Page 23 there is no substitute changes other than on line 5, shall call an election to reduce the maximum tax rate but not below the lesser of that rate determined by the district board to be necessary to operate the district, maintain the district facilities and improvements or the actual rate then in affect. That again is language added by the bond attorney's. So what they've done essentially is they have taken this language from other places, and our bond attorney's here in ND said but this is how it has to comply with ND law.

Page 24 top of page: Dissolution of the district. That again is standard statute language, how you get rid of a district in ND.

Page 25, the Waste water treatment projects, loan repayment agreements and definitions this is an area where in the original bill it had actually an allowance for them to set up their own waste water district, put their own plant in place, own sewer treatment plants and I said no, that is not the intent of this. We are trying to get special assessment development or property which is not going to encumber the cities or the counties with any debt. When you go into this, that is not what the intent is, so I made them take out the language and says,

notwithstanding any other law a community facility district may finance the expansion of an existing waste water treatment facility with monies borrowed. That language solely deals with an area where if the district is coming into the city system, and the city requires expansion of their plant to make that even come into the city, this district is going to be encumbered with that cost. That is all it does. It also grants them some borrowing authority, as a district to the state for State Revolving Loan Funds if the state would actually grant them the funds to do that. They are not going to build their own systems, not going to operate their systems, they have to be reliant on an existing system to make this work. That was something that I put in there because I did not want all these little sewer systems scattered around our cities and counties to start developing this property.

Page 26 the end.

**Senator Judy Lee** We selected the people who care about this and we need to make sure they have a chance to look this over and tell us how we need to improve it.

**Senator Bekkedahl** To answer Senator Anderson's question, I too wish this didn't have to be 26 pages, but it's 26 pages because everything has to comport with how we do things already relative to this district. It would be easier if we could just go back to the original legislation and say this type of district is empowered exactly as everybody else but they said they couldn't do it that way in Legislative Council. They have to redefine everything.

**Senator Anderson** We call it an incorporated city of its own. I was wondering why there is controversy out there now, I think it's McKenzie County where they have this man-camp that wants to (Williams County) and why they just couldn't incorporate into a city and do whatever they want to.

**Senator Bekkedahl** Part of the language here is protective. In the Williams County what happened, is there was a large developer that wanted to develop property near a small incorporated city near the city of Williston called Springbrook a town of 30 residents. Essentially what they did, the county said no you can't do that because nobody wanted it. The residents didn't want it. So then what the developers did is they went into that city and attempted by election within that city to change the city government to city council, essentially take over the city, and use the incorporated city which the county could then not deny subdivisions for, because the city would control that and that was their attempt. So, some of the language in here is attempting to not let that happen as well. So what they are going to do, because in ND if you have a city incorporate a city, the county can't deny these things within your city corporate limits. That was their way around it.

**Senator Judy Lee** These little cities, you said that 50 in order to incorporate now it is 150 I believe. But if they fall to 32, they don't lose their incorporation, do they? There can be two people in an incorporated city.

**Senator Bekkedahl** Exactly, they have to petition to dissolution. We have some cities that have people enough to fill the elected offices, an auditor or mayor.

**Senator Dotzenrod** In going through this quickly, it was probably in there and I may have missed it, is there a method by which this district if it wants to, at some future date can dissolve itself?

**Senator Bekkedahl** Yes, there is dissolution of the district language in here. It is the same as for cities.

**Chairman Burckhard** closed the committee discussion. We will convene on Monday, to be announced after session.

# 2015 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee  
Red River Room, State Capitol

SB 2375  
2/23/2015  
Job Number 24256

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating

## Minutes:

Written testimony #1 amendment #.01003  
Written testimony #2 John Shockley email  
Written testimony # 2Jim Brownlee email  
Written testimony#2 Carter Froelich,  
Written testimony #2 Blake Crosby emails

**Chairman Burckhard** opened the committee for discussion of SB 2375. All senators were present.

**Chairman Burckhard** As I recall we had yourself, Jeff Zarlo, Eric Johnson, city of Fargo attorney, Carter Froelich from AZ, and Steve Iverson of Fargo, basically spoke in favor of the bill with some reservations. Opposition to the bill was Bonnie Staiger from ACEC, Eric Volk from the Rural Water Systems and Richland County Water Resources were opposed and you suggested that the Water Districts would have concerns. Also, Mike Dwyer, amendments coming from questions marks from him. Did we ever get anything from Mr. Dwyer?

**Senator Bekkedahl** the amendments are all incorporated in the .01003 version before you.

**Chairman Burckhard** Explanation from Senator Bekkedahl potentially how this differs from MIDA bonds? These are my comments to start off the meeting.

**Senator Bekkedahl** handed out the amendments for SB 2375, amendment# 15.1014.01003 ( testimony # 1) He explained in detail each section of the amendment with the committee. (2:29) Accept as otherwise provided in this section, a district is considered to be a municipal corporation and political subdivision of this state, separate and apart from the city or county. This is the crux of why the bill is here. As, such the municipality or the county will not be liable for any debt obligations of the district. (pg.5; 40-64-04). The detailed account he shared with the committee was on February 20, 2015, Job Number 24213.



**Senator Judy Lee** The city is elected officials, I am not seeing that, this is, right? **Senator Bekkedahl** There is an election process they have to go through for these districts. However, it is typically to start the district, it would be the developer that controls the majority of the population appointing members of that elected board and then you go through the election process later as the district develops and much like the Home Owners Association. Someone starts the Home Owners Association and then they put members of the board on it as it gets developed and people get positioned in living in a subdivision. That is the most logical take I can put on it.

**Senator Grabinger** If they created their own district and their own officers, basically their own municipality, so in doing that, do they usurp the authority of the county, or the townships in controlling the zoning and the planning and everything? I think that raises a concern with me, (Ex. Cited). Does that actually override the county or townships?

**Senator Bekkedahl** Under section 40-64-09 formation of a district. I think that is where they are not going to let that happen.

**Senator Judy Lee** Talking about cities current responsibilities are you talking about corporate boundaries would be within the city limits, but how about extra-territorial zoning which is a significant deal. Every city depending on its size of its population, has ET zoning that is going to have an impact. So how is the ET zoning which I think should prevail, affect somebody with a subdivision and can they go and beyond that then and do their own thing? If there is no ET zoning from the city, if it's a scattered lot development and in a leap frog kind of deal, so it's not close in, which probably comes up in your territory as well?

**Senator Bekkedahl** This was intended to these developments only to be contiguous within the city or its extra-territorial boundaries. This is not designed, as I had them take out the language 'for this is used outside of those boundary areas, outside of the city and the ETZ'.

**Senator Bekkedahl** The first version dealt with allowing counties to do this as well. I told them no, this is got to be contiguous to cities and their infrastructure.

**Chairman Burckhard** And does not promote urban sprawl. It does not. **Senator Bekkedahl** replied no it does not.

**Senator Dotzenrod** This could be built outside of the city. It could then at some point maybe even fairly quickly that the city could annex that and it could become part of the city. Having this authority established doesn't really interfere with the functions that the city would perform, if it's in the city to start with or if it's annexed at a later time by the city. The fact that this authority has been created and it exists doesn't really change anything relative to those rights and privileges and normal operations of a city to annex or perform city functions that may be necessary.

**Senator Bekkedahl** No. That is exactly correct, it doesn't interfere with the city, it is not designed to do that. The other important part is because everybody has to follow the existing planning and zoning rules and regulations of the city. (Ex. Cited)

**Senator Judy Lee** Does this have to be a newly established or to be established sub-division or can a rural subdivision who tried to escape those nasty city and county taxes

that might have actually given them public water and public sewer and paved roads and snow removal, and now they decide maybe they don't want raw sewage floating into the ditches outside their unimproved gravel streets, and they want to be annexed now into the city or hook-up to a public sewer system. What can something like this be used for connecting an existing subdivision, that may now see the need for starting city services that would lead to a future annexation or is only for new stuff?

**Senator Bekkedahl** It cannot happen unless it is within the jurisdictional boundaries of the city or the ETZ, and cannot happen without the city agreeing to it.

**Senator Judy Lee** I get that, but how about an existing subdivision and not just a new subdivision?

**Senator Bekkedahl** I think you could use it, for an existing subdivision if the city allows that to happen, hooking up to city services. I still think the legislation is designed for the cities to still have the ability to say yes or no to these formations of these districts and its utilization. It is designed to give all the cities the powers that they have now, and not usurp any of that and just get the infrastructure in the ground at a better bond rating capacity than they are able to get right now and keep the cities held harmless to that future debt load.

**Chairman Burckhard** Cities and counties are not liable for anything. Is that true?

**Senator Bekkedahl** That is correct, that is my understanding of the way this is written.

**Chairman Burckhard** When I was one of those privileged few to be on the Tax and Finance Committee with Senator Cook he used to lecture us that there is 2100 political subdivisions in our state so we have a lot of government comparatively to the number of people. He said that we have 1400 townships, 180 school districts, 345 cities. How many community facility districts do you think this will create in the next 5 years?

**Senator Bekkedahl** I could not even begin to answer that question. I think it is one of those things that you would see used on a fairly limited basis to start out with and people would be very cautious in its use to see if they want to extend this or not. It is a privilege I think extended by the cities that want to be involved in this. I don't think it would be jumping off the cliff at this point. 1400 townships is a lot of government out there. But it seems to work in ND.

**Chairman Burckhard** So, would you see this district kind of being more common in the western part of the state, in oil country? **Senator Bekkedahl** I do and that is the reason this bill is before us because the public debt that was assumed by the cities out in that area, because of the special assessments that did go south, this is the answer to give them a better financing mechanism than going through the equity markets at 15% which they are doing now for their infrastructure.

**Chairman Burckhard** The City Finance Director in Williston and the City Planner, are of what opinion about this kind of legislation? **Senator Bekkedahl** I talked to our city officials and they see it as tool that would be helpful. Whether it would be used or not, is entirely up to the negotiations between the district that was trying to form in the city, at that time.

**Senator Judy Lee** I submitted the information as you asked to John Shockley (email included)(Testimony #2) who was the bond attorney at Ohnstad law firm and Senator Bekkedahl's city. He responded to some questions that he had raised. He had very little time to look at this today. I also talked to our City Administrator, Jim Brownlee (email included) (Testimony #2) who said I reviewed the bill and I don't think the City of West Fargo would ever use it however I don't see anything overly bad in it. It is really designed for Williston to do assessments outside city limits. Blake Crosby is here from the League of Cities and it might be useful to hear his ideas and know what they are.

**Senator Bekkedahl** I added two other pieces of language this morning. Pg. 14, relative to dissolution of district, 40-64-20, paragraph 1, sub paragraph A. " all of the property owned by the district has been or will be conveyed to the city, county, I would like to take out the word "or" , so it goes cities, counties, school district, or park district; and then continue with the word and beyond that", if the committee would be amenable with that? If I could just reiterate the two areas where I have made changes to what you have before you if they are amendable to the committee to amend this document. On page 9, 40-64-09 where we added at the end of that 1<sup>st</sup> paragraph "or extraterritorial jurisdiction" and then the one we just reviewed on page 14.

**Senator Bekkedahl** The comment from John Shockley who is our city attorney for bonds as well, in Williston. We use Ohnstad Twitchell and always have. 11-I questioned not sure what is meant by development fees where it says development fees charged; development fees charged by the county or city. A response from Mr. Shockley, this fee is typically charged by a city or county to finance infrastructure. In ND, this could also be related to fees charged by water districts and park districts if applicable as well. If impact fees are currently not levied in ND I would suggest leaving this in as they may be in the future. That is what the reference was. ND does not allow by statute impact fees, other states do.

**Senator Judy Lee** Why wouldn't we under ND call them special assessments, because that is what everybody else does? **Senator Bekkedahl** I think what he is talking about there is the separate line item of development fees which some states, has development fees.

**Senator Judy Lee** Apparently the person who is the catalyst behind this effort is an out of state person who wants to come in and use this device to develop in Williston is that where this is coming from? Because I am not hearing any huge outcry from anybody and we have a ton of development in my area. So, if there were any creative financing options I just don't think there or everybody is being oblivious to it. So is the source of this request really an out of state outfit that wants to come in and use this device to finance?

**Senator Bekkedahl** The source of this is a building consultant who is located in Williston that used to be in Minneapolis that works with the building trades areas for construction projects. In his numerous travels around the country and listening to speakers, he found this as a tool at a speaking engagement. He thought it could be applicable to getting better financing for infrastructure in the ground to potentially lead to lower home costs on the final sale. That is his whole premise.

**Chairman Burckhard** I have a note here suggesting that Mr. Froehlich called it a special purpose taxing district. Is that what you would agree with that? **Senator Bekkedahl** yes.

**Senator Bekkedahl** Also then on page 12 e, the question from John Shockley, was, it says funding and paying for bond proceeds interest accruing on bonds for a period not to exceed 3 years from the date of the issuance. John Schockley the attorney says I am not sure why that subsection is included as typically interest on bonds exceeds 3 years. Again, from the author, we are referring the maximum period allowed for capitalized interest through a bond issuance. We are limited to 3 years by the federal tax code. By capitalized interest I am referring to the fact that we are borrowing through bond proceeds, debt service payments of up to 3 years. This is similar to a construction loan on a house where they may borrow the debt service payments on the construction loan while the home is being constructed. This is standard for all assessment bonds in the US.

**Senator Judy Lee** I am not stupid about special assessments in city taxes and all of that kind of stuff so I am just trying to be smarter about it. So, this entity would then be selling bonds, so who is going to buy the bonds? I mean it's got to be a rate that is attractive enough that it's going to be a worthy investment. It's not tax free as I understand it, so it has to be higher than it would be if it was a tax free bond which is what we see for some kinds of financing of projects being an attractive way to do things. Is it or isn't it a tax free bond?

**Senator Bekkedahl** I don't believe it is a tax free bond. I don't believe it carries that municipal status. **Senator Judy Lee** It is not a municipal bond so I don't know if it is in some other category tax free bond. I am trying to figure out who the heck is going to buy this bond. If it really has a lower rate as this guy thinks he is going to get, why would I buy one? So there's got to be some really fine reason for me as an investor to buy this bond that I think has a hay a lot of risk in it, and it's not my job to worry about something else's risk if they want to buy a lottery ticket, they can do it.

**Senator Bekkedahl** I think the crux of the issue you just got too, is this district having the ability to special assess the property valuations within the district which a developer normally would not have the ability to do. The city would have to do that. So because the bonds have some guarantee with the local property tax base, of the district, that is the only answer I can come up with as to why they are attractive to the bond market.

**Senator Judy Lee** So if I am homeowner, in this new subdivision, does my liability continue or do I get dropped off and the liability continues to be just with the developer who is using this financing? Obviously the city doesn't want to get stuck with this stuff. I understand that part. But how does the risk get spread? Who has continuing liability as somebody that just bought a lot and put a home there now, or am I off the hook because I didn't see that anywhere?

**Senator Bekkedahl** You are still as a property owner as long as there are bonds committed, to the special assessment improvement district you are still paying those special assessments. **Senator Judy Lee** So why would I want the additional liability. I am trying to learn here. Why would I want the additional liability beyond what it costs to put the water and sewer line and the sidewalks and street lights in front of my house, why would I

want additional liability of being somebody in that group that is holding the bag for this if it goes belly-up. I don't expect it to happen in your neighborhood.

**Senator Bekkedahl** You do not have an obligation beyond your levied special assessments just as you would for a city. If there is a deficiency they don't come back to you and ask you to pay a larger share because of a deficiency. **Senator Judy Lee** You know this is talking to a different group of people who is liable. It doesn't go to the city anymore which is the way we've had it for a long time. It doesn't mean that it is right. But I am just trying to figure out. Who loses here and I am just wondering if somebody who buys a lot in that subdivision, has any jeopardy of having an additional liability because the developers bomb. What if the developer goes belly-up? Then wouldn't all the property owners in that subdivision end up having some liability for paying this off? I am just trying to anticipate that I hope never happens.

**Senator Bekkedahl** Their liability is limited to whatever their special assessments related against that property for the district at the start of the district. The deficiency if it occurs is because it has never paid off goes to the bond holders. The bond holders assume that risk. That is the difference. **Senator Judy Lee** I don't think I would ever buy one.

**Senator Bekkedahl** The next area that he had a question was on Section 40-64-17, on page 11. I think the question he has goes onto page 12. He says in this question from the attorney, please note that I have never heard of refunding improvement bonds being referred to as special assessment lien bonds in ND. Answer from the author is okay I don't know how to answer this one, but does it matter? I think it is a terminology issue.

**Chairman Burckhard** On what part of page 12 are you making reference to? **Senator Bekkedahl** I think it is a very long paragraph. **Senator Judy Lee** Well the title actually is 40-64-17 says assessment lien bond. So maybe he is starting there.

**Senator Bekkedahl** Continuing on then, he also says the first paragraph of this section, 40-64-17, is inconsistent with how other political subdivisions issue special assessment bonds. Typically a warrant is issued by the district, city, county, and then exchanged for a bond. Also, ND does not have a Court of Appeals. I have tried to state that from the beginning that appeals of political subdivisions are governed by 28-34-01, and that appeals goes first to the District Court, and then to the ND Supreme Court. The author's response was this change was missed. We could change the last section to read: " by a special action filed pursuant to 28-34-01".

**Senator Anderson** Where are you talking about? **Senator Bekkedahl** He is talking about that same section 40-64-17 that lengthy section. It is the top paragraph there at the end on page 12, the last sentence. " an owner of land on which an assessment has been levied may seek judicial review of whether the land has benefited by the proposed infrastructure on the merits by special action filed with the Court of Appeals". **Senator Anderson** You want to change that to District Court. **Senator Bekkedahl** I want to change that last sentence, instead of Court of Appeals, District Court. Within 30 days of the effective date of this resolution, he also wanted to add the language by "a special action" filed pursuant to 28-34-01. He wanted to reference what ND has now.

**Chairman Burckhard** asked Senator Bekkedahl to repeat his previous testimony. **Senator Judy Lee**, No obviously the guy who wrote it doesn't know what North Dakota law is I guess that is giving me a little bit of heartburn. Also part of that question, that Mr. Shockley had that at the beginning he said he has never heard of refunding improvement bonds being improved to a special assessment, lien bonds, and so, we don't even have it currently to find in statute in that way. This is a whole new review here.

**Senator Bekkedahl** Section 40-64-17 the question from the attorney John Schockley was there is already very detailed process in the Century Code for special assessments and the process of levying and collecting them. Some of the language in this section appears to contradict that procedure. Typically the political subdivisions sends the county a list of the properties to be special assessed, and the county adds it to the tax statement and pays it over to the political subdivision. I am not sure why they added in this provision as there is a procedure in place already and a process for tax forfeiture for non-payment of special assessments. He's is the answer from the Mr. Shockley. Legally, I am a little out of my league, but does the fact that there may be a slightly different process than that used in other special districts negate the legislation. I would think not. Additionally we try to cover the process " by referencing 40-28-08, through 40-22-19. That must also be on page 12 somewhere. I think it has to do with the last paragraph.

**Blake Crosby** (Testimony # 2) ND League of Cities; & Bill Wocken, City Administrator City of Bismarck. One of the questions that came up from Senator Lee had to do with why would you buy these unless there was some return? Looking at some information provided by Google, I see that these are tax exempt interest rates. They are tax exempt bonds from my recollection. So that is where the return comes in as they are tax exempt. (Mr. Froehlich said that.)(Testimony #2) Given the questions that have been asked by the committee and the responses that have been provided in writing by both Mr. Froehlich and bond council and some other attorney's we all understand this is a brand new concept. It did kind of shook down at the last minute. It's the last bill on the Senate roster. We're looking at a number of pages of very interestingly written language. Concurring with what Mr. Brownley (Testimony #2) said from West Fargo, I did put this out to the larger cities as soon as I became aware of it. The response was minimal to say the least. I think for a couple of reasons and I don't have any data to support this.

**Chairman Burckhard** meaning of low interest? **Blake Crosby** of the concept, the taxing district concept. That it was a big bill to read through and there were lots of language in it and they continued to be amendments coming forward. Cities looked at it and said, we probably wouldn't use it but if it's out there and somebody else uses it and it works we'll let them do it first. Who is going to try it first? So, I believe there was a certain amount of non-concern about the concept as it was stated. Obviously it needs some language clean-up to fit ND statute and code, so perhaps because this is so new, and because there have been a myriad of changes as we've tried to make it conform to ND law and ND process and practice. Maybe this is something we should study further over the course of the biennium before we jump into this. Now I hate to penalize any, and I know that Williston would like to use this off the bat, but the question is, does it fit into ND statute in code and does it fit it to the point where there is not going to be any questions about any constitutionality. Again, I think there are a lot of unknowns here and again I don't want to see Williston penalized by not having access to this. But, at the same time it has to fit statute and code, or it has to fit

ND law. Some other responses that I might make, that Senator Bekkedahl did confirm, the bond holders from what I've been able to read are the ones ultimately holding the bag. If anything goes wrong the bond holders are holding the bag. The bond holders pass that cost down to the homeowners in this special project taxing district. From what I read, the answer is no. The bond holders will sit there, until they can recover their funds but they cannot go to the individual homeowners in the development and say we're going to add more taxes to your property in order to try to make us whole. Once you've sold the bonds it's a contractual arrangement that is it!

**Senator Anderson** When you wonder who's going to buy the bonds I think the interest rate on Greek bonds now is 8% so that is half of what these people are paying now to get financing for their projects. So, anywhere between there and the 1.9% that bonds are getting now, you're still way below what the cost to financing is currently.

**Bill Wocken** City Administrator This legislation is so large I have not been able to absorb it. Bismarck has been selling bonds in the 2-3% range and we haven't really had an issue. We've been able to stay ahead of the interest and move all of our special assessment bonds, so I don't know if we would use this. Asking our finance director she also wasn't sure whether or not the vehicle would be usable. I don't want to object to something we're not going to use this, someone else can use it of course. I am just not sure of the functionality of the bill. If we have some time to look at it and to either see what other people's experience have been or to study it before jumping in. I think those are very honorable alternatives. I just don't have answers to all of my questions. I am not sure exactly how to relate that to the committee. So I am afraid that I don't have a lot of useful testimony to offer to you except that this is a unique concept and deserves consideration. I am just not sure if it fits and I am not sure if we would use it if it did. I think that is why Mr. Crosby has probably gotten the lack of response as with any new concept it takes time to absorb it and to understand it before one wants to comment.

**Senator Bekkedahl** I will be the first one to admit that this wasn't in the form that I wanted to be when they gave it to me the day before the last bill had to go into the hopper. But it was critical to these people and they are constituents of mine and I responded. I would not be unamenable to taking this to a study recommendation if that's what the committee feels would be best. I do think the people that authored this should put more time into it and work with our bond attorney's to make it the right length. I still think it will work, I think it will be a helpful tool. Clearly in my city where we are approaching our bond limits now at \$323 Million dollars in debt and we're not going to take on special assessments with load of debt. It is projected to go to \$670 Million by the year 2017. So we will be out of debt capacity I am sure, if we're not already. We'll need a tool like this. I am amendable to the committee's recommendations.

**Chairman Burckhard** any motions?

**Senator Judy Lee** I am actually relieved that Senator Bekkedahl brought that up because even before Mr. Crosby was speaking I was thinking we haven't moved to studies in areas way less complex than this. I want to do it correctly. I am not saying it isn't a good idea. I am entirely grateful to John Walstad, we owe him something after this. But I would move

that we amend the bill to turn it into a study relating to the formation of a community facilities districts for public improvement. Femi can put it into the proper form.

**Senator Grabinger 2<sup>nd</sup>** I think that's exactly where this needs to go. I relayed that to Senator Bekkedahl. I am concerned with having the ability to do what we can for developing areas. One of the questions I still have with is working in the ET limits, as we only recognize 1 mile so I really don't know that this would have a whole lot impact in our community. But, in saying that, I certainly want to keep it on the table and have a discussion at a later point because I think it does have some merit. We are struggling with the cost of utilities and infrastructure when we look at development. It is a big problem in my community and this maybe an avenue down the road. So I certainly don't want to brush it under the rug. I think it needs more study.

**Chairman Burckhard** It has been moved and seconded to adopt into a study.  
Roll call vote 6 Yea, 0 No, 0 Absent  
Carrier: Senator Bekkedahl

**Senator Judy Lee** On the chance that it doesn't get chosen as a study, and even if it doesn't actually, I really do think it is extremely important that the developers or whoever wants it shouldn't be the one to develop the bill. It has to include representation in my opinion only, from the League of Cities, townships, county whoever happens to be the political subdivision where these districts are going to located so that their input is in it, because it is kumbyae, when you get to the session. So all of those political subdivisions and other important planners and all that stuff I am obligating I realize but, we don't want to do it to them, we would like to do it with them. So please keep them included in what's going on.



2/24/15  
JMC

PROPOSED AMENDMENTS TO SENATE BILL NO. 2375

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of the formation of community facilities districts for public improvements.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY.** During the 2015-16 interim, the legislative management shall consider studying the formation of community facilities districts for public improvements. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly."

Renumber accordingly

**2015 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES /  
 BILL/RESOLUTION NO. 2375**

Senate Political Subdivisions Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:     Reconsider     as a Study

Motion Made By Sen. Judy Lee    Seconded By Senator Grabinger

Senators	Yes	No	Senators	Yes	No
Chairman Burckhard	X				
Senator Anderson	X		Senator Dotzenrod	X	
Senator Bekkedahl	X		Senator Grabinger	X	
Senator Judy Lee	X				

Total (Yes) 6    No 0

Absent 0

Floor Assignment Senator Bekkedahl

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2375: Political Subdivisions Committee (Sen. Burckhard, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2375 was placed on the Sixth order on the calendar.

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2015 HOUSE POLITICAL SUBDIVISIONS

SB 2375

# 2015 HOUSE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee Prairie Room, State Capitol

SB 2375  
3/19/2015  
25110

- Subcommittee  
 Conference Committee

*Ormonda Muscha*

### Explanation or reason for introduction of bill/resolution:

Relating to formation of a community facilities district for public improvements.

### Minutes:

Testimony 1

Vice Chairman Hatlestad: Opened hearing on SB 2375

Senator Bekkedahl: Testimony 1

Vice Chairman Hatlestad: Is this similar to a building authority?

Senator Bekkedahl: It is another layer of political subdivision if it is used as intended because you form a board for this geographic entity area they can go out and access about market taxes and bonds. Currently cities have the ability to use municipal industrial development bonds and it mirrors that to some degree. What is important is that you form this geographical entity and form a board within that geographic entity which eventually becomes elected by the members of that entity to develop or form a board to start with. It gradually turns into an elected board of that subdivision. It doesn't have any incumbencies to the city or the county or the larger jurisdiction as special assessments would do. If a community facilities district was formed and they went into default- then the people that purchased property and built improvements on that property and were special assessed for that property- those special assessments are set at the time that they purchased the property. It is a fixed amount for the life or the term of the bonds 20 or 30 years. They can't come back and increase the special assessments on those people and they also can't go outside the district and assess a deficiency levy across the city which we do now when special assessments don't cover that area. The cities and counties are totally protected. The bond holders have to sit and wait until there is appreciation of that property to regain that value and they continue to make the bond payments. When it is in default- much like a bank would- if you lose a piece of property and the bank has the mortgage title they will keep that piece of property until it is worth something and then they will recover their investment that way. That is how it is intended to be used. I thought it was a good bill for protecting the communities that we deal with in the special assessment realm.

Representative Beadle: Community backing towards the bonds would be issued by these districts without having more of that political subdivision. What sort of ratings do these

typically get on the bond markets? What are the interests that they pay out to their financiers in comparison to a typical special assessment district?

Senator Bekkedahl: Once they get the taxes and bonds status because they have political subdivision status under ND law they are granted the tax exemption and that puts the bonds in the market rate of all the rest of us as political subdivisions in the 4-5% range?

Representative Koppelman: You mentioned the original language of the bill was crafted after language in other states. The way we do special assessments here is unique. Do these replace special assessment districts in other states??

Senator Bekkedahl: They take the place of special assessments and the entity can go on the bond market and get the taxes and bonds and they can also have the authority to special assess the property to cover those bonds within them. The difference is that it is within that entity and has no effect on the rest of the city or developments.

Representative Koppelman: Do you think it would be wise for this study to be expanded a bit to study the whole system we have with special assessments and this?

Senator Bekkedahl: I am not oppose to that but I believe there is another study that is going through right now that will look at special assessments.

Representative Beadle: What is this limited to?

Senator Bekkedahl: This was intended to deal with the below ground improvements. There were objections early on to the legislation because in other states where it is empowered to use now they do much more than that. They have a higher base about what they can accomplish with this. Here with our rural water districts- out rural water associations came in very early on this project and said no you cannot construct water systems- which this allowed them to do initially in its first draft and we said you're right we don't want it to do that. We also heard objections from rural water districts, power generation facilities and we said the initial bill empowered sewer systems, water systems, and power generation if needed. We took all that out. We ran out of time to get everything out for everyone's objections, but working through it everyone likes what is going on here. They just wanted us to remove the objectionable areas. This is as it is intended, the study could look at all of it if it wants to but as it was intended it was just the below ground and above ground apprentice system to make the housing in the commercial districts function.

Chairman Klemin: In these entities- would these bonds be tax exempt and is there an IRS rule that covers this situation?

Senator Bekkedahl: The legislation allows the formation of a board within the geographic area of the community's facility district and that board is empowered with political subdivision powers as we are within ND for counties and cities on other boards of jurisdiction and that gives them the ability to go into bonding through municipal bonds with the tax exempt bonds. It had to be worked out through statute to make that happen and that was one of the early exemptions to the bill as we were forming it- another layer of government in ND but it would have a unique use. Your other question, they have not been challenged on the IRS standards to date but there are two cases in Florida where the IRS

seems to be challenging that jurisdictional authority. The two year study to work that through would be a very good opportunity to make sure we are doing this right.

Chairman Klemin: Is there a vote on these by the tax payers to approve the issuance of these bonds?

Senator Bekkedahl: Initially what this is designed to do is develop a 40 acre partial property wants to put the improvements in. The developer of that property on which no one is living in (raw ground) the developer controls 100% of the property allocation within the district. That person appoints a 5 member board including a contractor and neighbors in the corporation to act as the entity for the political subdivision because nobody else lives there then. As the district builds up to a certain size (60% of the property then owned by other people outside of the structure of the corporation for the development that first entertains it) then they have a voting process to vote in members of the community's facilities district which are elected from the tax payers that live within the district and they make the decisions moving forward on how anything is handled. The initial bonds are sold with a board that is formed and empowered by the original developer.

Chairman Klemin: The taxpayers that may be ultimately responsible for payment of the bonds do not get a vote on the issuance of the bonds- only indirectly by electing the board.

Senator Bekkedahl: The district itself has boundaries. The bonding authority and the ultimate responsibility for those bonds only extends to the people living in the district. The rest of the city and county have no obligation to those bonds. They are totally held harmless to anything that could happen within the district.

Chairman Klemin: The taxpayers within that district, do they vote on the issuance of the bonds or only indirectly by electing the board?

Senator Bekkedahl: They don't vote initially because the bonds are typically put into place by the board that is appointed before anybody lives in the district. Once the bonds are there the special assessments are tied to the property through the normal process and then as the tax payer once you're a property owner the district elects the board when it becomes over 60% of the district and at that point the bonds are already there and the specials are already assessed and they don't have any control over that but they will have control over the payments of those bonds at some point.

Representative Beadle: I believe there is currently a bonding method in place that deals a little bit with this through the private activity bonding method. There was something the last session that expanded that to allow them to do more underground work as well. The covers from the sewer and water and garbage and similarly to this, the private activity bonding is one that is a bond issued by the developer through the municipality as a munity bond but it does not have the backing of the municipality. It only has the backing of the developer and the subsequent land is impacted for the rating system and that is a similar case where a board is not a board that tax payer voted on- it is just done. There is some precedence but it might be worth keeping in mind looking at the private activity bonding as well as this when we get to a potential study.

Representative Becker: If we are at that point and you are giving your submission and you in a short time frame could you comment on the most two or three most significant aspects of the intent of this law?

Senator Bekkedahl: The intent is to get access to lower cost capitol for developers because they are required to do those inputs in some jurisdictions now. That is the first area and the second area is to not having any encumbrance of any of this debt extending to the counties or cities that are in existence today. The third intent would be to keep the development of new ground going for the growth of all the communities in the state. As cities take on more debt and have more encumbrances, they are going to be less likely to extend in the new areas of development without the developers taking that cost on themselves- it is significant.

19.30 Blake Crosby: This is a concept that has a great deal of merit. It we want to make sure the concept conforms to our law. It is difficult to get into a concept that has a lot of detail until we make sure that there has been some testing but most importantly that the concept, as it has been tested, in other states conforms to the laws in ND. In a couple years we can look into the kinks and see where the two lawsuits have gone. We will then have some reaction from some communities that might want to avail themselves the use of something like this as to how they would like it to work within the confines of their needs and the confines of ND state law. I would ask for a do pass on the study. For Representative Beadle- if you google the National Association of Home Builders there is a page full of information titled 'An Overview of Special Purpose Taxing Districts' which is dated September 2014.

Representative Maragos: I move a do pass

Representative Hatlestad: Second

A Roll Call Vote Was Taken: Yes 13, No 1, Absent 0

Motion carries

Representative Strinden will carry the bill



Date: 3-19-15  
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2375

House Political Subdivisions Committee

Subcommittee  Conference Committee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations

Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Maragos Seconded By Hatlestad

Representative	Yes	No	Representative	Yes	No
Chairman Lawrence R. Klemin	X		Rep. Pamela Anderson	X	
Vice Chair Patrick R. Hatlestad	X		Rep. Jerry Kelsh	X	
Rep. Thomas Beadle	X		Rep. Kylie Oversen	X	
Rep. Rich S. Becker	X		Rep. Marie Strinden	X	
Rep. Matthew M. Klein	X				
Rep. Kim Koppelman	X				
Rep. William E. Kretschmar	X				
Rep. Andrew G. Maragos	X				
Rep. Nathan Toman		X			
Rep. Denton Zubke	X				

Total (Yes) 13 No 1

Absent 0

Floor Assignment Strinden

If the vote is on an amendment, briefly indicate intent:

motion carries

**REPORT OF STANDING COMMITTEE**

**SB 2375, as engrossed: Political Subdivisions Committee (Rep. Klemin, Chairman)**  
recommends **DO PASS** (13 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING).  
Engrossed SB 2375 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

SB 2375

SB2375  
2.5-15  
#1

February 5, 2015  
The Honorable Senator Randall Burckhard  
Political Subdivisions Committee  
Re: Support for Senate Bill 2375

Chairman Burckhard and members of the committee:

My name is Brad Bekkedahl, Senator from District 1, representing Williston and I am here to introduce Senate Bill 2375 relating to the formation of a community facilities district for public improvements.

Otherwise known as Special Purpose Taxing Districts or Special Districts, they provide a mechanism for developers to access lower cost capital to fund public infrastructure in real estate developments without putting cities and counties at risk.

Traditionally, it is common for the city or county to finance a portion of the public infrastructure in land development such as water, sewer, and streets through municipal bonds and recover the funds through a special assessment on the resulting property over a twenty to thirty year period.

Many western North Dakota communities have taken the position not to finance the infrastructure in a development and special assess it back to subsequent property owners due in no small measure to the amount of debt the cities carried after oil development ceased after 1985.

Land developers are funding projects primarily through equity and private lending. The average cost of debt capital has been described to be in the 13% to 15% range or higher. The cost of equity is easily at that rate and ranges much higher to the 30% range. The result is significantly higher costs for the same infrastructure that would have been financed at 4-5% municipal bond rates and subsequently more expensive lots, housing, and commercial real estate.

Special Districts may be formed around a defined area and issue bonds to fund a portion of the infrastructure. The bonds are secured by the land and assets in the district and do not affect the bond capacity or credit of the associated city or county.

SB2375  
2.5.15  
#2

February 5, 2015  
The Honorable Senator Randall Burckhard  
Political Subdivisions Committee  
Re: Support for Senate Bill 2375

Chairman Burckhard and members of the committee:

My name is Jeff Zarling. I am here as a resident of Williston and owner of DAWA Solutions Group.

I stand before the committee today to support the passage of Senate Bill 2375 and to provide some background before introducing Carter Froelich to provide specific details.

Our company provided website, graphic design and computer application solutions in the building industry in the Twin Cities before expanding into serving numerous clients in many segments after moving the business to Williston in 2002. Having worked with over 100 companies and entities in western North Dakota as the economy accelerated we had a broad view of the market and the needs. We began working to meet those needs and bring people together to solve problems through event production and communication tools.

In 2011 we created the Bakken Investor Conference and the Bakken Oil Product & Service Show for people to understand the market needs, connect and conduct business. After the October 2011 NBC program Rock Center feature on the Bakken, we were inundated with activity and inquiries. We subsequently created the Bakken Field Tour and Bakken Briefing that provided a four hour briefing to over 500 investors, real estate and business developers, and financial institutions.

By the end of 2011, many of us in the community were frustrated by the lack of housing development and determined to create the Bakken Housing Summit where we called for 5,000 homes in 24 months to frame the scope of the problem, get the attention of solution providers and bring all the stakeholders together to address the housing issue. The event attracted over 375 people and helped to spur investment and development.

While organizing these events, we heard repeatedly about the challenges in the market. We took the opportunity with so many stakeholders gathered at our events to organize side

meetings to discuss the issues and search for solutions. We held what we called a Housing Finance Roundtable discussion during the 2012 Bakken Investor Conference that included 20 stakeholders including builders, developers, investors, city leaders, and state leaders. An executive summary is included in the folder provided. From that meeting and similar meetings at the Bakken Housing Summit and the Affordable Housing Workgroup organized by then Williston Mayor Ward Koeser, we identified five primary drivers of cost in housing and real estate development:

- Land prices
- Materials: cost, access, freight
- Labor/Subs: cost, accessibility, reliability
- Infrastructure: cost, financing
- Cost of Capital: High equity return expectations, lack of commercial lending

Most of these market forces we felt we could not have much affect but the one we thought we could address is infrastructure financing which is also affected by the high cost of capital.

Many western North Dakota communities decided not to take the risks associated with special assessments for the infrastructure and require the developer to fund the entire infrastructure. Their high cost of capital has contributed to high lot costs and lack of affordable housing and real estate.

I met Debbie Bassert, Asst. V.P. of Land Use and Design with NAHB, in 2013 who provided us with research material and contact information for experts in this field including Toby Rittner, CEO, Council of Development Finance Agencies, and Carter Froelich, Managing Partner of Development Planning and Finance Group. The resources included a series of resource documents on Creative Infrastructure Finance tools and a 360 page study from Abt commissioned by NAHB outlining 65 strategies from across the country to Increase Affordable Housing.

We organized a stakeholder's call in April of 2014 again including developers, investors, city leaders, and state leaders to review the research to date and discuss possible solutions. A copy of the agenda and participants is enclosed in the folder provided. We discussed existing North

Dakota financing tools and the resources we had received. It was determined that the path to new solutions would be to:

- Review N.D. statues and existing tools
- Review and evaluate potential solutions  
(which could be accelerated by using a subject matter expert)
- Select a solution or solutions to pursue and work toward implementation

No one single stakeholder emerged to drive the initiative so it languished until September and October of 2014. Carter delivered a report commissioned by NAHB on Special Purpose Taxing Districts at an NAHB meeting that Don Dabbert, a developer in Fargo and an NDAB board member, had attended. A copy of the report is included in your packets. I subsequently talked with other stakeholders and in January, we brought together several others who committed funding to the process and we contracted with Carter to work on what is now SB2375.

I would like to introduce Carter Froelich of Development Planning and Finance Group to provide more information about the Special Purpose Taxing Districts and SB2375.

April 23, 2014

SB2375  
2.5.15  
2.0

## Development Finance Initiative

*Provide access to lower cost capital enabling affordable housing and real estate development in North Dakota*

### **Development Finance Challenges**

Beyond the physical costs of land development, the cost of capital and the challenges of financing land development add significant cost to real estate in western North Dakota.

Commercial lending for land development is virtually non-existent. Many western North Dakota communities have taken the position that they will not finance the infrastructure in a development and special assess it back to subsequent property owners due in no small measure to the amount of debt the cities carried after development ceased after 1985. (Please note: this position is not being criticized or questioned nor it is suggested to be changed.)

Land developers are funding projects primarily through equity and private lending. The average cost of debt capital has been described to be in the 13% to 15% range or higher. The cost of equity is easily at that rate and range much higher.

### **Goals and Objectives**

Goal: Reduce development cost through access to lower cost capital

- Explore, determine and develop alternative land development or infrastructure financing options to bring down the cost finished lots.
- In turn, reduced lot costs may lead to reduced housing and real estate prices.

### **Development Finance Workgroup**

A number of stakeholders and resources can contribute to the dialogue and discussion about infrastructure and land development finance including developers, city leaders, Bank of North Dakota, other state officials, and outside resources that have experience in the area of infrastructure finance.

#### Department of Commerce

Alan Anderson                      701-328-5300  
[alranderson@nd.gov](mailto:alranderson@nd.gov)

Additional state resources and stakeholders may be involved including the Governor's office and it may be most appropriate for Dept of Commerce to coordinate with or involve additional state resources.

#### Bank of North Dakota

Bob Humann                      701-328-5703  
SVP of Lending                      [bhumann@nd.gov](mailto:bhumann@nd.gov)  
Tom Redmann                      701-328-5671  
Commercial Loan Manager                      [tredmann@nd.gov](mailto:tredmann@nd.gov)

#### North Dakota Housing Finance Authority

Jolene Kline, Director                      (701) 328-8072  
[jkline@ndhfa.org](mailto:jkline@ndhfa.org)



April 23, 2014

North Dakota Public Finance Authority

DeAnn Ament 701-426-5723  
[dament@nd.gov](mailto:dament@nd.gov)

City of Williston

Brad Bekkedahl 701-577-8100  
 Finance Commissioner [drbekk@wil.midco.net](mailto:drbekk@wil.midco.net)

City of Watford City

Brent Sanford 701-444-2341  
 Mayor [brent@sandsmotorsinc.com](mailto:brent@sandsmotorsinc.com)  
 Curt Moen 701-444-2533  
 City Planner [cumoen@nd.gov](mailto:cumoen@nd.gov)

CP Realty (KKR)

Mike Anderson 720-946-4659  
[Mike.anderson@continuumllc.com](mailto:Mike.anderson@continuumllc.com)

Mike is the lead for The Ridge development ( a partnership with KKR and CP Realty) including their land development and some things they are taking vertical themselves including Prairie Pines Apartments.

JMAC Resources/Jonathan's Landing

Jon McCreary 701-774-8511  
 Owner [jon@jmacresources.com](mailto:jon@jmacresources.com)

JMAC provides heavy civil construction services including underground, utilities, etc. Jonathan's Landing is a residential development they are doing ground to vertical themselves. Jon brings several perspectives including finance as he has a background in banking as well.

Bakken Housing Company / Hawkeye Village / Eagle Crest Apartments

John Sessions 206-587-4040  
 Principal [JohnTSessions@AOL.com](mailto:JohnTSessions@AOL.com)  
 George Kropinski 206-587-4040  
 Principal [gkropinski@gmail.com](mailto:gkropinski@gmail.com)

Hawkeye Village is a 160 acre mixed-use development recently presented to the city of Williston.

Triton Real Estate Investments

Jon Kalikow 212-922-9471  
[jkalikow@tritonreal.com](mailto:jkalikow@tritonreal.com)

Jon Kalikow has invested significant capital into projects throughout the Bakken region and can bring a sophisticated financial perspective to the discussion.

National Association of Home Builders

Debra Bassert 202-266-8443  
 Land Use & Design [dbassert@nahb.org](mailto:dbassert@nahb.org)

Debra has provided input on this topic through discussion with Jeff Zarling. She has provided

April 23, 2014

infrastructure finance information in the form of brochures and a study they commissioned on "State and Local Means of Increasing Affordable Housing". Links to resources included below. Debra's assistance may be limited to directing to resources as she has done already.

Development Planning & Financing Group, Inc.

Carter Froelich 602-381-3226 x-10 [www.dpfg.com](http://www.dpfg.com)  
Managing Principal [Carter.Froelich@dpfg.com](mailto:Carter.Froelich@dpfg.com)

Carter and his firm advise developers and communities on infrastructure and development financing including discussion similar to the one we are having in western North Dakota. Carter has done several infrastructure financing reports for NAHB. He's an experienced CPA and planner with extensive knowledge of special districts and related tools and beyond working with developers, has worked for several HBAs including on legislative language. Of note, Carter grew up in Dickinson, ND.

Council of Development Finance Agencies

Toby Rittner (614) 224-1300  
President & CEO [trittner@cdfa.net](mailto:trittner@cdfa.net)  
Katie Kramer 614-224-1316  
Vice President [kkramer@cdfa.net](mailto:kkramer@cdfa.net)

Toby has a background in land use planning and economic development finance. He worked closely with Deb at NAHB on a Baton Rouge project to address infrastructure financing that she says is applicable to what we are facing.

Resources

Below is a link to a directory on our Bakken Construction News website that contains several documents that may be of use to us in this process. Also included below is a description of these resources.

<http://bakkenconstructionnews.com/bcn/usrfiles/InfraFinance/>

*Infrastructure Solutions Series*

The first three documents that include the numbers 1 to 3 at the beginning of the file names are provided by NAHB and include information about various infrastructure financing tools and strategies. Debra Bassert from NAHB and noted in the stakeholders list above provided these documents for our reference and can answer questions regarding them.

- 1InfraFinance\_InnovativeSolutions.pdf
- 2InfraFinance\_CaseStudies.pdf
- 3InfraFinance\_StateInventory.pdf

*Research on State and Local Means of Increasing Affordable Housing*

Debra Bassert also directed us to this document. It is a comprehensive, 359 page report that was prepared for NAHB that includes 65 different strategies being used at state and local levels to increase affordable housing.

4AbtReport\_20120821035301.pdf

April 23, 2012

**Housing Finance Roundtable Report – Executive Summary**

**Report Contents**

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## Executive Summary

The Housing Finance Roundtable was organized with the intent to bring together key stakeholders to discuss the **finance** challenges facing the development of **housing** in Western North Dakota where an acute shortage of housing is straining communities and the ongoing energy and business development.

**Meeting Date & Time:** Tuesday, April 3, 2012 - 10:30 a.m. – 12:00 p.m.

**Location:** Sleep Inn & Suites – Board Room  
2400 – 10<sup>th</sup> St SW  
Minot, ND 58701

## Goals

- Identify and discuss the housing finance challenges
- Develop ideas for additional solutions
- Define actionable items

## Attendees

### Attendees

Eric Hardmeyer, President, Bank of North Dakota  
Mike Anderson, Exec. Dir., ND Housing Finance Agency  
Dean Dovolis, CEO, Annabelle Homes  
Neil Fox, Bakken Development Resources  
Tim Moore, Dir. Economic Dev., Sen. Kent Conrad  
Samuel "Sandy" Haviland, Partner, Eaglesmere  
Carol Holman, Mortgage Lender, FIB&T  
Jolene Kline, Dir. Planning & Housing Dev. NDHFA  
Bruce Walker, Broker, 1<sup>st</sup> Minot Realty, ND Assoc Bldrs  
Jeff Zarling, President, Dawa Solutions Group

Doreen Riedman, Exec Officer, ND Assoc of Builders  
Dave Hanson, President, American State Bank & Trust  
John Drady, Minot President, First Intl Bank & Trust  
Mike Hynek, Mayor of Stanley, ND  
Ward Koeser, Mayor of Williston, ND  
Greg Bradford, President, Envision Land & Dev.  
Paul Lucy, Director, ND Econ. Dev. & Finance Division  
Gene Veeder, McKenzie County Job Dev. Authority  
Joel Feist, Real Builders, ND Assoc Bldrs Past President  
Ken Callahan, Energy Services Manager, MDU

### Invited Attendees Unable to Attend

Hon. Jack Dalrymple, Governor of North Dakota  
Congressman Rick Berg  
Darin Carej, Bakken Basin Bank Inspections, Inc.  
Ryar Hayward, President, Major Mortgage

Hon. John Hoeven, United States Senate  
Jackie Velk, Field Representative, Sen. John Hoeven  
Jason Ulmer, Vice President, Scott Financial  
Jason Eid, Eid-Co Builders; NAHB Housing Finance  
Committee Member

## Overview

The meeting discussion focused on two primary housing finance segments; commercial lending and consumer lending. We reviewed the challenges and then discussed potential solutions or strategies. Below is a summary of the discussion items by segment area. An abridged version of the meeting transcript is provided as an appendix to provide the complete information for those who are interested.

### Commercial Lending

A common theme among developers is a lack of available debt financing. Many projects rely on equity financing which is typically more expensive than debt financing.

### Challenges

#### Local Lender Perspectives

- Local lenders in North Dakota have diversified portfolios consisting of consumer, Ag, residential and commercial lending. Development is not one of their core strengths. With the lack of development over the past 30 years, it is not something banks in Western North Dakota have developed.
- Construction loan servicing is another area not developed by local lenders, including draw inspections.
- Lending limits and risk distribution preclude local lenders from providing the size and volume of commercial lending for development that is being sought in Western North Dakota. The desired capacity is just not there.
- It is important to note, however, that the local lenders are participating in the market as they deem appropriate.

#### Out-of-State and National Lenders

- People outside of this area do not understand the Western North Dakota market. It is a foreign concept to them and their opinions tend to be less than favorable. There is some familiarity in neighboring states but that drops off sharply after that. Their understanding of this area tends to be gleaned in large part to stories in the national media that exaggerate the negatives and focus too little on the economic realities.
- Lenders question "Is this just another boom and bust?"
- The national lending environment causes additional hesitation
- The most significant issue seems to be a lack of understanding of the market and no comfort level with lending in this area.

#### Other Issues

- Appraisal and title work: long lead times and shortage of service providers. These problems lead to increased carrying costs.

### Solutions

- Lender education, communication and connection
  - Market information and data
  - Energy industry information
  - Connection with energy industry and other business points of contact to help understand the long-term viability of the market
  - Connection with local lenders

- Bank of North Dakota Participations
  - Build network of lenders and attract them to deals in Western North Dakota
  - Educate lenders on the market (reference previous point)
  - Connect out-of-state lenders with local lenders. The local lender may not be able to take the lead, but may participate. The local lender helps provide credibility for the market and the deal.
- Syndication: revisit the possibilities with service providers
- NDHFA: Construction loan guarantee program. This is a current solution.
- Attract REITs to the market
  - This is a component that seems to be missing
  - They provide an exit strategy for developers
  - They provide long-term stability in the market and may even get involved with further development
  - How to attract their attention? Sizeable project (250 unit minimum). Market education.
- Appraisal reciprocity list
- Attract additional title companies

### Comments

At the end of the day, banking is still about relationships. Developers and builders cannot realistically expect to walk into a local bank in North Dakota and walk out with development or construction financing. Nor can they expect their lender from their home market to provide financing in a distant market that they know very little about and don't typically service.

Debt financing is a critical part of continuing the development of Western North Dakota and bringing the cost of capital down. The solutions discussed may help in bridging the gap between local lenders and out-of-town or national lenders. The key seems to be the sharing and information and risk among several parties.

### Consumer Lending

Introductory copy

### Challenges

- Mortgage Qualification Problems
  - Credit problems: slow pay, late pay, collections, high debt to earnings ratios
  - Owns a house elsewhere that is under water
  - Lack of down payment, need a low down payment program but does not qualify due to income or home value limitations
  - Most can come up with the 3.5% down payment

- Anecdotally, it seemed that 90% of people with challenges fall into the “small stuff” category. Whereas only about 10% fall into the difficult challenges such as bankruptcy, etc.
- The discussion seemed to rally around the idea of credit repair and financial counseling strategies or programs
- Appraisal Gap and Appraisal Timeline
  - These issues contribute to the market’s preference for cash buyers over family buyers.
  - The appraisal gap can mean the deal falls through for many buyers who are unable to cover the difference

#### Solutions

- HUD Limit: pursue the process for raising the HUD limit. The best point of contact may be Joel Manske with the HUD office in Fargo.
- Product Mix: more options in townhomes and twin homes would be helpful. These products tend to have a lower price point and families can get into ownership and an equity position.
- Lender Credits: some developers offer seller credits that can be used towards the down payment
- Bank of North Dakota Programs: in particular, the recent expansion of the rural purchase program
- Silent Second Mortgage: a second mortgage with no payment. At the sale of the home, the second mortgage holder received 1/3 of the appreciation along with the loan principle. Questions as to how to configure such a loan and satisfy regulators.
- Bond Program: unable to define this idea or point of reference. The concept did not sound feasible in the current regulatory environment.
- Private Equity Fund: a private financing source that would hold the mortgage until the homeowner can convert to a conventional mortgage after working through a credit repair program or obtaining the necessary work history.
- NAHB Policy for Housing Finance System Reform
  - Acquaint yourselves with the framework
  - Connect lines of communication where appropriate. Jason Eid with Eid-Co in Fargo sits on the NAHB Housing Finance Committee and would be a good point of contact for our congressional leaders or their staff.
- Down Payment Assistance
  - NDHFA: possibly expand the existing program and couple it with community based home owner education program as a requirement
  - Employers may consider a Down Payment Assistance Program as an employee benefit. Can it be tied to tenure?

- Credit Repair & Financial Counseling
  - Development of a program or utilization of existing programs
  - Communication of the program(s) and the value of them by the energy industry
  - Industry or company benefit programs to enroll employees into a credit repair & financial counseling program. (The employee needs to show the initiative or some skin in the game to be successful)
  - The people coming here have shown the initiative to get here to try to better themselves. This type of program can provide hope and a path to recovery for many.

### Comments

The discussion of solutions to the credit qualification problems initially centered on ideas of how to get the borrower into the home at that point in time. It soon became clear that the solutions were not in trying to overcome the guidelines set for mortgage lending but to focus on helping the borrower meet the guidelines.

For that reason, two proposed solutions stood out in the discussion; down payment assistance and the credit repair & financial counseling concept. There seemed to be a consensus that these two initiatives, especially the credit repair and counseling would be effective and are worth pursuing.



### Meeting Agenda (Reference)

Below is the agenda that was used to conduct the roundtable meeting. It is provided as a reference to better understand the meeting transcript.

#### Introductions – Name and Company

#### Finance Challenges

- Survey of known challenges

##### Commercial Lending:

- Local lender limitations
- Out-of-state local lenders - hesitation and lack of market knowledge
- National lenders – lack of activity in the market
- Construction loan services – lack of resources for inspections, draws, etc.
- Difficulty getting financing for spec homes (see lender bullets)
- Lack of commercial lending leads to expensive private equity financing at 10%-11% +

##### Consumer Lending:

- Qualification challenges – poor credit, documenting income: unable to consider overtime wages and bonuses, short work history, down payment
- Appraisal gap – issues with loans, sellers biased to companies with cash offers
- Appraisal & title work lead times

- Discussion of other challenges (open)

#### Solutions

- Introduction of recent ideas (selected attendees)

- FHA limit raise from \$270k to 370k? (Home Ownership Center)
- FHA loan with state bond? (Utah reference)
- Private Equity Mortgage Fund – Privately funding mortgages, holds the mortgage for 12 to 14 months while homeowner is enrolled in credit repair program and establishes 12 month work and wage history. Conversion to conventional financing after 12 to 14 months.
- On-ramp To Ownership Program (OTOP) – Financial literacy and credit repair program for new residents. Enrolled while renting in preparation for homeownership. Operated by private nonprofit or public entity. Funded through grants and enrollment fees paid by employer.
- Appraisal access – address lead times, shortage of appraisers, access to sales data
- NAHB Housing Finance Reform Blueprint

- Additional solution ideas (open)

#### Action Items

**Abt Associates Inc.**

SB2375

2.5.15

2.C

**Research on State  
and Local Means of  
Increasing Affordable  
Housing**

**From Insight to Impact**  
- worldwide

January 29, 2008

*Prepared for*  
National Association of  
Home Builders  
1201 15th St., NW  
Washington, D.C. 20005

*Prepared by*  
Kimberly Burnett  
Jill K hadduri  
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55 Wheeler Street  
Cambridge, MA 02138

**Abt**

Abt Associates Inc.

## Acknowledgements

We would like to acknowledge the efforts of numerous people in contributing to this report. Debbie Bassert and Ed Tombari from the National Association of Home Builders provided valuable guidance and comments, Meryl Finkel provided thoughtful reviews of case studies, Missy Robinson provided production assistance, and Emily Holt, Amy Minzner, and Josh Cox contributed to writing the case studies. In addition, many homebuilders, local officials, researchers, and representatives of non-profits participated in interviews for the case studies.

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## INTRODUCTION

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High quality, affordable housing<sup>1</sup> is fundamental to the economic and physical well being of families, communities, and the nation. Despite its importance, a “perfect storm” of factors over the last several years has led to near crisis-level shortages of affordable housing. Among these factors are formerly pro-growth local governments that have become slow-growth, NIMBYs (Not-In-My-Backyard sentiments by neighbors of proposed housing developments) who resist development, rapid price increases in housing across much of the country in the first half of this decade, and declines in federal resources for affordable housing. Most recently, the problems in the subprime mortgage market have limited access to loans even for borrowers with good credit histories.

Each party in a development proposal has legitimate concerns: local budgets are strained, causing challenges in how to finance the education of current schoolchildren, much less new ones who may occupy new developments. Likewise, NIMBYs often have legitimate concerns about traffic and environmental impact.

The people who need the affordable housing also have a legitimate claim, however, and the lack of housing is leading to consequences for both households and local and regional economies that may become increasingly severe. The most obvious of these is that many families pay disproportionate shares of their income for housing, leading to financial stress.

Metropolitan areas also suffer. For example, some cities, such as Boston, are losing a large share of the population key to driving future economic success in the city - 24 to 34-year-olds - many of whom are leaving precisely because they view housing as too expensive. Employers often decide not to locate in a community if housing costs are too high and their workers can't afford to live nearby. The environment, which NIMBYs and others try to protect, also suffers. The housing that does get approved tends to be high-end, in outer-ring locations that are seen as yielding higher property taxes and requiring fewer local services - but add to congestion and impacts on natural resources.

Lower-income families have long struggled to find housing that fits their budgets; the difference now is that the need for affordable housing exists nearly across the income spectrum and includes families earning up to 120 percent of the area median income and even higher in very high cost areas such as Southern California. The extent of the problem calls for new solutions, and the good news shared in this report is that new solutions are rapidly being generated and adopted at the local level.

The challenge is sharing these ideas across communities rapidly enough to avert the worst consequences of affordable housing shortages. The shift in responsibility for affordable housing from the federal government, with its declining resources, to state and local governments increases the complexity of spreading information about successful strategies. The disparate

actors involved and their poor connections with one another make it difficult to share strategies. A few strategies - such as inclusionary zoning - have spread to many places in the 30-plus years since they were first introduced. Despite the incidence of inclusionary zoning, however, no single strategy can fix the affordable housing shortage, and no single strategy works in every market. Inclusionary zoning may not work at all in a slow market, for example, and may well exacerbate the shortage of affordable housing even in a hot market.

Many strategies have not previously been well known or understood. The purpose of this report is to shed greater light on what approaches are being used successfully at the state and local level so that communities can adopt more comprehensive and effective strategies to address this critical need and problem.

### **Outline of the Report**

This compendium of strategies being used at the state and local level to increase affordable housing is intended to help speed the spread of innovative ideas. Ideally, this resource will be valuable to developers, affordable housing advocates, and state and local officials in identifying new approaches to encouraging affordable housing in their locations.

Although the focus of the report is on innovative strategies, it is also intended to be as comprehensive as possible, so some strategies included, such as property tax abatements for maintaining affordable housing, have been in use for decades. This collection builds on the work of many people, but in particular Jeffrey Lubell and Tasha Harmon,<sup>2</sup> who have written shorter guides to tools for producing affordable housing.

Sixty-five different strategies are included here in all. These are divided into three categories: land use, financial, and a catch-all "other" strategies category. There is a great deal of overlap between both categories and strategies, so cross-references are included where appropriate.

*Land-use strategies* may work through the zoning process, create particular types of housing development, make land available for affordable housing development, provide relief for regulatory barriers to producing housing, or use local ordinances to control the use of land in other ways.

The land-use strategies chapter begins with a section on planning for affordable housing, which is an essential first step, but one that is often overlooked. Ideally, communities that solicit businesses to locate within their borders also plan for the housing new workers will need. Without this kind of planning, the population growth that accompanies economic development leads to increases in demand for housing that outstrip the ability of the market to respond, given the current land use system. Rises in the price of housing quickly exceed wage growth.

*Financial strategies* include sources of funding used by state and local governments to improve the affordability of existing housing, encourage the development of new affordable units, or discourage the conversion of affordable housing to more expensive



housing or to non-housing uses. Financial strategies may affect property taxes or other taxes, provide tax credits, provide financing from other sources, reduce or eliminate impact fees, provide regional approaches to financing affordable housing, or provide other types of financial assistance.

*Other strategies* operate in ways other than through regulation of land use or through providing financial incentives. They include provisions of state law intended to encourage affordable housing, strategies that provide information to communities and developers to improve acceptance of affordable housing, the creation of organizations that promote affordable housing, and relief from regulations (other than land use regulations) that impede the development of affordable housing.

In general, the strategies included are limited to those that lead to the production of new housing. Strategies useful for assisting individual homebuyers or renters, such as rent vouchers, property tax waivers for low-income homeowners, and downpayment assistance are generally excluded.

In addition, only strategies that can be implemented by state and local governments are included. The arsenal of federal strategies available for affordable housing is excluded because they are better known, and increasingly scarce. The strategies included here provide ideas for local and state governments stepping in to fill the void left by declines in funding for federal programs. In addition, they show how state and local governments are serving moderate-income households in need of workforce housing, who are largely unserved by federal programs.

Two to three page descriptions of each strategy include the history of the strategy, its target population, and the extent of its use. How the strategy is funded and administered is also included, as are pros and cons for using the strategy or types of markets where the strategy is more or less effective.

In addition, because seeing is believing, this report includes as many examples of locations using each strategy as possible. It also gives results of the strategies (number of units produced in a particular location, for example). Each description concludes with sources of information about the strategy (reports and websites) and contact information for people and organizations knowledgeable about the strategy.

Case studies of about half the strategies provide an in-depth look at how the strategy has been used in a specific location. The case studies are based on interviews with local officials, developers, and non-profits who have implemented or used the strategy. In some cases, the case studies highlight successes in using a particular approach. In others, they highlight lessons learned about implementing a strategy and offer advice for other places considering the strategy. It is clear that strategies must be very carefully adapted to each location and market condition and that, in some cases, there is still a lot to learn.

## Observations from case studies

Several things stand out from the case studies research. First, the most successful places rely on an array of strategies to encourage affordable housing rather than any single strategy. Austin, Texas, for example, combines impact fee waivers, expedited permitting, advocacy to reduce NIMBYism, transit-oriented locations to reduce commuting expenses, and energy efficiency to reduce utilities costs. Austin's efforts result in 1,500 units of moderately priced housing per year, making it one of the most productive programs in the country. Polk County, Florida, in contrast, relies primarily on impact fee waivers, which people we interviewed feel would be far more effective if combined with downpayment assistance.

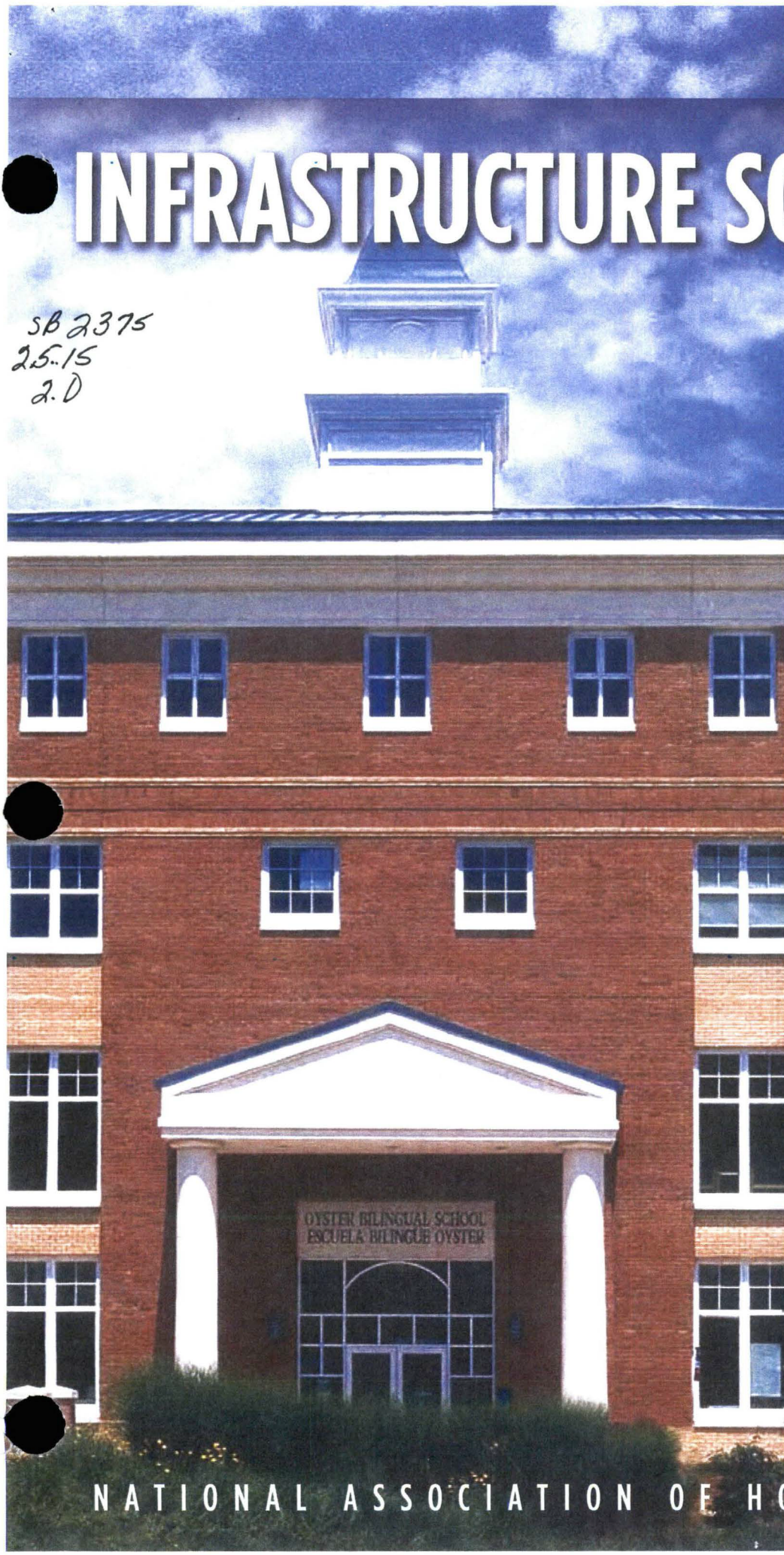
Second, inclusionary zoning is a commonly used approach. However, its implementation and success varies widely, from places that offer no cost offsets to developers whatsoever to places like Highland Park, Illinois, which offers developers cost offsets as well as - perhaps most importantly - flexibility in the size and type of affordable units compared with the market-rate units. In addition, in places with the most effective housing affordability programs, inclusionary zoning ordinances guarantee strong incentives for developers and are combined with several other strategies to produce affordable housing rather than being the only or primary strategy. In fact, voluntary programs with appropriate incentives such as those in Irvine, California, Lexington, Massachusetts, and Chapel Hill, North Carolina are considered to be quite effective.

Third, virtually all states in the nation are involved in efforts to produce affordable housing, not just very expensive places like California, New York, and the Northeast. Case studies cover locations in 15 different states, and examples of locations where strategies are used cover fully 49 states.

Fourth, the strategies that get the most press are not necessarily the most effective. Communities trying strategies such as transfers of development rights, cluster development, and transit-oriented development for affordable housing are generally having only mixed success, although we hope the lessons they have learned in using these tools (presented in case studies) will help other communities further develop these strategies to increase their effectiveness.

In contrast, less flashy strategies such as expedited permitting processes, advocacy efforts to reduce NIMBYism, zoning changes to encourage affordable housing, and regular local planning efforts that incorporate realistic assessments of the area's remaining development capacity, can have broad effects on housing affordability. These strategies are more difficult to quantify, but can affect virtually every new development in a community.

Last, the task of improving access to housing that is affordable to low- and moderate-income households is never finished. Constantly changing economic conditions, housing markets, and local conditions mean that even communities with highly successful programs to improve housing affordability must constantly reevaluate their efforts. We hope this resource is valuable to communities in all phases of their mission.



# INFRASTRUCTURE SOLUTIONS

SB 2375  
2.5.15  
2.0

**Best  
Practices  
from  
Results-  
Oriented  
States**

PART 3 OF A SERIES

NATIONAL ASSOCIATION OF HOME BUILDERS

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## Infrastructure Solutions

With each passing year, the nation's local governments are falling further behind in the effort to maintain and expand the infrastructure needed to keep communities vibrant and competitive. As the problems mount, they affect the ability of communities to sustain strong economies and provide amenities that contribute to a good quality of life. Fortunately, there are proven financing solutions. This publication, based on new research from the National Conference of State Legislatures (NCSL), highlights state policies that enable local governments to use the most effective infrastructure finance techniques.

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Based on research conducted by  
The National Conference of State Legislatures

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## Funding Partners



The National Association of Home Builders



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International Council of Shopping Centers



The National Council of the Housing Industry



National Apartment Association



The National Association of Realtors



National Association of Industrial and Office Properties



Real Estate Advocacy Group for States

ON THE COVER: The Oyster School, an elementary school in Washington, DC, created through a public-private partnership.

Photo by August Scheele.

SB2375  
2.5.15  
20

# INFRASTRUCTURE SOLUTIONS

**W**ITH EACH PASSING YEAR, the nation's local governments are falling further behind in the effort to maintain and expand the infrastructure needed to keep communities vibrant and competitive. The challenge is overwhelming. Government officials must deal with aging infrastructure, a growing population, and a citizenry that expects more and better public services and facilities, but all too often rejects higher taxes that would pay for them.

The result is aging infrastructure, traffic congestion, overcrowded schools, inadequate water and sewer capacity and other problems. As the problems mount, they affect the ability of communities to sustain strong economies and provide amenities that contribute to a good quality of life.

If citizens are unwilling to pay more taxes for the construction and maintenance of infrastructure, then communities must seek alternatives. Impact fees have been tried by many local governments, but such fees have serious limitations:

- ▶ They cannot be used to pay for maintaining existing infrastructure.
- ▶ They cannot be used to build facilities that serve the entire community.
- ▶ They are an unreliable source of revenue that rises and falls with the construction cycle.
- ▶ Because impact fees are an unstable source of revenue, communities cannot leverage them by borrowing against them.
- ▶ They are an added cost on new housing that drives up the cost of all housing in a community.

Fortunately, there are effective financing alternatives. Forward-thinking state and local governments have been making the most of some of these alternatives, including special districts, municipal lease finance, tax increment financing and state infrastructure banks. These and other mechanisms enable a community to leverage its limited resources most effectively—to get more



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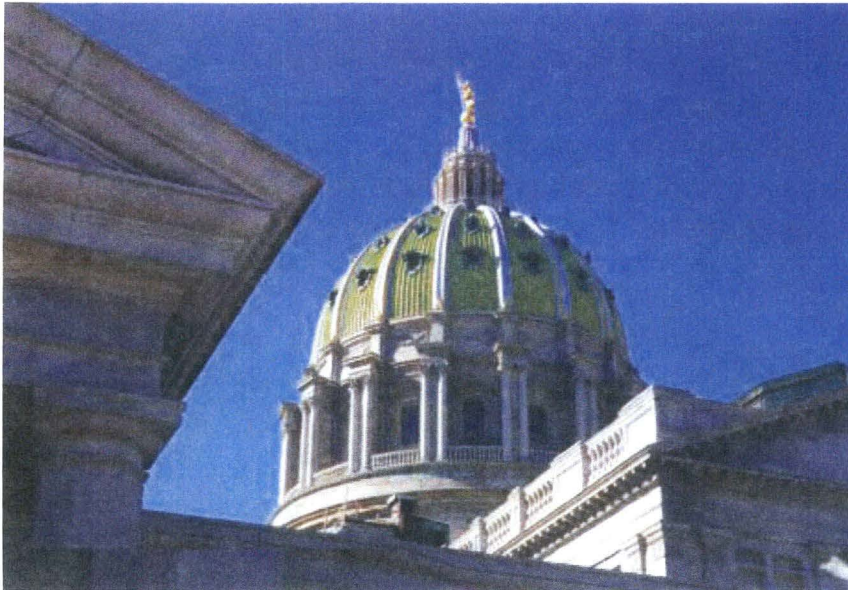
**Maine State Capitol Building**

bang for the buck.

The National Association of Home Builders (NAHB) has been studying this issue for many years and has produced a series of reports designed to help state and local governments find infrastructure finance and management strategies that optimize their finite capital resources.

In 2003, NAHB published "Building

for Tomorrow: Innovative Infrastructure Solutions," a 32-page report that explains more than 20 financing and management tools and presents case studies on how those tools have been applied successfully. A detailed description of the tools can be found in that original publication, which is available online at [www.nahb.org/infrastructurefinance](http://www.nahb.org/infrastructurefinance).



**Pennsylvania State Capitol Building**

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In 2006, NAHB published the second publication in the series, “Infrastructure Finance: Does your state encourage innovation?” It features a list of all 50 states showing which states authorize the use of the 12 most commonly used infrastructure finance tools. That publication highlighted a more in-depth research report written by the National Conference of State Legislatures (NCSL) that summarized state enabling authority for these tools and included links to the relevant statutes. Those materials can be found online at [www.nahb.org/infrastructurefinance](http://www.nahb.org/infrastructurefinance).

This publication, the third in the series, features new research from NCSL regarding the best state policies for some of the most commonly used infrastructure finance alternatives. NCSL looked at statutory language from all of the states authorizing the use of these finance tools and highlighted the best-written laws—those that showed the most promise for helping local governments make effective use of those tools.

A good example comes from Iowa, one of just five states to statutorily allow

the establishment of special districts to provide for infrastructure finance and development. The Iowa Special Districts statute provides for the variety of special districts that other states address and also includes acknowledgement by the legislature that the state has a shortage of opportunities and means for developing local housing. The legislature addressed that deficiency by providing for the establishment of real estate improvement districts to help meet the state’s need for affordable housing.

Maine provides another good example with its statutory language authorizing a municipal lease-finance program under the Maine Municipal Bond Bank. This comprehensive state legislation charges a single state agency with administering the law and calls for a single point of contact to determine implementation. The statute also calls for a wide range of direct and indirect financing options and has strict accountability standards for receiving financial assistance.

Other examples include school partnerships in Florida, tax increment

financing in Utah, Pennsylvania’s state revolving funds program, community development districts in Arizona and Hawaii, California’s GARVEE bond program, and certificates of deposit in North Carolina. NCSL highlighted those state programs that were most likely to deliver strong results for the communities that apply the highlighted mechanism.

NCSL’s research indicates that good enabling authority is only half the battle—a clear commitment to a mechanism for implementation is also critical to success.

It is worth noting that few states have taken advantage of most of these innovative infrastructure alternatives, and that many of the most promising options are overlooked by all but a handful of states. Special districts and municipal lease finance are two good examples. In both cases, only five states have specific statutory language authorizing use of that particular finance tool. Think about it. That means 45 states have not yet granted the statutory authority for these programs.

That’s why NAHB created this publication: To showcase states that have passed strong legislation authorizing some of the best infrastructure tools; to demonstrate the legislative features that go into a good statute; and to bring attention to the opportunities available to states to provide additional means for their local governments to address growing infrastructure finance challenges.

Talk to your finance director, the head of your school board or the city manager. Then talk to your state legislators about those options that make sense for your state and your community. The demand for more and better infrastructure will not go away. Use the information in this series of publications to make sure you have the finance tools you need to address your community’s infrastructure needs.

# MUNICIPAL LEASE FINANCE

**TAX-EXEMPT MUNICIPAL LEASE FINANCE** is basically a “rent-to-own” program in which a municipality pays one-year renewable obligations to a third-party lessor as rent payments on a given project. These leases are not considered outstanding debt for bond ratings. The financed infrastructure often becomes the property of the lessee once the debt is retired.

Five states statutorily allow the use of tax-exempt municipal leasing to help meet infrastructure needs. The Municipal Lease Finance Program, part of Maine’s Municipal Bond Bank, is worth consideration because of the comprehensive state legislation involved in its establishment; the fact that a single state agency is charged with administering the law, providing a single point of contact to determine implementation; the provision of a diverse number of direct and indirect financing options; and the presence of strong accountability standards for receipt of financial assistance.

## Maine Municipal Bond Bank—Municipal Lease Finance Program

30-A ME. REV. STAT. § 6006-C

The Maine Municipal Lease Finance Program was established under the jurisdiction of the Maine Municipal Bond Bank to assist municipalities and governmental entities in the financing of leases under which the entity may acquire or obtain the right to use personal or real property. The program makes available a variety of direct or indirect financing, insurance, borrowing, credit enhancement and other financial tools for the lease, lease-purchase, rental or right of use of any real or personal property or other authorized activity of a municipality. Lease purchase financing is viewed as a cost-effective and tax-exempt alternative for financing capital equipment and technology purchases.

The Maine Municipal Bond Bank is authorized to:

- ▶ Make loans to municipalities or borrow money on behalf of municipalities;
- ▶ Purchase, refinance or enter into leases with or on behalf of municipalities;
- ▶ Purchase or refinance any municipal lease that may be held or issued by any 3rd party; and
- ▶ Issue its bonds or notes for the purchase of municipal leases on behalf of a municipality or group of municipalities or for the establishment of a pool of

funds to be used for the purchase, financing or other means of acquisition of leases used by a municipality or group of municipalities.

The bank is required to establish prudent standards for the terms and conditions of any lease financing made available to a municipality or group of municipalities. To be eligible to participate in the program, a municipality must satisfactorily demonstrate that it can and will pay the principal, interest, fees and related charges on the bond, debt or other instrument issued by the bank on behalf of the municipalities or purchased by the bank from the municipality, as well as the costs for operation and maintenance of any real or personal property acquired or made available for use by the municipality by virtue of the lease finance assistance. Satisfactory assurance can be demonstrated if a municipality has:

- ▶ Established a method of payment by assessment, rate, charges or other mechanism that is satisfactory to the bank; or
- ▶ Provided collateral sufficient to assure payment.

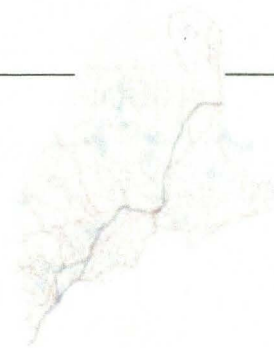
The Municipal Bond Bank does not lend money directly for the Lease Purchase Program. Rather, it conducts the competitive bid process on behalf of the governmental entities seeking to use the

program. Bonds, notes, leases or other forms of debt or liability entered into or issued by the bank under this program section are not in any way a debt or liability of the state.

Eligible projects for the Lease Purchase Program include:

- ▶ Public safety and works vehicles;
- ▶ Portable classrooms;
- ▶ Computer equipment;
- ▶ School buses;
- ▶ Telecommunications equipment; and
- ▶ Energy conservation equipment and renovation projects.

Although the lease finance program was authorized in 1991, it took several years to make the program operational. Since the first lease was approved in 1998, 63 equipment lease purchases have been approved totaling \$14.2 million for such things as modular classrooms and office facilities, school buses, fire trucks and ambulances. Also since 1998, 18 mortgage lease purchases totaling \$9.5 million have been approved primarily for building additions, bus garages and maintenance garages.



# SPECIAL DISTRICTS

**SPECIAL DISTRICTS** are a form of local government that delivers public services such as water, fire protection, police protection and flood control within defined geographical boundaries. They are usually empowered to enter into contracts, employ workers, acquire property, levy assessments and charge fees for services. Special districts are an efficient and equitable method of supplementing local public services. One of their many benefits is that they increase accountability in public spending.

Five states statutorily allow the establishment of Special Districts to provide for infrastructure finance and development. The Iowa Special Districts statute provides for the variety of special districts that other states allow and also includes legislative acknowledgement that the state has a shortage of opportunities and means for developing local housing. The legislature addressed that situation by providing for the establishment of real estate improvement districts to help meet its need for affordable housing development.

## Iowa Special Districts

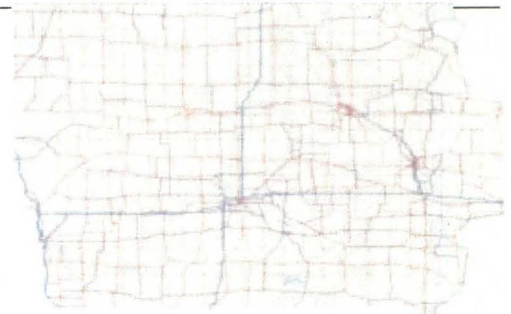
IOWA CODE ANN. TITLE IX, SUBTITLE 2 (2005)

Iowa's Special Districts statute provides for a variety of special districts including water, street lighting, law enforcement, recreational, emergency medical, library, and sanitary improvement facilities. Additionally, the legislature, recognizing that it is in the best interest of the state and its citizens to provide for infrastructure development to lower the costs of developing housing, included a real estate improvement district provision in the Special Districts statute. This section provides for development of water, sewer, roads and other infrastructure. It also specifically recognizes the inter-relationship between the economic health and development of Iowa communities and the state's need to assist developers and communities in increasing the availability of housing in Iowa communities.

In order to form a real estate improvement district, the owners of the property to be designated as such must file a petition with the Board of Supervisors of the area where the property is located requesting that the issue be put before the area's voters.

A district may acquire, construct, reconstruct, install, maintain, and repair public improvements, defined as the principal structures, works, component parts and accessories of the following:

- ▶ Underground utilities —gas, water, heating, sewer, telecommunications, and electrical connections located in streets for private property;
- ▶ Sanitary, storm, and combined sewers;
- ▶ Waterworks, water mains, and extensions;
- ▶ Emergency warning systems;
- ▶ Pedestrian underpasses or overpasses;
- ▶ Drainage conduits, dikes, and levees for flood protection;
- ▶ Public waterways, docks, and wharfs;
- ▶ Public parks, playgrounds, and recreational facilities;
- ▶ Clearing, stripping, grubbing, earthwork, erosion control, lot grading, street grading, paving, graveling, macadamizing, curbing, guttering, and surfacing with oil and gravel;
- ▶ Street lighting fixtures, connections, and facilities;
- ▶ Sewage pumping stations;
- ▶ Traffic control devices, fixtures, connections, and facilities; and
- ▶ Public roads, streets, and alleys.



A real estate improvement district, through its governing boards of trustees, is authorized to:

- ▶ Acquire real or personal property, rights-of-way and easements by purchase, gift, condemnation, and eminent domain;
- ▶ Levy certain types of taxes;
- ▶ Establish equitable rates, charges, or rentals for the utilities and services furnished by the district to be paid to the district by every person, firm, or corporation whose premises are directly or indirectly served by a connection to the utilities and services;
- ▶ Borrow money for its corporate purposes so long as its debt does not exceed its constitutionally established debt limit;
- ▶ Issue bonds, including both general obligation and revenue bonds, and enter into short-term loans and issue warrants, again as long as the entity does not exceed the constitutionally established debt limit; and
- ▶ Levy special assessments on property located within the district.



# SCHOOL PARTNERSHIP

**PARTNERSHIP SCHOOLS** enable public school systems to contract with private developers to construct or make available public school facilities to the standards of state and local laws.

Statutorily enacted school partnership programs are something of a rarity—only three states have enacted such statutes, and all are relatively new. While it is new and there is no evaluative data available on it, Florida's "A Business-Community (ABC) School Program" is included here for two primary reasons: it appears to be the first of its kind at a state level that has been established legislatively, and significant state legislative analysis and activity went into establishing the program.

## Florida A Business-Community (ABC) School Program

*Formerly the Business and Education in School Together (Florida BEST) Program—Contracting for Educational Facilities*

FLA. STAT. §1013.721

The Florida A Business-Community (ABC) School Program [formerly the Florida Business and Education in School Together (BEST) Program] encourages the formation of partnerships between business and education to provide a unique public school experience for the children of the business's employees or others involved with the establishing entity. Originally enacted in 2003 as the Florida BEST Program, the Florida ABC School Program was launched as a result of amending legislation enacted in 2006 (Chapter 2006-301). The amending legislation, in addition to renaming the program, provides for other changes in reporting and administration. The new legislation defines "A Business-Community (ABC) School" as a "public school that offers instruction to students from kindergarten through third grade." Such instruction may consist of a single grade or multiple grades, and state constitutional class size requirements apply to ABC schools. The 2006 legislation requires each school district to identify a person to serve as a point of contact and information about the program. Evaluative data about the program should be available within a few years.

The goals of the program include:

- Increasing business partnerships in education;
- Reducing school and classroom over-

crowding throughout the state; and

- Offsetting the high costs of constructing educational facilities.

Each school district is required to establish an ABC school evaluation committee appointed by the school board. The committee must include one school district administrator, at least one member of the business community, and at least one member of a local chamber of commerce.

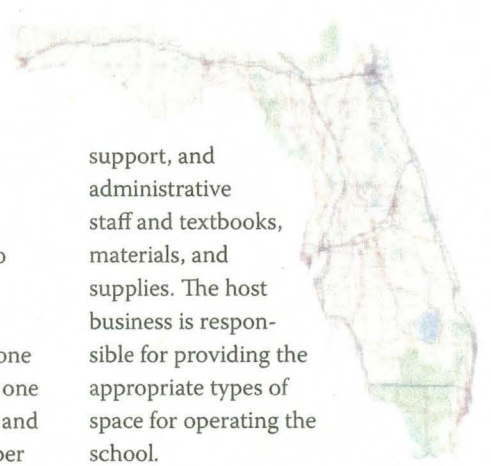
The committee is charged with evaluating the feasibility of each proposal based on various factors including operating costs, the number of students served, the proposed student-teacher ratio, and the proposed number of years the school would operate. Based on its evaluations, the committee then recommends to the school board those schools it has deemed viable.

Children of owners and employees of the host business have first priority for attending an ABC school. If there is excess capacity after these children are offered space, then the host business may designate other neighboring businesses whose owners or employees may participate to generate a viable student population. Parents are responsible for providing student transportation to and from the school.

The school board is responsible for providing the appropriate instructional,

support, and administrative staff and textbooks, materials, and supplies. The host business is responsible for providing the appropriate types of space for operating the school.

The legislative sponsor of the ABC School Program, Sen. Lee Constantine, believes that the program provides a unique opportunity for everyone involved in education to win. According to Sen. Constantine, the hardest classroom size requirement for schools to meet is in the K-3 group, the ages involved in the ABC School Program. Building additional classrooms to meet class size requirements may not be the best expenditure of school district funds, especially if the surge in young students is temporary. School systems benefit because they can focus on classroom space for smaller numbers of K-3 students as well as older children in the school. Transportation is provided by the parents of the students attending the ABC Schools so the demand for district-provided transportation is decreased. This means lower costs for the district.



# TAX INCREMENT FINANCING

**TAX INCREMENT FINANCING (TIF)** determines the difference between a site's pre-development tax revenues and the projected taxes resulting from proposed development and uses that difference (or increment) to finance the proposed development.

At least 48 states have enacted statutes permitting the use of Tax Increment Financing to help local governments finance redevelopment. Utah's Limited Purpose Local Government Entities—Community Development and Renewal Agencies Act and its predecessor, the Utah Redevelopment Agencies Act, both include a provision to use tax increment financing to develop, construct or retain affordable housing in the state. This provision, the only one addressing housing found in the statutory research on TIFs done for this project, is the reason that the Utah statute is included in this study.

## Limited Purpose Local Government Entities— Community Development and Renewal Agencies

UTAH CODE ANN. §17C-1-101 ET SEQ.

**U**nder the Tax Increment Financing (TIF) portion of the Utah Redevelopment Agencies Act, enacted in 2001, local governments are authorized to use tax increment financing for redevelopment activities, including affordable housing. With a few exceptions, each TIF project adopted on or after May 1, 2000, which provides for greater than \$100,000 of annual tax increment to be paid to the agency, was required to allocate a minimum of 20 percent of the TIF for affordable housing development, construction or retention. Approximately \$127 million has become available to fund affordable housing under this act so far, with about \$5 million allocated to date. The first large expenditures of this funding are expected between 2008 and 2015.

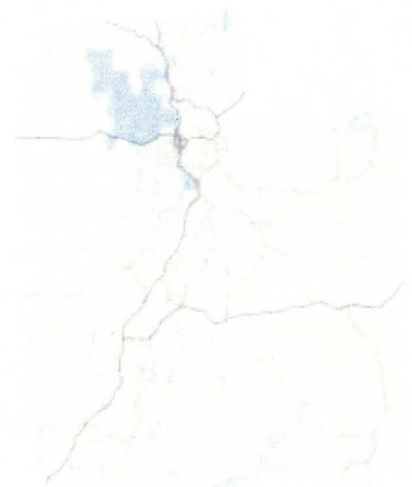
An "agency" for purposes of this statute means a separate entity that is a political subdivision of the state, created to promote redevelopment, economic development or education housing development (i.e., high density housing within a project area that is adjacent to a public or private institution of higher education). The boundaries of the agency must be consistent with the creating political entity (e.g., for a county-created agency, the boundaries are the unincor-

porated areas of the county; for a city- or town-created agency, the boundaries are those of the city or town). There are 48 redevelopment agencies in Utah.

The statute also provides that an agency may use tax increment financing to pay for all or part of:

- ▶ The value of the land and the cost of installation, construction and rehabilitation of any building, facility, structure, or other housing improvement, including infrastructure improvements related to housing, located in any project area within the agency's boundaries; and
- ▶ Use up to 20 percent of tax increments outside of project areas to replace housing units lost by urban renewal, economic development or community development, or increasing, improving and preserving the affordable housing supply of the community that created the agency.

Two major affordable housing efforts have been conducted since the beginning of the TIF provision. Bluffdale, a community near Salt Lake City, has seen the construction of about 85 affordable housing units dispersed across three complexes. Sandy City, also near Salt Lake City, is using the TIF money it receives for infrastructure support for housing development.



# COMMUNITY DEVELOPMENT DISTRICTS

**COMMUNITY DEVELOPMENT AUTHORITIES (CDA)** and **COMMUNITY DEVELOPMENT DISTRICTS (CDD)** are quasi-governmental entities with distinct boundaries that provide a limited number of public services. The debt is retired by charging the district's home owners an annual tax surcharge.

At least 11 states have legislatively authorized the use of Community Development Districts to help fund infrastructure projects. This page and the next look at the Greater Arizona Development Authority and the Hawaii Community Development Authority. NCSL included the Greater Arizona Development Authority in this study because of the comprehensive legislation that charges a single state agency with administering the law and because of the diversity of the types of assistance available.

## Greater Arizona Development Authority

ARIZ. REV. STAT. ANN. § 41-1554 ET SEQ.

The Greater Arizona Development Authority (GADA) is a public body established in 1998 to administer a revolving fund to assist Arizona's fast-growing communities in meeting the need for new infrastructure in a cost-effective manner. The fund consists of revenue appropriated by the legislature, federal grants and loan repayments from political subdivisions, special districts or Indian tribes.

The authority is empowered to issue tax-exempt bonds to provide financial assistance to political subdivisions, special districts and Indian tribes to construct or improve infrastructure projects.

The bonds are issued in the name of the authority and are not considered to be debt obligations of the state.

Financial assistance may include loans or credit enhancement agreements; revenue in the fund may also be used to secure bonds issued by the authority. The loan repayment period may not exceed 30 years, and receipt of a loan is conditioned on identification of pledged revenue sources to ensure repayment. Voter approval is required for any municipality with a population of more than 50,000, and for any county with a population between 250,000 and 1 million, as a condition for loan approval.

The bond pool that is available to communities through GADA enables

the communities to obtain better loan rates due to credit enhancement. Eligible applicants must be public and include cities, counties and Indian tribes. Eligible projects include, but are not limited to, street improvements, fire districts and municipal buildings. Through the Authority, the Department of Commerce has leveraged a \$1.1 million investment into low interest loans totaling \$238.1 million for 43 projects to date.

Examples of recent projects, the funding amounts and estimated savings include:

- ▶ \$9.4 million to the City of Buckeye for multiple public works projects with an estimated savings of \$171,000;
- ▶ \$13.1 million to the Northwest Fire District for public safety projects with an estimated savings of \$203,000; and
- ▶ \$58 million to Lake Havasu City for wastewater system improvements for an estimated savings of \$507,000.

The Authority also is authorized to fund and provide communities with technical assistance during the pre-construction phases of infrastructure projects. This is especially vital to smaller communities due to the high costs of pre-construction work. Due to low interest rates in the past few years, no such funding was available in 2005 and 2006. The State Treasurer's office has worked with GADA to reinvest funds in higher earning long-term accounts.



# COMMUNITY DEVELOPMENT DISTRICTS

NCSL included the **HAWAII COMMUNITY DEVELOPMENT AUTHORITY (HCDA)** in this study because of the comprehensive state enabling legislation that encourages implementation of the program by designating community development districts (CDDs). The legislation includes a requirement that the HCDA prepare a comprehensive community development plan for the designated CDDs and an affordable housing provision.

## Hawaii Community Development Authority

HAWAII REV. STAT. § 206E-1 ET SEQ.

**T**he Hawaii Community Development Authority (HCDA), established within the Department of Business, Economic Development and Tourism in 1976, celebrated its 30th anniversary in 2006. HCDA was established by the Hawaii legislature to focus on redeveloping underused areas through the use of traditional community development mechanisms and public-private initiatives. About 80 percent of the funds issued under the program go to public entities for various projects including utilities, roads and sidewalks.

The HCDA has a \$1.56 million budget and employs about 20 staff. The authority is empowered to:

- ▶ Prepare community development plans for all designated community development districts;
- ▶ Acquire and transfer real property, including through the use of eminent domain;
- ▶ Acquire, construct or rehabilitate projects and public facilities; and
- ▶ Meet affordable housing requirements in any community development district through the construction of reserved housing (defined as low- or moderate-income housing).

The legislature may designate community development districts where it determines an area is in need of replanning, renewal or redevelopment. Once a district has been designated by the

legislature, the HCDA must prepare and approve a community development plan. The governor must then submit requests for appropriations or authorization to issue bonds to implement the plan to the legislature.

The authority is also required to develop a district-wide improvement program that identifies necessary public facilities within a community development district. The costs of funding public facilities as part of a district wide improvement program shall be assessed against real property within the community development district that benefit from the facilities. The authority is empowered to issue general obligation bonds authorized by the Legislature to finance the public facilities. The bonds are to be secured by the property assessments and are exempt from all state and local taxation except transfer and estate taxes.

In addition to general obligation bonds, the authority may issue revenue bonds in amounts that do not exceed the Legislature's authorization and which are approved by the Governor. Revenue bonds are exempt from all state and local taxation except transfer and estate taxes. They are issued in the name of the authority and are not an obligation of the state. The bonds are payable from and

secured by revenues generated by the public facilities for which they are issued. The authority must establish separate special funds for each public facility financed by revenue bonds.

The Kaka'ako area of Honolulu, a mixed-use and mixed-income community, was the first CDD designated under the statute (See case study on page 9).

Another good example is the Kalaeloa District, which was designated a redevelopment district and transferred to HCDA authority in 2002. The Kalaeloa District's five-year redevelopment plan was adopted by HCDA in 2005 and a draft master plan was finalized in March 2006. Kalaeloa, a former Naval Air Station that was closed in 1999, will become a mixed-income, mixed-use district through the multi-stage development plan extended through 2025.

## CASE STUDY: HAWAII'S KAKA'AKO COMMUNITY DEVELOPMENT DISTRICT

Innovative infrastructure financing by the State of Hawaii has brought vitality and opportunity to a long-underused part of Honolulu. State-of-the-art infrastructure and public facilities are the centerpiece of a major redevelopment project in the city's Kaka'ako community. The 600-acre site includes mixed-income housing, commercial properties and new parks.

The entire area is part of a community development district (CDD) made possible by the Hawaii Community Development Authority (HCDA). The original HCDA enabling legislation designated the Kaka'ako area of Honolulu as the first community development district under the statute. At the time of its designation the area was determined to be significantly underdeveloped and underutilized relative to its central location in urban Honolulu. Every dollar invested by the state in the Kaka'ako CDD has brought ten dollars in private sector investment.

Hawaii designed the community development district legislation to encourage a detailed planning process that involves the public sector, private sector and the community's residents. The CDD process opens avenues for bonds and other types of low-cost infrastructure financing that is effective in leveraging private sector investment. The HCDA works with public- and private-sector organizations to assess the community's infrastructure needs, plan and schedule a construction program, and determine the most cost-effective financing strategies.

In designating Kaka'ako as the HCDA's first CDD, the Legislature recognized the community's potential for increased growth and development and its inherent economic importance to Honolulu as well as to the state. The Legislature foresaw that the redevelopment of Kaka'ako would offer tremendous opportunities to address the need for more housing, parks, and open areas, as well as new commercial and industrial space near downtown Honolulu.

According to the HCDA, at the time of designation the population of the area was 2,798 living in 1,100 residential units. All of these units were market rentals. Today, the area is home to more than 6,000 people, residing in over 3,240 market units and another 1,388 affordable units produced through HCDA. Parks in the mixed-use, mixed-income Kaka'ako community area were expanded from 1.65 acres to more than 45 acres, and the University of Hawaii's new medical school chose to locate in the revitalized neighborhood.

A central aspect of the redevelopment initiative was an upgrade of the area's infrastructure—both roads and utilities. Before the redevelopment project could move forward, that infrastructure had to be expanded and modernized to meet the needs of the increased population and the associated commercial activities. The state invested \$217 million in the infrastructure redevelopment within the Kaka'ako CDD. That public investment has helped to leverage more than \$2 billion in private sector investment.

The combined investment of public and private funds is making it possible for Kaka'ako's residents to live in a safe and attractive environment that offers excellent facilities for shopping, entertainment, education, culture, and social activities.

The Kaka'ako District includes the waterfront area from Kewalo Basin to Forrest Avenue and the downtown HECO power plant site.

HCDA determines the location of improvement districts within the district based on infrastructure requirements in the area. In Kaka'ako, many improvement



Photos courtesy HCDA

### Road and park improvements financed by the Kaka'ako CDD.

districts have been concentrated in the areas with the worst drainage problems. Other factors such as improving traffic flow and helping to provide necessary electrical, telecommunications, water, and sewer systems to encourage adjacent development, also contribute to the decision.

The redevelopment effort has included a dozen major roadway improvement projects, including a \$17 million project to improve the infrastructure of Ilalo Street, from Ahui Street to Forrest Avenue. The improved roadway was opened to the public on April 1, 2003. Now that construction is completed, Ilalo Street is a beautifully landscaped boulevard that serves as the principal collector street for Kaka'ako Makai and also provides an attractive and comfortable pedestrian environment.

For this project, new water, sewer, drainage and underground utility systems were installed along with the construction of a new roadway, driveways, a pedestrian-way, curbs and gutters. Construction on the Ilalo Street project took about 30 months.

# DESIGN-BUILD and ELECTRONIC ROAD PRICING

**DESIGN/BUILD** is a privatization strategy in which the design and construction of infrastructure is done by a private party. Other variations include design/build/operate and design/build/operate/finance. **ELECTRONIC ROAD PRICING** is a user-fee system that charges drivers for roadway use through an electronic toll or fee collection system rather than the use of toll booths.

At least 37 states statutorily authorize the use of the design-build construction process, primarily for transportation related projects, and at least 18 states have legislatively approved electronic road pricing and tolls to help meet transportation needs. The Delaware Public-Private Initiatives Program in Transportation provides for a variety of mechanisms that can be used to address transportation needs including public/private partnerships, design/build and electronic road tolls.

Delaware's statute is included in this report because it is comprehensive, it recognizes that public/private partnerships can be an effective means of meeting infrastructure needs, and it offers built-in program flexibility that allows but does not require the use of any specific mechanism. The program also establishes a "Public-Private Initiatives Program Revolving Loan Fund" in the statute.

## Delaware Public-Private Initiatives Program in Transportation

DE. CODE ANN. TIT. 2 §2001, ET SEQ.

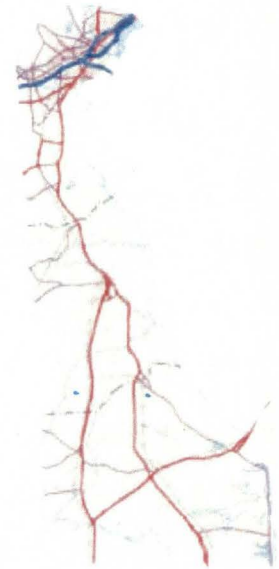
In Delaware, the legislature enacted a broad initiative entitled "Public-Private Initiatives Program in Transportation" in 1995 with the acknowledgment that an efficient transportation system is imperative to the economic, social and environmental health of the state. In enacting this measure, the legislature also acknowledged that the program would enable the state to take advantage of private sector efficiencies in the design and construction of projects as well as in their financing. In the enabling statute, the legislature also directed the state's Department of Transportation to "take full advantage of every financing opportunity and mechanism provided by federal legislation, including transportation legislation facilitating federal financing or grants for construction, improvement, leasing, operation or related functions" for such things as roads, bridges, tunnels, highways, ports and marine-related facilities, park and ride lots, rail and other transit systems, airports, transportation management systems and rest areas.

Under the statute, a project proposal can be initiated by the state or by the po-

tential constructing party. The Secretary of Transportation is allowed to entertain and solicit proposals from private entities or consortia but is only able to enter into project agreements that have been authorized by the general assembly.

Local metropolitan planning organizations and the state's Council on Transportation (established under the state's procurement statute) must approve any projects selected by the project committee within 45 days. The failure of either entity to take action within the 45-day-period means the project is approved. If approved, the project becomes an amendment to the state's capital improvements program for the fiscal year in which the project approval is granted.

Project agreements may provide for either private or state ownership of the overall project during the construction period; however, the state generally must retain ownership or control of the underlying real property. After the project is completed, the project agreement must provide for state ownership and a lease back to the contracting party. The leases on such projects can be for as long as 50 years.



The contracting party is authorized to impose tolls or other user fees for use of the transportation system project that allow for a reasonable rate of return on the investment. These tolls or user fees can be collected through the use of automatic vehicle identification systems, electronic toll collection systems, and video-based toll collection enforcement. The tolls or fees that are collected may differ based on the vehicle class and weight as well as time of day or year.

# STATE INFRASTRUCTURE BANKS

**STATE INFRASTRUCTURE BANKS (SIBS)** operate the same way as state revolving funds. SIBs are intended to complement traditional federal aid highway and transit programs by supporting certain projects via loans and credit enhancements.

Twenty-four states have statutorily established state infrastructure banks, which are typically available for only a few types of projects. Although state budget constraints have prevented its funding, the Indiana Local Infrastructure Revolving Fund is included in this report for several reasons:

- A wide variety of projects are eligible.
- There is a statutory directive that the state Department of Transportation and the Department of Environmental Management must consult with the budget agency to identify infrastructure financing mechanisms available to local communities.
- The fund must provide an annual report on project funding to the state's budget agency.

## Indiana Local Infrastructure Revolving Fund

IND. CODE § 4-10-19

The Local Infrastructure Revolving Fund is established under the state's budget agency to provide funds to local governments for infrastructure projects. The budget agency monitors infrastructure finance needs and the availability and cost of capital; manages investment pools and financial services associated with loans; and explores and evaluates capital financing techniques.

The application for a loan or grant from the fund from a political subdivision must include information that describes the infrastructure for which the funding is sought; estimates the cost of constructing or improving the infrastructure, including design costs; and any other information the budget agency deems necessary.

Money in the fund can be loaned to political subdivisions for a variety of purposes, including:

- Debt financing;
- Grants;
- Loan guarantees;
- Refinancing and purchasing political subdivision debt;
- Guaranteeing political subdivision loans;
- Making bond and debt service reserve insurance payments; and

- Guaranteeing debt service reserve funds for political subdivisions.

Eligible uses for funding include:

- Wastewater treatment projects, sewer systems, and drinking water systems;
- Infrastructure or local public improvements needed for the rehabilitation, redevelopment, economic development, and reuse of military base property acquired from the federal government by a state-established reuse or redevelopment authority; and
- Highways, roads, streets, and public mass transportation systems for communities.

A grant from the fund is limited to the lesser of 10 percent of the total project cost or \$5 million.

Loan interest rates are limited to current market rates for the type of loan. Loan terms must be for 20 years or less and, generally, the amount is limited to the lesser of 10 percent of the total project cost or \$5 million. In either case, the grant or loan must be made in conjunction with the adoption of a resolution that sets forth the political subdivision's commitment of revenues to the infrastructure project for which the loan is made. The fund also requires that amortization must begin within one year after project construction ends.



# STATE REVOLVING FUNDS

**STATE REVOLVING LOAN FUNDS (SRFS)** make low-cost loans available to jurisdictions for infrastructure, and loan repayments are put back into the program to fund additional projects.

Roughly half of the states (26) have statutorily enacted State Revolving Fund programs. The Pennsylvania Infrastructure Investment Authority (PENNVEST) was selected for inclusion in this study due to the comprehensive state legislation involved in establishing it; the fact that a single state agency is charged with administering the law and serves as a point of contact to determine implementation; the diversity of fund uses beyond traditional drinking water and wastewater facilities; the diversity of the types of financial assistance available; and its strong accountability standards for receiving financial assistance.

## Pennsylvania Infrastructure Investment Authority

35 PA. CONS. STAT. ANN. § 751.1 ET SEQ.

**T**he Pennsylvania Infrastructure Investment Authority Act established the Pennsylvania Infrastructure Investment Authority (PENNVEST) as an instrument of the state. PENNVEST is authorized to provide financial assistance to local governments, municipal authorities and, in some circumstances, private entities for waste water, drinking water and storm water projects. Sources of revenue include state appropriations, federal grants, proceeds from issuing bonds, repayment of loan principal and payment of loan interest. Financial assistance may take the form of loans, loan guarantees, bond guarantees, bond insurance and grants.

PENNVEST bonds are general obligations of the authority and do not constitute a debt obligation of the state. The bond proceeds are exempt from state or local taxation.

When providing financial assistance, the authority must consider the following criteria:

- ▶ Whether the project will improve the health, safety, welfare and economic well being of the community.
- ▶ Whether it will solve water management and control supply, sewage treat-

ment or storm water system problems.

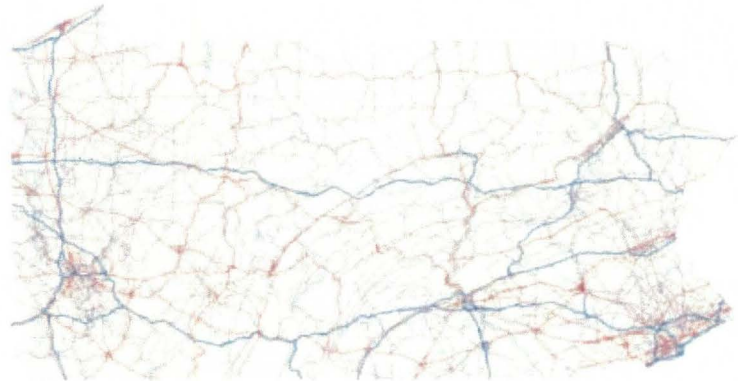
- ▶ The project's cost effectiveness.
- ▶ Whether the project is consistent with other state plans.
- ▶ Whether the applicant has demonstrated an ability to effectively operate and maintain the project.
- ▶ Whether the project will encourage consolidation of water or sewer systems to achieve greater efficiency in operation.
- ▶ The availability of other financial aid.

The maximum amount of financial assistance for a municipal project is \$11 million, with \$20 million available for regional projects.

Since its inception in 1988, PENNVEST has provided over \$4 billion for infrastructure investment, averaging

\$250 to \$300 million per year. About 90 percent of the funding provided for projects is in the form of loans, and 10 percent is in the form of grants.

PENNVEST has recently funded projects related to brownfields remediation and development. It has also provided \$4.3 million in loans to fund an acid mine drainage project in the southwestern part of the state to help prevent wastewater in an abandoned mine from overflowing and contaminating the Monongahela River. Such contamination would have caused serious environmental damage, threatened drinking water supplies and curtailed recreational activities (see case study on page 13).





## CASE STUDY: PENNVEST FUNDS KEY TO CLEANUP OF ABANDONED MINE POOL

**N**ot all infrastructure projects are about new roads and schools. Sometimes an effective infrastructure finance program can help fund facilities needed to safeguard natural resources such as surface water supplies.

A good example is the Pennsylvania Infrastructure Investment Authority (PENNVEST) and a key investment it made in a mine cleanup project in the Southwestern part of the state. PENNVEST funds were used to turn an environmental challenge into an economic opportunity by building a plant to pump and treat a polluted mine pool at the abandoned Shannopin Mine near Dunkard Township in Greene County.

Pumping and treating the polluted mine pool water is preventing an uncontrolled breakout of the water that would pollute Dunkard Creek and the Monongahela River. The plant will also allow the Dana Mining Company to reopen the Dooley Run Mine, which it shut down because of flooding from the Shannopin Mine, and expand other mining operations in the area.

The Shannopin Coal Company mined the Pittsburgh coal seam in the Shannopin Mine from 1926 until the early 1990s. The rising Shannopin Mine pool flooded the reserves in Dana Mining Company's Dooley Run Mine, causing the company to shut that mine down. The Dooley Run Mine was operating in the Sewickley coal seam about 100 feet above the Pittsburgh seam. The pool then began to flood the reserves in the company's Titus Mine, forcing the company to cut the number of employees in that mine from 30 to 15.

The combined cleanup effort was done by PENNVEST and the Department of Environmental Protection (DEP), Department of Community and Economic Development (DCED), AMD Reclamation Inc. and Dana Mining Company.

PENNVEST made the project feasible

by providing a low-interest, \$4.3 million loan, said Larry Gasparato, PENNVEST's project specialist in Southwestern Pennsylvania. That loan was part of an overall funding package of \$7.1 million from various state agencies. The PENNVEST funds have been used to cover the cost of constructing the acid mine drainage treatment facility as well as two miles of outfall sewer lines.

DEP contributed a \$1.8 million grant to the project from the Commonwealth's "Ten Percent Set Aside" Fund, authorized under a provision of Title IV of the federal Surface Mine Control and Reclamation Act of 1977. In addition, DCED provided a \$900,000 Industrial

Sites Reuse Program loan (ISRP) and a \$100,000 Opportunities Grant to assist in this project. The DCED funds will be administered through AMD Reclamation Inc., a non-profit organization.

"PENNVEST is very pleased to help make this critically important project a reality," said PENNVEST Executive Director Paul Marchetti. "This is just one of many steps that this Administration will be taking, along with local government and the private sector, to protect our water resources and revitalize communities all across the Commonwealth."

The treatment plant went online in June 2004, pumping and treating at a rate of 3,300 gallons per minute. As anticipated, construction and operation of the plant averted the potential discharge of polluted water into Dunkard Creek and the Monongahela River.



Photo courtesy of PENNVEST

**A \$4.3 million low-interest loan from PENNVEST was key to building a plant to pump and treat a polluted mine pool in Southwestern Pennsylvania.**

# CERTIFICATES OF PARTICIPATION

**CERTIFICATES OF PARTICIPATION (COPS)** are portions of incoming rent payments that are sold as issues to raise revenue for financing a project. COPS can be used for larger and more expensive projects and they do not count toward a jurisdiction's debt limitations.

At least 12 states have legislatively enabled the use of certificates of participation. The North Carolina State Capital Facilities Finance Act, enacted in 2003, recognized the need for a variety of alternative financing mechanisms in addition to the traditional direct appropriations and general obligation bonds in order to adequately address the state's capital facilities needs. Additionally, this legislation charges a single state agency with administering the law and providing a point of contact to determine implementation and the diverse types of assistance available.

## North Carolina State Capital Facilities Finance Act

N.C. GEN. STAT. § 142-80

The North Carolina State Capital Facilities Finance Act authorizes a variety of alternative finance mechanisms to facilitate providing capital facilities. Certificates of participation may be issued if the state treasurer determines that such issuance would result in debt service savings.

Items eligible for financing under the act include:

- ▶ Capital facilities, including buildings, utilities, structures or other facilities;
- ▶ Property development, including streets and landscaping;
- ▶ Extensions and enlargements to existing facilities; and
- ▶ Acquisition of equipment, machinery, and furnishings in connection with these items.

The Department of Administration oversees the finance mechanisms authorized by the legislation. Certificates of participation include certificates or other instruments delivered by a special corporation, and each certificate represents a fractionalized or proportional interest in the rental payments that will be made by the jurisdiction.

To date, approximately \$1.4 billion in certificates of participation has been approved for issue with about 47 percent of that authorization issued for various projects. The remaining 53 percent of the approved amounts has not yet been issued.

Category	Approved	Issued
Repairs and Renovations	\$ 300,000,000	\$ 175,000,000
Hospitals	110,000,000	48,961,672
Prisons	509,000,000	52,443,292
Universities	388,000,000	337,126,036
Youth Facilities	35,000,000	22,000,000
Parks	45,000,000	20,759,000
Wildlife	17,500,000	—
<b>Total COPS</b>	<b>\$1,404,500,000</b>	<b>\$ 656,290,000</b>

# GARVEES

**GARVEE BONDS** are debts secured with anticipated federal funds.

At least 13 states have statutes authorizing the use of Grant Anticipation Revenue (GARVEE) bonds for transportation needs. The two statutes below, which allow GARVEEs in California, are included in this report because they were used to provide for the first GARVEE issue in the country by a local government.

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## Federal Highway Grant Anticipation Notes

CAL. GOV. CODE § 14550

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## Funds for Highway and Public Mass Transit Guideway Purposes

CAL. STS. & HY. CODE § 188.51

California statute authorizes the use of Grant Anticipation Revenue (GARVEE) bonds to fund the state's transportation needs. The statute specifically cites the rapid growth in population and traffic levels as well as the failure of revenues to keep pace with the need for transportation system improvement. GARVEE bonds, authorized by the federal National Highway System Designation Act of 1995 and the federal Transportation Equity Act for the 21st Century, are tax-exempt anticipation notes backed by annual federal appropriations for federal-aid transportation projects. By using these bonds, a state can accelerate projects and achieve significant cost savings by completing projects necessary for the future at present-day costs.

By law, the federally funded portion of any highway or other transportation project that has been designated for accelerated construction by the California Transportation Commission, and that increases capacity, reduces travel time, or provides long-life rehabilitation of key bridges and roadways of a corridor

or gateway for interregional travel and movement of goods, is eligible for funding by GARVEEs.

An interesting feature of California's GARVEE authorization, and the primary reason that it is included in this study, is that other sections of California law require that a percentage of all federal surface transportation funds allocated to the state must be made available to California counties. Under these provisions, the state recently had the first GARVEE bond issue in the nation that is guaranteed by a local entity for a local project.

A total of eight projects, including freeways and high occupancy vehicle (HOV) lanes, have been funded to date, with \$650 million allocated and \$250 million spent. Projects are determined by need, so all projects have been in Southern California, where most of the state's traffic congestion can be found. The Transportation Commission, in conjunction with the state treasurer, is required to prepare an annual analysis of the bonding capacity of available federal transportation funds.

## ADDITIONAL RESOURCES

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### National Association of Home Builders

[www.nahb.org](http://www.nahb.org)

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### National Association of Realtors

[www.realtor.org](http://www.realtor.org)

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### American Legislative Exchange Council

[www.alec.org](http://www.alec.org)

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### American Public Works Association

[www.apwa.net](http://www.apwa.net)

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### The Aspen Institute: Charter Schools

[www.aspeninstitute.org/Programt3.asp?bid=795](http://www.aspeninstitute.org/Programt3.asp?bid=795)

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### Association for Governmental Leasing and Finance

[www.aglf.org](http://www.aglf.org)

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### The Bond Market Association

[www.bondmarkets.com](http://www.bondmarkets.com)

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### Council of Development Finance Agencies

[www.cdfa.net](http://www.cdfa.net)

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### Council of Infrastructure Financing Authorities

[www.cifanet.org](http://www.cifanet.org)

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### Design Build Institute of America

[www.dbia.org](http://www.dbia.org)

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### FHWA's Innovative Finance (main page)

[www.fhwa.dot.gov/innovativefinance/index.htm](http://www.fhwa.dot.gov/innovativefinance/index.htm)

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### FHWA's Innovative Finance Primer

[www.fhwa.dot.gov/innovativefinance/ifp/ifprimer.pdf](http://www.fhwa.dot.gov/innovativefinance/ifp/ifprimer.pdf)

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### FHWA and Tea-21

[www.fhwa.dot.gov/tea21](http://www.fhwa.dot.gov/tea21)

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### Government Finance Officers Association

[www.gfoa.org](http://www.gfoa.org)

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### The Heritage Foundation

[www.heritage.org](http://www.heritage.org)

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### International Council of Shopping Centers

[www.icsc.org](http://www.icsc.org)

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### The National Association of Bond Lawyers

[www.nabl.org](http://www.nabl.org)

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### National Association of Counties (NACo)

[www.naco.org](http://www.naco.org)

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### National Conference of State Legislatures

[www.ncsl.org](http://www.ncsl.org)

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### National Cooperative Highway Research Program

[www.innovativefinance.org](http://www.innovativefinance.org)

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### National Council for Public-Private Partnerships

[www.ncppp.org](http://www.ncppp.org)

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### Reason Public Policy Institute: Privatization

[www.privatization.org](http://www.privatization.org)

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### School Construction News

[www.schoolconstructionnews.com](http://www.schoolconstructionnews.com)

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### Transportation Infrastructure Financing Alternatives

[www.wsdot.wa.gov/partners/tifa](http://www.wsdot.wa.gov/partners/tifa)

## ABOUT NAHB

The National Association of Home Builders is a Washington-based trade association representing more than 235,000 members involved in home building, remodeling, multifamily construction, property management, subcontracting, design, housing finance, building product manufacturing and other aspects of residential and light commercial construction.

Known as "the voice of the housing industry," NAHB is affiliated with more than 800 state and local home builders associations around the country.

NAHB's builder members will construct about 80 percent of the more than 1.56 million new housing units projected for 2007, making housing one of the largest engines of economic growth in the country.

For more information about Smart Growth, please call NAHB's Public Affairs Division at (202) 266-8583.

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Learn more at [www.nahb.org/infrastructurefinance](http://www.nahb.org/infrastructurefinance)

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Point Pleasant, West Virginia

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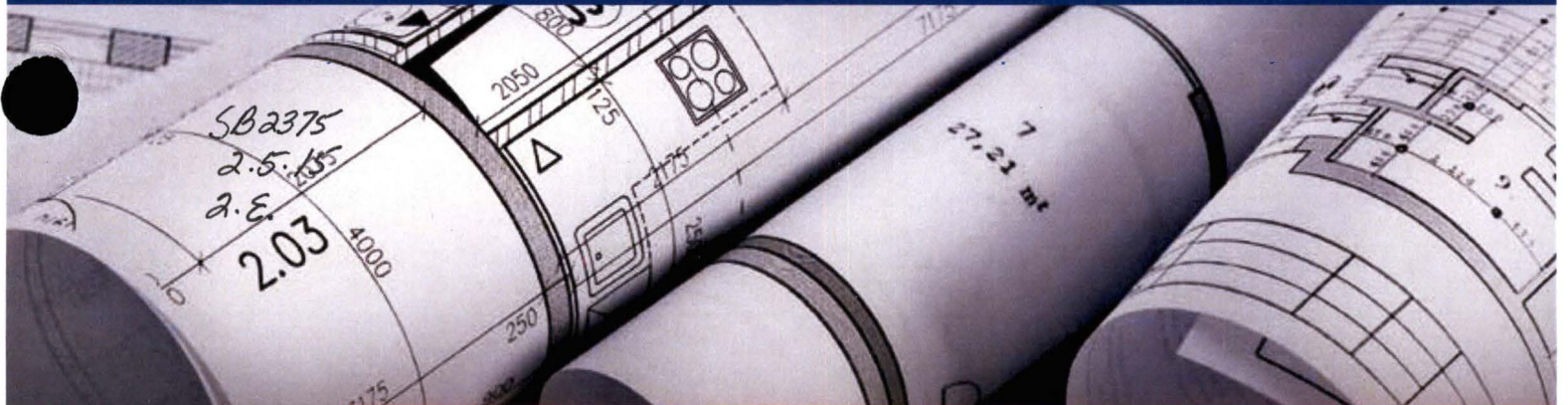
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National Association of Home Builders

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# Infrastructure Finance

Does your state encourage innovation?

PART TWO OF A SERIES





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# Infrastructure Finance Tools

Below are 11 infrastructure financing mechanisms available to local governments. To find out which tools are specifically authorized by statute in your state, check the matrix at right. Please note that in some cases a few of these tools are being used in the absence of an enabling statute.

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## Certificates of Participation

Certificates of participation are funded by incoming municipal payments. Those payments are subsequently sold as issues to raise revenue for financing infrastructure improvement projects.

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## Community Development Districts

Community development districts, also known as community development authorities or community facility districts are quasi-governmental entities with distinct boundaries. These districts provide financing for infrastructure projects, usually by charging homeowners within the district's boundaries an annual tax surcharge.

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## Design-Build

Design-build is an often-used privatization strategy that allows local governments to contract with a private party for the design and construction of infrastructure facilities. Design/build is commonly used in transportation and school improvements, but is also used in the construction of public buildings and parks.

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## Electronic Road/Toll

Electronic toll is a system that charges drivers for use of certain roadways without the presence of toll booths. This is usually done by the use of electronic transponders placed inside of a vehicle.

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## GARVEE Bonds

Grant Anticipation Revenue Vehicles, or GARVEEs, are bonds secured by anticipated federal funds. NCSL identified twenty-nine states that authorize the use of GARVEEs by statute.

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## Municipal Lease Finance

Municipal lease financing allows municipalities to "rent-to-own" buildings and facilities. The municipality does so by paying renewable obligations on a given project until the debt is retired. At that point, it becomes property of the municipal lessee.

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## Partnership Schools

Partnership schools allow public school districts to contract with private developers for the construction of school facilities.

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## Small-Scale Water and Wastewater Systems

Small-scale water and wastewater systems allow developers to provide water and wastewater facilities to their developments. The cost of installing these systems is usually added to the cost of the homes. This allows developers to establish new developments despite public sewer and water capacity restrictions.

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## Special Districts

Special districts are a form of local government that deliver public services—such as water, fire and police protection, and flood control—within specified boundaries. Special districts are typically authorized to enter into contracts, employ workers, and charge fees for services.

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## State Infrastructure Banks and State Revolving Loan Funds

State infrastructure banks (SIBs) and state revolving loan funds (SRFs) both make low-cost loans available to jurisdictions for infrastructure improvements. The money generated from loan repayment is then put back into the SRF or SIB to fund additional projects. SIBs typically are used for transportation improvements, while SRFs typically are used to fund drinking water and wastewater improvement facilities.

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## Tax Increment Financing

Tax increment financing uses the difference between a site's pre- and post-development tax revenues for a proposed development to finance that proposed development. Forty-eight states use tax increment financing, with Arizona and Wyoming the only states that do not participate.



# STATE-BY-STATE INFRASTRUCTURE ALTERNATIVES

	Certificates of Participation	Community Development Districts	Design-Build	Electronic Road/Toll	GARVEEs
Alabama			████████	████████	████████
Alaska	████████		████████		████████
Arizona	████████	████████	████████	████████	████████
Arkansas	████████		████████		████████
California	████████	████████	████████	████████	████████
Colorado	████████		████████	████████	████████
Connecticut	████████		████████		████████
Delaware			████████	████████	
Florida		████████	████████	████████	████████
Georgia			████████	████████	████████
Hawaii		████████	████████		
Idaho			████████		████████
Illinois			████████	████████	
Indiana		████████	████████	████████	████████
Iowa					
Kansas			████████		
Kentucky			████████		████████
Louisiana	████████	████████	████████	████████	████████
Maine			████████	████████	████████
Maryland		████████	████████	████████	████████
Massachusetts			████████	████████	
Michigan					
Minnesota		████████	████████	████████	████████
Mississippi		████████	████████		████████
Missouri			████████		████████
Montana			████████		████████
Nebraska		████████	████████		
Nevada			████████	████████	
New Hampshire			████████	████████	████████
New Jersey			████████	████████	
New Mexico	████████		████████		████████
New York	████████		████████	████████	
North Carolina	████████		████████	████████	████████
North Dakota			████████		████████
Ohio			████████	████████	████████
Oklahoma			████████	████████	
Oregon	████████		████████	████████	████████
Pennsylvania			████████	████████	
Rhode Island					
South Carolina		████████	████████	████████	
South Dakota			████████		
Tennessee			████████		████████
Texas			████████	████████	
Utah			████████		
Vermont		████████	████████		
Virginia		████████	████████	████████	████████
Washington	████████		████████	████████	████████
West Virginia	████████		████████		
Wisconsin			████████		
Wyoming			████████		





# Infrastructure Finance

## Does your state encourage innovation?

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**THE NATIONAL ASSOCIATION OF HOME BUILDERS** (NAHB) published a report in 2003 entitled *Building for Tomorrow: Innovative Infrastructure Solutions*, which highlights a variety of strategies available to local governments to finance current and long-term infrastructure needs. Many of the strategies identified in the report require state legislation that authorizes local governments to use them.

To assist builders, developers, and policymakers with understanding where these tools can be used, NAHB identified 11 of the infrastructure finance strategies contained in *Building for Tomorrow* that appear to provide the greatest opportunities for local governments to meet their current and long-term infrastructure needs in the most cost-effective manner and retained the National Conference of State Legislatures (NCSL) to catalog the extent to which these tools were authorized across the states, along with links to the enabling statutes. NCSL's full research report was highlighted in NAHB's second publication in its infrastructure series, *Infrastructure Finance: Does Your State Encourage Innovation?*, first published in 2005 and updated in 2007.

NCSL also explored the best state-enabling legislation for those 11 key finance strategies, detailing which statutory language shows the most promise for helping local governments make effective use of these tools, in a third NAHB publication called *Infrastructure Solutions: Best Practices from Results-Oriented States*, also published in 2007.

NCSL has once again updated for NAHB their body of work on which states authorize these key tools. That new research is highlighted in this updated publication, which shows at a glance the financing options that are available in each state. Since the last report was compiled pre-recession, NAHB believes this new research will provide valuable current information for both the private and the public sector at a time when financing and revenues are more constrained and limited than ever before.

NCSL has altered its methodology for researching infrastructure finance tools. This alteration, combined with improved legal and state research tools, has allowed NCSL to capture significantly more statutes. The largest increase under this new methodology relates to state revolving loan funds and state infrastructure banks (SRLFs/SIBs), with 96 SRLFs/SIBs authorized in 48 states. Seventeen states offer both infrastructure banks and revolving loan funds, up from twelve in 2007.

Financing for small-scale water and wastewater systems are now reported in five states, whereas in 2007, no states were captured as using these finance tools. There was also growth in states that offer certificates of participation, electronic tolling, and special districts, and large gains seen in states that authorize the use of GARVEE bonds and municipal lease financing plans. GARVEEs are now used in 29 states, up from the fourteen states previously reported, and municipal lease financing jumped from eight states to twenty-three.

All three of NAHB's infrastructure publications and NCSL's full research report, with statutory citations and summary analysis, can be found online at [www.nahb.org/infrastructurefinance](http://www.nahb.org/infrastructurefinance).

In today's financial environment, the public and private sectors need all of these tools and more. The added capacity across the states that NCSL uncovered in their research is a good indication of that understanding. These innovative tools enable a local government to maximize limited community resources to improve and expand infrastructure in a timely and cost-efficient way.

How many of these tools are available to your community? Does your state encourage local governments to find innovative ways to finance, build, and manage infrastructure?

Check the list inside to find out.

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**THE NATIONAL ASSOCIATION OF HOME BUILDERS** is a Washington-based trade association representing more than 140,000 members involved in remodeling, home building, multifamily construction, property management, subcontracting, design, housing finance, building product manufacturing and other aspects of residential and light commercial construction. NAHB is affiliated with 800 state and local home builders associations around the country. NAHB's builder members will construct about 80 percent of the new housing units projected for this year.

**For more information about these infrastructure tools, contact any of these NAHB staff members:**

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# An Overview of Special Purpose Taxing Districts

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### **The National Association of Home**

**Builders** is a Washington-based trade association representing more than 140,000 members involved in remodeling, home building, multifamily construction, property management, subcontracting, design, housing finance, building product manufacturing and other aspects of residential and light commercial construction. NAHB is affiliated with 800 state and local home builders associations around the country. NAHB's builder members will construct about 80 percent of the new housing units projected for this year.

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## **Acknowledgements**

This publication is designed as a resource to provide accurate and authoritative information in regard to this subject matter covered with the understanding that its authors are not engaged in rendering legal, accounting, and other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought.

Funding for this research was provided by the Land Development Committee of the National Association of Home Builders.

## **About Development Planning & Financing Group, Inc. ("DPFG")**

DPFG is primarily a transaction-oriented national real estate consulting firm which provides professional services to the private sector in matters of development and public finance. More information on DPFG may be found at [www.dpfg.com](http://www.dpfg.com).

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## SPECIAL PURPOSE TAXING DISTRICTS

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Concluding Comments..... 15

### APPENDIX

Special Districts – Selected Case Studies ..... Exhibit A

Special Districts – Players and Process ..... Exhibit B

# Infrastructure Financing Challenges

The U.S. banking crises that occurred in late 2008 resulted in a major shift in the way land development projects, especially residential projects, are financed. Basically, commercial banks, which were doing most of the upfront funding on land development projects in the great real estate boom days, continue to shy away from doing business in this sector of the economy. This shift has created a huge void in finding up-front funding to cover the significant development costs that must be incurred before a single lot or home is sold or a business is occupied. The financing gap is currently being filled by expensive asset-based loans and private equity, which are typically three to five times more expensive than the cost of commercial lending if it were available, thus preventing many development projects from moving forward. Additionally, the construction of residential homes and commercial facilities from the “great boom days” has left many communities with public improvements that have no capacity to accommodate future development.

In addition, jurisdictions have been struggling in their approach to providing funding for the new facilities required by new growth. As may be expected, the jurisdictions have dusted off their impact fee ordinances and are now beginning to raise impact fees in an attempt to fund public improvements, as this is a financing tool with which they are familiar. The problem with this approach is that impact fees arrive too late in the process to fund the construction of public improvements in advance of growth; by the time impact fees are collected, the growth has already occurred causing stress on existing facilities.

The second challenge with impact fees is the manner in which they are estimated. Among other things, when credentialed professionals have evaluated impact fee studies prepared by the jurisdictions and/or their consultants, they have commonly found the following shortcomings with impact fees studies: (i) the utilization of overly aggressive land use and/or growth projections; (ii) construction costs utilized in the fee study do not correspond with the jurisdiction’s Capital Improvement Plan; (iii) current levels of service are not documented properly or utilized within the study; (iv) other jurisdictional funding sources for public improvements are ignored or improperly applied; (v) land and/or construction costs are inflated; (vi) construction cost estimates are not prepared by licensed professionals; (vii) impact fees are being utilized to correct current levels of service deficiencies within the jurisdiction; (viii) impact fee studies are not compliant with the requirements of the state’s enabling legislation; (ix) lack of multiple services areas, and (x) math and/or logic errors are present. All of these issues result in home builders and home buyers funding public improvements that are in excess of the benefit that they receive.

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**For more information on impact fees, see the National Association of Home Builder’s (“NAHB”) publication entitled *Impact Fee Handbook*. The publication is available online at [www.nahb.org/fileUpload\\_details.aspx?contentID=184609](http://www.nahb.org/fileUpload_details.aspx?contentID=184609).**



# A Better Way to Finance Public Improvements

A more efficient and effective way to fund public improvements in advance of growth, while at the same time ensuring that new growth pays for the improvements, is through the use of Special Districts (as herein defined). One may want to view the taxes and/or assessments that are levied by Special Districts as a “user fee” rather than a “tax”, meaning that the Special District is created over a specific land area and the dollars are being collected by the Special District to pay for the public improvements that are benefiting the landowners within the Special District. In other words, the Special District residents are paying for public improvements for which they derive benefit and existing municipal residents who are outside the Special District boundaries are not paying for the Special District improvements. As a result, Special Districts are much more transparent and easily understood than impact fees. More importantly, Special Districts provide a more efficient form of financing because infrastructure improvements can be delivered in advance of growth, are funded exclusively by property owners within the Special District, are secured by liens that ensure collection of the funds by the Special District, and often deliver higher-quality public improvements than might otherwise be economically feasible.

Additional advantages of Special Districts over impact fees include:

- Special Districts cover a specific geographic area and as such there is a clearer connection between the taxes/assessments being levied by a Special District and the benefits that the residents in the Special District are receiving.
- Special District taxes / assessments are levied on an annual basis and therefore are not rolled up into the home price/mortgage as is the case with impact fees.
- Over time Special Districts draw upon a large pool of citizens to finance public infrastructure and don't place this financial burden solely on new residents as is the case with impact fees.
- Special Districts often require the preparation of an annual budget thereby making them more accountable and transparent to the residents.
- Special Districts may be used in combination with other financing mechanisms thereby accelerating the financing of public improvements in advance of growth.
- Impact fees do not readily allow for the issuance of bonds to finance the construction of infrastructure in advance of growth.

In order to foster continued growth in the housing recovery, the public and private sectors should increase the use of Special District financings because this type of financing is the key to unlocking local and regional capacity problems associated with public improvements for newly developing areas.



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# Introduction to Special District Financing

Special District (“**Special District**”) financing involves the issuance of tax-exempt bonds to finance public improvements within a specified geographical area, or district. Districts may construct public improvements (“Construction District”) and/or purchase public improvements (“Acquisition District”) that have been constructed by the developer through bond proceeds. The bonds are repaid from the special taxes, assessments, and/or an ad valorem property tax imposed on the land within the district. Property owners in the district thus finance the improvements without any city-wide taxpayer subsidy. The bonds are typically underwritten in private offerings managed by underwriting firms who specialize in this type of land-secured financing. See Exhibit B for a detailed description of the players and processes involved in Special District financing.

Various state statutes and local ordinances provide authorization for Special District financing. The nomenclature for Special District varies according to location, but some of the more common Special District names include metropolitan districts (“**Metro District**”), municipal utility districts (“**MUD**”), public improvement districts (“**PID**”), special improvement districts (“**SID**”), special assessment districts (“**SAD**”), community facility districts (“**CFD**”), improvement districts (“**ID**”), community development districts (“**CDD**”), and tax increment financing districts (“**TIF**”). The tables that follow illustrate some of the more common Special Districts. They are intended to be illustrative and not exhaustive, in terms of both the financing tools as well as the states listed. Additional information related to the other available infrastructure financing options and where they are authorized may be found in the NAHB’s publications *Building for Tomorrow: Innovative Infrastructure Solutions* (2003), *Infrastructure Finance—Does Your State Encourage Innovation?* (2012) as well as *A Summary of State Legislation to Encourage Innovative Infrastructure Financing Options* (2012). All three of the NAHB’s publications may be found online at [www.nahb.org](http://www.nahb.org).

Infrastructure for which Special District financing may be used is defined by state statute. In some jurisdictions, Special Districts are also used to fund specific public services, such as public safety, snow removal and/or street cleaning and maintenance. However, this publication focuses on Special Districts with broader authorization to finance public infrastructure improvements needed to support growth and development.

Commonly, most Special Districts are allowed to finance public water and sewer systems, public roadways and other transportation improvements, drainage projects, public safety as well as public parks and recreational facilities. The determination of which Special District to utilize is dependent upon a number of factors including but not limited to: (i) Special Districts allowable pursuant to state law; (ii) jurisdictional policies, (iii) the type of public infrastructure to be financed; (iv) the phasing schedule of the project; (v) other available financing sources; and (vi) the competitive environment. A listing of the types of facilities eligible for financing through selected Special Districts has been included in the tables on pages 6 through 9.



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Special Districts are typically, but not always, separate political subdivisions from the jurisdiction that creates the Special District. The obligation to repay the Special District bonds is passed on to the end users of the property located within the Special District's boundaries.

Based upon the type and location of the Special District, the district may issue general obligation, revenue, special assessment and/or special tax bonds to finance eligible public improvements.

The bonds issued by Special Districts typically have terms ranging from 20 to 40 years, with tax-exempt interest rates ranging from 3 to 7 percent. Typically, the only security for the bonds is the property located within the Special District itself—no other forms of developer financial assurance is required. As the Special District is typically a separate political subdivision from that of the establishing jurisdiction, the establishing jurisdiction does not have to repay bondholders should the developer or property owners default on the debt obligations of the Special District. Nowhere was this fact more readily apparent than in the state of Florida when during the Great Recession approximately \$4 billion in community development district bonds went into default, yet not one Florida jurisdiction was required to fund the debt service on the defaulted bonds. Additionally, not one jurisdiction in which the defaulting districts were located had their credit rating downgraded.

A Special District's ad valorem taxes, special assessments or special taxes are imposed in addition to the traditional statutory property taxes on real property within the Special District and are authorized for a specific period of time to fund specific improvements, or debt service thereon, within the Special District. Depending upon the type of bond being issued, the repayment of the bonds will be accomplished through the payment of additional ad valorem taxes in the case of general obligation bonds, special assessment payments in the case of special assessment bonds or special tax payments in the case of special tax bonds. Sales taxes, various excise taxes and/or user fees can also be utilized to support Special District revenue bond financing.

Further, Special District ad valorem, special assessments and special taxes carry the same priority as real property taxes, meaning that in the case of delinquency or non-payment, collection is enforced in the same manner as real property taxes. Because real property taxes have precedence over private liens, including mortgages, the governmental entity and the Special District have the right to ultimately to collect delinquent amounts by a tax sale of the property.

Public hearings to establish Special Districts, advance disclosure in real estate contracts, deeds, or marketing materials to purchasers of property within the Special District may be required by enabling legislation or policy guidelines published by the governmental entity.

## Special District Financing Advantages

The use of Special District financing creates a "win-win-win" scenario for the development community, the jurisdiction and the homeowner as follows:

### Private Sector Benefits

- 1. Non-Recourse Financing** – In most cases, Special District financings are non-recourse borrowings to the developer, meaning that if the developer defaults on the bonds, the only recourse to the Special District is to foreclose on the property. The security for the bonds is either an assessment lien on the individual lot or parcel in the case of a special assessment or special tax levy bond; an increase in the ad valorem property taxes of the property contained within the Special District in the case of a general obligation bond; or the revenue stream created by an asset financed by the Special District, such as a water treatment facility or parking garage in the case of a revenue bond.
- 2. Long-Term Financing** – Unlike traditional construction financing, which has a 2 to 3 year term, the typical term of Special District bonds ranges from 20 to 40 years.
- 3. Reduces Equity/Third Party Borrowings** – The use of Special District financing to finance a portion of the project's public improvement costs reduces the amount of equity and/or traditional lending required.
- 4. 100% Debt Financing** – Conventional financing sources typically require equity contributions, whereas Special District financing is 100 percent debt financing. Additionally, no personal and/or corporate financial guarantees are required with Special District financing.
- 5. Tax-Exempt Interest Rates** – Special District bonds are issued at tax exempt interest rates and therefore are less expensive than the interest cost of borrowing from conventional sources (including potential lender participation).
- 6. Interest Reserves** – Special Districts may borrow up to 3 years of capitalized interest to fund debt service requirements while the project is under construction. During the capitalized interest period, property owners within the district are not required to pay debt service on the bonds as this is funded by the Special District.
- 7. No Acceleration Provisions** – Development loans typically have an acceleration provision in which the lender may foreclose on property for the entire loan amount; whereas with Special District financing, the district may only foreclose on the property for which the assessments and/or taxes are levied and unpaid.

SPECIAL DISTRICTS  
**Selected State Special Districts**

Description	Arizona		California	Colorado		Delaware	Florida
	CFD	RD	CFD	Metro	SID	SID	CDD
<b>Jurisdiction Availability</b>							
Establish in County	X	-	X	X	X	-	X
Establish in a Municipality	X	X	X	X	X	X	X
<b>Available Bond Types<sup>1</sup></b>							
Revenue Bonds	X	X	-	X	-	-	X
General Obligation Bonds	X	-	-	X	-	-	X
Special Assessment Bonds	X	X	-	-	X	X	-
Special Tax Levy Bonds	-	-	-	-	-	-	-
<b>Maximum Bond Term (Years)<sup>1</sup></b>							
	<b>25</b>	<b>30</b>	<b>40</b>	<b>30</b>	<b>30</b>	<b>30</b>	<b>40</b>
<b>Eligible Capital Public Improvements</b>							
Roadways	X	X	X	X	X	X	X
Water	X	X	X	X	X	X	X
Sewer	X	X	X	X	X	X	X
Drainage	X	X	X	X	X	X	X
Lighting	X	X	X	X	X	X	X
Traffic Control	X	X	X	X	X	X	X
Natural Gas	-	-	X	-	-	-	-
Telephone	-	-	X	-	-	-	-
Electrical	-	-	X	-	-	-	-
Cable TV	-	-	X	X	-	-	-
Landscaping	X	X	X	X	-	X	X <sup>2</sup>
Recreational Facilities/Parks	X	X	X	X	-	X	X <sup>2</sup>
Civic Buildings	X	X	X	-	-	X	X <sup>2</sup>
Schools	-	-	X	-	-	X	X <sup>2</sup>
Police Facilities	X	X	X	X	-	-	X <sup>2</sup>
Fire Facilities	X	X	X	X	-	-	X <sup>2</sup>
Pedestrian Malls	X	X	X	X	-	-	-
Parking	X	X	X	X	-	X	X <sup>2</sup>
Other	-	X	-	-	X	-	-
Child Care Facilities	-	-	X	-	-	-	-
Hazardous Waste Remediation	-	X	X	-	-	-	X <sup>2</sup>
Solid Waste	-	-	-	X	-	X	X <sup>2</sup>
Mosquitoes/Pest Control	-	-	-	X	-	-	X <sup>2</sup>
Transit Facilities	-	-	-	-	-	-	-
Provision of Ongoing Operations and Maintenance Costs	Limited	Limited <sup>3</sup>	Limited	X	Limited	-	X

Hawaii	Idaho		Illinois	Maryland	Montana
CFD	CID	LID	SSA	STD	SID
X	Limited	X	X	X	-
X	X	X	X	X	X
-	X	-	-	-	-
-	X	-	X	-	-
-	X	X	-	-	X
X	-	-	X	X	-
<b>30</b>	<b>30</b>	<b>30</b>	<b>40</b>	<b>30</b>	<b>20</b>
X	X	X	X	X	X
X	X	X	X	X	X
X	X	X	X	X	X
X	X	X	X	X	X
X	X	X	X	X	X
X	-	-	-	-	X
X	-	-	-	-	X
X	-	-	-	-	X
X	-	-	-	X	X
X	X	X	-	X	X
X	X	X	-	X	-
X	-	-	X	X	-
X	X	-	-	-	-
X	X	-	-	-	-
X	-	-	-	-	-
X	X	X	-	-	X
-	-	-	-	-	-
X	-	-	-	-	-
X	-	-	-	-	-
-	-	-	-	X	-
-	-	-	-	X	-
-	-	-	X	X	-
Limited	Limited <sup>3</sup>	-	X	X	X

**Footnotes:**

- <sup>1</sup> Pursuant to state statute.
  - <sup>2</sup> With approval of jurisdiction.
  - <sup>3</sup> Operations Only.
- Note: Dashes (-) equate to a NO answer.

**LEGEND:**

- CDD Community Development District
- CFD Community Facilities District
- CID Community Improvement District
- GID General Improvement District
- ID Improvement District
- LID Local Improvement District
- Metro Metropolitan District
- MUD Municipal Utility District
- PID Public Improvement District
- SSA Special Service Area District
- SSD Special Service District
- SID Special Improvement District
- STD Special Taxing District
- TIDD Tax Increment Development District

SPECIAL DISTRICTS

Selected State Special Districts (continued)

	Nevada		New Mexico		New York	North Carolina	Pennsylvania
Description	SID	GID	PID	TIDD	ID	SAD	NID
<b>Jurisdiction Availability</b>							
Establish in County	X	X	X	X	-	X	-
Establish in a Municipality	X	-	X	X	X	X	X
<b>Available Bond Types<sup>1</sup></b>							
Revenue Bonds	-	-	X	-	-	X	-
General Obligation Bonds	X	X	X	-	-	-	-
Special Assessment Bonds	-	X	-	-	X	X	-
Special Tax Levy Bonds	-	-	X	X	-	-	X
<b>Maximum Bond Term (Years)<sup>1</sup></b>							
	30	30-40	30	25	None Given	30	40
<b>Eligible Capital Public Improvements</b>							
Roadways	X	X	X	X	X	-	X
Water	X	X	X	-	X	X	X
Sewer	X	X	X	-	X	X	X
Drainage	X	X	X	X	X	X	X
Lighting	X	X	X	-	X	-	-
Traffic Control	X	X	X	X	-	-	-
Natural Gas	-	-	X	-	-	-	-
Telephone	-	-	X	-	-	-	-
Electrical	-	-	X	-	-	-	-
Cable TV	-	-	X	-	-	-	-
Landscaping	X	X	X	X	X	-	-
Recreational Facilities/Parks	X	X	X	X	X	X	-
Civic Buildings	-	-	X	-	-	-	-
Schools	-	-	X	-	-	-	-
Police Facilities	-	-	X	-	-	-	-
Fire Facilities	-	X	X	-	-	-	-
Pedestrian Malls	X	X	X	-	-	-	-
Parking	X	X	X	-	X	-	X
Other	-	-	-	-	X	-	X
Child Care Facilities	-	-	X	-	-	-	-
Hazardous Waste Remediation	-	-	-	-	-	-	-
Solid Waste	-	-	-	-	-	-	-
Mosquitoes/Pest Control	-	-	-	-	-	-	-
Transit Facilities	-	-	-	-	-	-	-
Provision of Ongoing Operations and Maintenance Costs	-	X	X	X	X	-	X

South Carolina	Texas		Utah		Virginia	Washington
ID	MUD	PID	SSD	ID	CDA	CFD
-	X	X	X	X	-	X
X	X	X	X	X	X	X
X	X	-	X	-	X	-
X	X	-	X	-	-	-
X	-	X	X	X	-	X
-	-	-	-	-	X	-
<b>40</b>	<b>30</b>	<b>40</b>	<b>25</b>	<b>20</b>	<b>40</b>	<b>30</b>
X	X <sup>2</sup>	X	X	X	X	X
X	X	X	X	X	X	X
X	X	X	X	X	X	X
X	X	X	X	X	X	X
X	-	X	X	X	X	X
X	-	X	X	X	X	X
X	-	-	-	X	X	-
-	-	-	-	-	X	-
X	-	-	X	X	X	-
-	-	-	-	-	-	-
-	-	-	-	-	X	-
X	X	X	X	X	X	X
X	-	X	-	X	-	X
X	-	X	-	-	X	-
-	-	-	-	-	X	X
X	-	-	X	-	X	X
X	-	X	-	-	-	X
X	-	X	-	-	X	-
X	-	-	X	-	-	-
-	-	-	-	-	-	-
-	-	-	-	-	-	-
-	-	-	X	-	X	-
-	-	-	-	-	-	-
-	-	-	-	-	-	-
Limited	X	Limited	-	-	X	-

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- SSA Special Service Area District
- SSD Special Service District
- SID Special Improvement District
- STD Special Taxing District
- TIDD Tax Increment Development District

**8. Accelerate Construction** – The use of Special District financing allows the developer to advance the construction of facilities, which may have had to wait until additional financing and/or project revenues were available with other financing approaches, such as impact fees.

**9. Additional Facilities** – The additional financing capacity provided by Special District's allows the developer to fund additional amenities and/or enhanced facilities which may otherwise have not been possible thereby potentially enhancing the marketability of the project to homebuyers.

**10. Impact Fee Credit** – To the extent that the developer is funding public improvements through the Special District for which the jurisdiction is also collecting an impact fee, the jurisdiction must provide a credit against the impact fee to insure that new growth is not paying for the public improvement twice—once through the impact fee, and a second time through the Special District.

## Public Sector Benefits

**1. "Growth Pays for Growth"** – As Special Districts typically only encompass a specific project boundary and not the entire jurisdictional boundary, Special Districts are well designed to ensure that growth is paying for itself without burdening the existing residents of the community.

**2. Preserves Debt Capacity of Jurisdiction** – The utilization of Special Districts allows the jurisdiction to preserve its statutory bonding capacity for other public improvements.

**3. New Source of Capital Funding** – The use of Special District financings provides an additional capital funding source for the jurisdiction's financial tool box.

**4. "Off Balance Sheet" Financing** – Typically, Special Districts are separate and distinct from the jurisdiction in which they were established, and as such, the jurisdiction is not financially responsible for the debt obligations of the Special District.

**5. Competitive Advantage Among Public Entities** – The use of Special Districts allows the jurisdiction which offers such financing to be more competitive than jurisdictions which do not.

**6. Fulfillment of Public Purpose Objectives** – The use of Special Districts may assist the jurisdiction in accomplishing its public purpose objectives.

**7. Provision of Additional Amenities** – The use of Special Districts may assist in the construction of public amenities which may otherwise have not been possible or may allow the developer to fund improvements to a higher quality standard.

**8. Faster than Impact Fees** – As Special Districts may fund the construction of public improvements in advance of growth, they are much more efficient than impact fees, which arrive after growth as already occurred and can't be spent until they accumulate.

## Home Owner Benefits

**1. Lower Home Prices** – As portions of the public improvement costs are financed through the Special District, it is not necessary to recover these costs through the home price thereby allowing homes to be sold at a lower price point than that which otherwise be possible.

**2. Additional Amenities** – Typically projects which utilize Special Districts have additional and/or enhanced public amenities (e.g. parks, trails, landscaping, open space, etc.) than non-Special District communities. These additional amenities create value not only for the jurisdiction and the master planned community, but also for the homeowner's residence.

**3. Advanced Construction of Improvements** – The use of Special District financing allows the developer to install improvements in an accelerated manner than that which would have otherwise been available.

**4. Reduce Operations and Maintenance Expenses** – Special Districts may fund operations and maintenance expenses of the project thereby lowering HOA dues. As the operations and maintenance taxes are deductible for tax purposes and HOA dues are not, this provides an additional economic benefit to the homeowners.

## Other Considerations

**1. Lender Consent May be Required** – With the exception of revenue bonds, similar to regular property taxes, Special District special assessment/tax liens and ad valorem taxes have priority over any traditional lending. As such, it may be necessary to secure the consent of underlying lending institutions to establish the Special District. In our experience, obtaining the lender consent has not been difficult as most lenders understand that the establishment of the Special District will enhance the project's residual land value, and Special District bonds will be issued over an extended period and often will be utilized to "take out" the lender's development loan.

**2. \$5,000,000 Bond Issuance (Special District Sweet Spot)** – In order for an underwriter to garner the interest of institutional bond investors, a Special District bond issuance should be equal to or greater than \$5 million. As institutional investors have hundreds of millions of dollars to invest, and the time



it takes to place \$1 million is the same as \$100 million, they tend to look for larger transaction amounts, and \$5 million is typically the lowest amount which they will consider. It is preferred to sell Special District bonds to institutional investors as opposed to accredited investors, as it is easier to negotiate with 3 or 5 institutional investors as opposed to 300 accredited investors should bonds ever default and need to be restructured.

**3. Public Bidding/Prevailing Wage** – When considering the use of Special Districts, one has to be cognizant of the fact that the use of the Special District to construct and/or acquire public infrastructure may require the use of public bidding and the payment of prevailing wages. The requirements for public bidding and prevailing wage vary from state-to-state and from district-to-district, so it is important to understand the specific requirements of your state and Special District.

While having to publicly bid the public improvements that will be financed by the Special District requires additional time and overhead, with the exception of the payment of prevailing wages in those states where this is required, public bidding should not result in dramatic increase in costs. Generally the contractor understands that the Special District improvement work is a developer-driven project, and that if the contractor increases their pricing related to the Special District improvements, chances are the developer will not have them participate in the construction of other non-Special District improvements.

As it relates to those states that require the construction of public improvements through Special Districts to adhere to the tenants of the Davis-Bacon Act,<sup>1</sup> the cost of public improvements can increase between an estimated 10 to 30 percent. If an infrastructure project has limited labor involvement, such as the paving of a roadway, the cost increase will generally be on the low end of the scale, while an infrastructure project that demands a significant amount of manual labor to complete—such as the landscaping of a public park—could drive up the cost of the landscaping by as much as 30 percent. Accordingly, should your state require the payment of prevailing wage, one will want to fund non-labor intensive public improvements through the Special District as opposed to labor-intensive projects in order to minimize construction costs.

**4. Construction District vs. Acquisition District** – Special Districts can function as a Construction District and/or an Acquisition District. A Construction District is when the Special District issues bonds to fund the construction of the public improvements through the use of bond proceeds. In this instance, the construction contract is in the name of the

Special District as opposed to the developer's construction entity. On a monthly basis as construction takes place and draw requests are received, the district engineer will verify that the improvements that are the subject of the draw request have been constructed. Assuming there are no deficiencies in either the draw request or construction work, the district engineer will approve the draw for payment. Once approved by the district engineer, the draw request is typically approved by the district board and the trustee is instructed to fund the draw request through funds held within the Construction Account.

In the case of an Acquisition District, the developer's construction entity is typically the contracting entity, and the developer funds the construction of the public improvements as they would normally do in the regular course of business. Once the improvement has been completed, the project will be inspected by the jurisdictional engineers and district engineer. Once the punch list items have been completed, the Special District will issue bonds and "acquire" the completed improvement from the developer through the funds held within the Acquisition Fund.

Most Special Districts are set up to do both Construction Districts as well as Acquisition Districts. However, given the constraints within the capital markets, more-and-more Special Districts are being established to issue bonds to fund the construction of public improvements through Construction Districts. The use of Construction Districts is also the most efficient and cost effective method, as the developer is not having to incur financing costs twice; once through equity and/or a traditional construction loan, and a second time through the Special District.

**5. Operations and Maintenance Costs** – Not only can Special Districts finance the construction and/or acquisition of the public infrastructure, but they may also levy ad valorem taxes and/or additional charges through assessment bonds to fund the ongoing operations and maintenance of public facilities within the boundaries of the Special District. While the rules related to the methods, timing and amounts that can be funded vary from state-to-state, the ability to finance operating costs through a tax rate as opposed to an HOA fee can lower the HOA fee and allow the home owner to deduct these tax payments from their income taxes. Such a tax deduction is not allowed for HOA fees.

<sup>1</sup> The Davis-Bacon Act of 1931 is a United States Federal law that establishes the requirement for paying the local prevailing wages on public works projects for laborers and mechanics. It applies to "contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair of public buildings or public works.

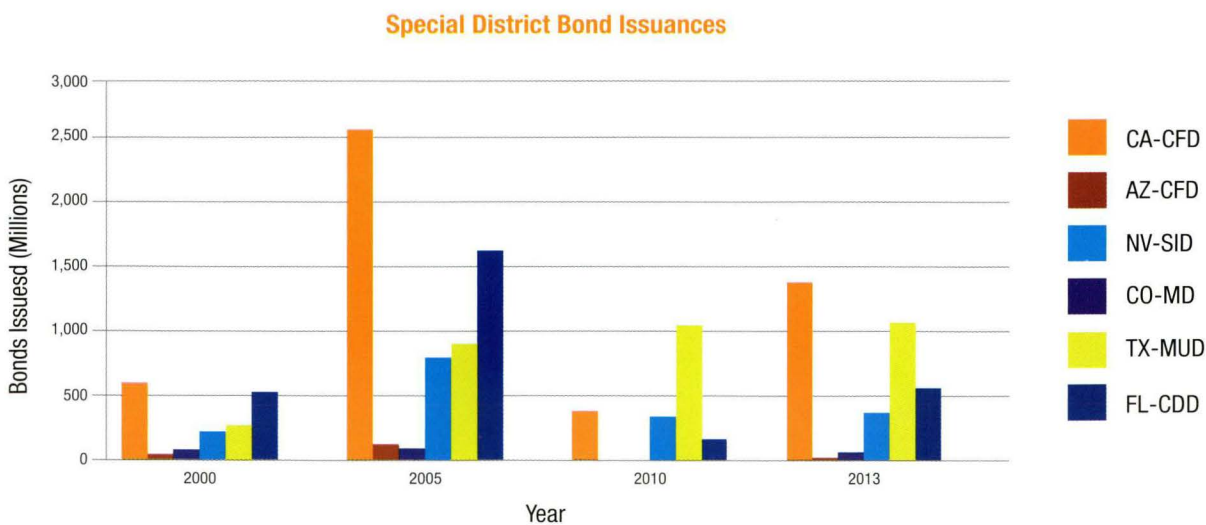
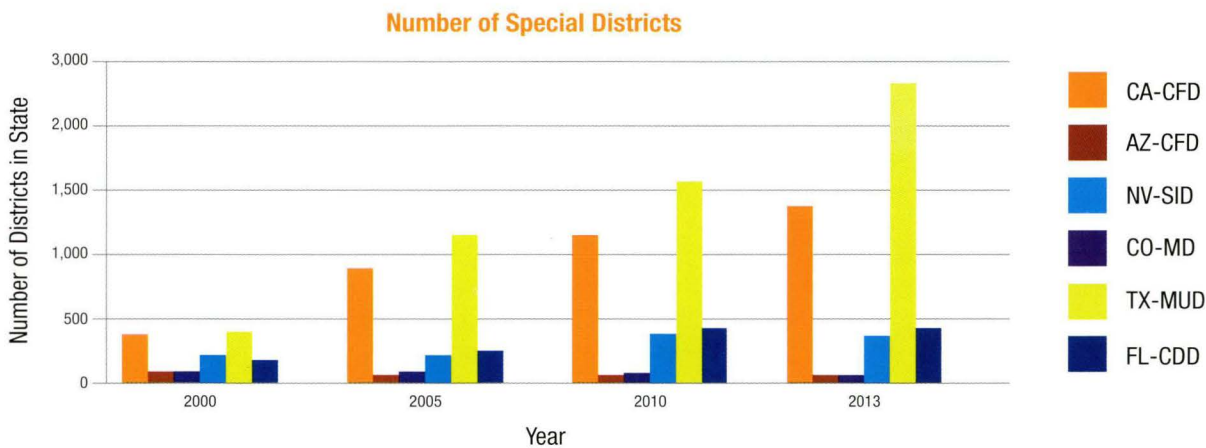
# Special District Trends and Opportunities

The “Great Recession” caused those involved in issuing Special District bonds across the U.S. housing market to recoil and apply very conservative bond issuance practices when the market was at its weakest points. However, as the U.S. housing market continues to improve, Special District bond issuance criteria is moving towards what one would expect in a normalized market.

## Historic Trends

The illustrations below provide a historical snapshot of the use of various Special District financing vehicles in the states of California, Arizona, Nevada, Colorado, Texas and Florida for the time period 2000, 2005, 2010 and 2013.

### Special Districts • Historic Trends



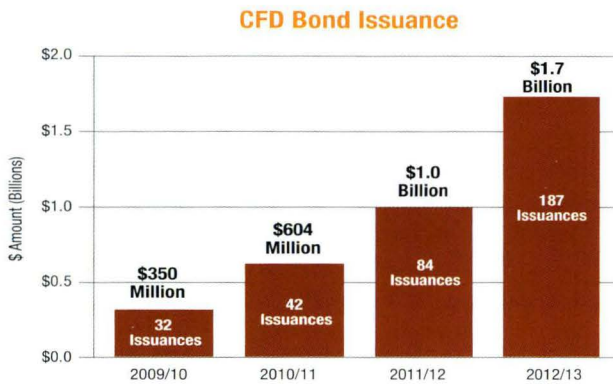
Source: Stifel Nicolaus (from selected national/state and local publications)

## Current Trends

A number of current trends and opportunities in the Special District arena follow.

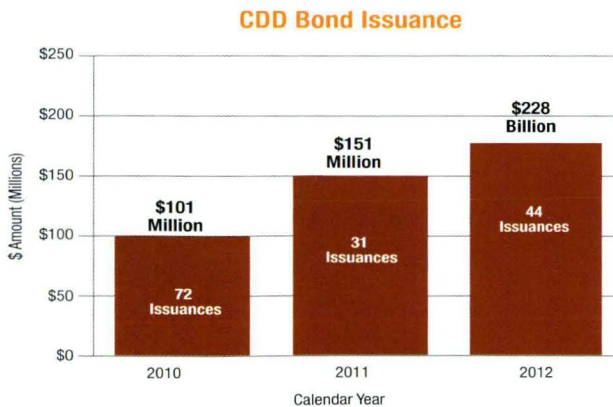
### Special District Bond Issues on the Rise

The absolute number and amount of Special District bond issues has been increasing steadily from past years. For example, in California, the use of CFD bonds has been accelerating in recent years, according to the California Debt Investment Advisory Commission, as follows.



Source: California Debt Investment Advisory Commission.

Additionally, according to the Municipal Securities Rulemaking Board, the number and amount of CDD bond issues in Florida has been growing in recent years, as illustrated in the following.



Source: Municipal Securities Rulemaking Board.

The growth in the number and amount of bond issues is the result of general economic improvement in the U.S. housing sector. Another ancillary reason why Special District bond issues are on the rise across the nation is because the residential housing industry is still experiencing difficulty in obtaining financing for upfront public infrastructure costs from commercial banks and other financial institutions. Steve Heaney, a Managing Director of Stifel Nicolaus, said recently that, "It is expected that

the use of Special Districts will continue to accelerate throughout the U.S. especially if conventional lending sources continue to sit on the sideline".

### Accelerating Bond Issuance Timing

As the U. S. went deeper into the "great recession," the timing as to when Special District bonds were issued was pushed to the back-end of the project's development cycle. For example, it was common for the public agencies in California to be unwilling to issue bonds until a substantial number of residences (i.e., 50 to 100 percent) were constructed and occupied by homeowners in the project. As the housing recovery unfolds, Special District bonds are being issued at the front-end of developments that are located in "Class A" markets. For example, on July 13, 2013 the Santa Margarita Water District issued \$57,420,000 in Community Facilities District No. 2013-1 bonds on a project known as the Village of Sendero, which is located in a Class A market in Orange County, California. At the time of the bond issue, the Village of Sendero project had been graded, and the major infrastructure (i.e., water, sewer, storm drain, utilities, and arterial roads) were substantially complete. Furthermore, at the bond issuance date, all planned residential property was either conveyed or under option to merchant builders; however, no homeowners were present.

Additionally, the City of Austin in the state of Texas issued \$12,590,000 in Special Assessment Revenue bonds, Series 2013, on July 17, 2013, for the Estancia Hill Country PID. Estancia Hill Country is a mixed use development encompassing 593 acres in the City of Austin's extraterritorial jurisdiction. The bonds are entirely secured by assessment liens on the first phase of the project, which consists of 216 acres anticipated to be developed as 386 single family lots, 450 multifamily units, and 83 acres of commercial/office uses. Additional bonds are expected to be issued as additional phases of the project are developed. Construction of the improvements had just begun at the time of the bond issue, and any costs spent prior to closing were reimbursed to the developer at closing. All remaining infrastructure costs are being paid monthly directly from bond proceeds. On the bond issuance date, the residential lots were under contract with a merchant builder, and the sale was expected to finalize within 30 days after the bond closing. No contracts were in place for any of the multifamily or commercial/office parcels.

One would expect to see more Special District bonds being issued at the front end of developments in "Class A" and "Class B" markets if the recovery continues to expand and build greater strength and confidence.

## Bonding Capacity Increases as Home Prices Increase

As residential home prices increase across the U.S. housing market, so does the potential to increase the bonding capacity of Special Districts. For example, in California, a \$50,000 increase in home price can result in an additional \$5,000 per unit increase in CFD bond proceeds that can be used to pay for a project's public infrastructure. Likewise, in Texas, a \$50,000 increase in home price can result in an additional \$5,500 per unit increase in public improvement district bond proceeds that can pay for public infrastructure, assuming a tax rate of \$1.00 per \$100 of assessed value.

## Larger Upfront Bond Issues as Project Values Increase

Most Special Districts employ an independent appraiser to determine the property value that is typically the sole source of bondholder security in the event of non-payment of annual special taxes or assessments. In a rising market, it's imperative that the land developer provide the appraiser with all relevant recent land closings, as well as all pending purchase contracts they know about in order to establish an accurate value that's current. Often, the appraiser will use sales comps that are too old and no longer reflective of the value changes that have occurred in the marketplace, especially if the market has experienced quick value movements. The higher the appraised value, the larger the Special District bond issue can be, because many public agencies have limits or minimums on value-to-lien ratios. For example, in California, the community facilities district statute states that a bond issue must have a value-to-lien ratio of 3 to 1, unless certain exceptions are met. When a Special District bond issue is constrained by a value-to-lien ratio, the bond issue will typically be split into two bond issues, with the second bond issue occurring later in time after the project has increased its value by constructing more improvements or by finished lot prices increasing. As the market continues to improve and appraised values increase, this will cause the amount of upfront Special District bonds to increase.

## Bonding Capacity Decreases when Interest Rates Rise

The Federal Reserve policy for many years has been to keep interest rates low to induce economic development. Now that the U.S. housing market is recovering along with other industries, the Fed will be under pressure to increase interest rates. Currently, Special District bond issue rates across the U.S. are very low. For example, in California, the Menifee Union School District priced Community Facilities District No. 2011-1, on October 10, 2013, at an average coupon rate of 5.85 percent with a 30-year bond term. In Texas, the Estancia Hill Country PID priced its bonds on July 16, 2013 at an average coupon rate of 5.88 percent with a 15-year bond term. In Florida, the Union Park Community Development District priced its 2013 bonds on November 1, 2013, at an average coupon rate of 7.5 percent with a 30-year bond term. Most economists agree that interest rates eventually have no place to go but up. It is important to note that it typically takes 9 to 12 months to form a Special District and issue bonds, so development projects are already subject to potential interest rate increases that could occur over this timeframe even if one started today. It is anticipated that interest rates on Special Districts will increase as the U.S. housing market continues to build strength. An average coupon rate increase of 1 percent on a Special District bond term of 30 years results in 10 percent less gross bond proceeds, which can be financially significant when issuing multi-million dollar bond issuances.

Many U.S. housing markets are recovering, and traditional financing for a development project's public infrastructure is still difficult to obtain. What is available is very expensive. Special Districts can help fill the financing void, and the trends that are occurring with these districts are looking more favorable and attractive as the market continues to recover. The implementation of a Special District does require some lead time, so if a development project is ready to enter the market, one may want to start the Special District process sooner versus later, because interest rates will not stay low forever.

## Lessons Learned From the “Great Recession”

The “Great Recession” played financial havoc with the global economy and severely impacted both the public and private sectors with equal ferocity. One may believe that a number of new insightful financial lessons were learned as part of the “great recession,” but in fact, the old lessons remain the new lessons.

### Public Sector Lessons

- 1. Special Districts Work as Intended** – Special Districts protect the jurisdiction from financial liability. As Special Districts are separate political subdivisions from that of the jurisdiction that created the district, the jurisdiction is not responsible for the debt obligation of the Special District. Additionally, the non-payment by the jurisdiction of a defaulted Special District does not appear to negatively impact the credit rating of the jurisdiction.
- 2. Absorption Rates** – Have realistic expectations regarding the absorption rates of projects so that bonds are not issued in excess of that which can be reasonable absorbed over a 3 year period.
- 3. Flexibility** – Special Districts should be created to allow for changes in land uses and alternative construction projects. This will minimize administrative time associated with the Special District.

### Private Sector Lessons

- 1. Guarantees** – Mark Twain said, “A man who carries a cat by the tail learns something he can learn in no other way”. The same can be said about guaranteeing Special District bonds. Never provide corporate and/or personal guarantees related to the issuance of Special District bonds, or one may potentially experience a very painful learning experience.
- 2. Absorption Rates** – Have realistic expectations regarding the absorption rates of your project. Very few master planned communities in the United States experience sales rates in excess of 1,000 units per year for an extended period. Prior to the downturn, many developers across the United States were issuing bonds assuming linear increases in their sales projections, pushing sales figures in excess of 1,200 units per annum. The great majority of these optimistic absorption rates did not materialize.

- 3. Over-leverage** – Special District financing is a vital component of the capital stack however, it will not finance 100 percent of the project’s public improvements. As such, when estimating the amount of Special District bonds that can be supported by a development project; care should be taken not to dramatically increase the effective property tax rate of the project so that it is not competitive with other development projects. If one is using the Special District to finance the maximum amount public improvements given the district’s underwriting criteria, and this causes the effective tax rate of the project to be dramatically higher than the competitive market, the bonds should be structured in such a manner to allow the pay down the effective tax rate of the Special District and fall within an acceptable range of the competitive supply.
- 4. Build Flexibility into Special District Agreements** – As no one has a crystal ball as to what will occur over the time involved in a development project, one should create operational flexibility within the Special District operating agreements to allow for changing economic and market forces.
- 5. Know Where the Exit is Located at all Times** – Special Districts should be established in such a manner to enable the developer to limit their financial exposure in the case of a severe downturn. The time to plan for a graceful exit from the Special District is when the district is established, not when it is in trouble.

## Concluding Comments

Given the financing challenges that the development community continues to face in light of the “Great Recession”, combined with ongoing jurisdictional demands for the development community to provide more-and-more of the jurisdiction’s public improvement needs, the necessity for the use of Special Districts is anticipated to accelerate over the foreseeable future. Not only do Special Districts allow for the provision of public improvements in advance of growth, they also allocate these costs in a fair and equitable manner to the areas which are deriving their benefit, thus avoiding the use of impact fees, which are an ineffective and inefficient means of financing public improvements.

Lastly, Special Districts play an important role of filling the financing gap left by the departure of traditional lending institutions, allowing developers to provide necessary public improvements in a timely and efficient manner, while at the same time allowing growth to pay for itself, and without financially burdening the jurisdiction or its existing residents.

# APPENDIX | Exhibit A

## Selected Case Studies

A small sampling of recent Special District financing transactions is shown below.

**Eastmark** – A 2,170-acre project located in Mesa, Arizona. The developer issued both CFD general obligation and special assessment bonds to finance the acquisition of approximately \$3.6 million in roadway improvements.

**Estancia Hill Country** – Estancia Hill Country is a 593-acre project located in the Lake Travis area of Austin, Texas. The developer issued approximately \$12.6 million in PID special assessment bonds to construct water, sewer, drainage, roadways, landscaping and trails out of bond proceeds.

**Village of Sendero** – This project represents approximate a 416-acre project in Orange County, California, in which the developer issued \$57.4 million in CFD special tax bonds to finance the acquisition of water and fire improvements.

**Sienna Plantation** – This 944-acre project located in Fort Bend, Texas, issued \$4.7 million in MUD general obligation bonds to acquire water, sewer and drainage improvements.

**Summerlin** – At the time of publication these bonds have not been issued; however, the developer is anticipating approximate a \$25 million SID special assessment bond issue to finance the acquisition of water, sewer and drainage improvements related to Village 16A of this approximate 22,500-acre development located in Clark County, Nevada.

**Union Park** – This 580-acre project located in Pasco County, Florida, issued \$9.6 million in CDD special assessment bonds to acquire and construct water, sewer, roadway, landscaping, and trail improvements.



Eastmark



Summerlin



Eastmark



Sienna Plantation

## Selected Case Studies Recent Bond Transactions

Description	Eastmark		Estancia Hill County	Village of Sendero	Sienna Plantation	Summerlin	Union Park
<b>Project Location:</b>	Mesa, AZ	Mesa, AZ	Austin, TX	Orange Cty., CA	Fort Bend Cty., TX	Clark Cty., NV	Pasco County, FL
<b>Project Type:</b>	MPC	MPC	MPC	Mixed Use Residential	Residential	MPC	MPC
<b>Size (Acres):</b>	2,170	2,170	593	416	944	22,500 (Approx.)	580 (Approx.)
<b>Land within Assessment Area:</b>	231	N/A	216	416	NAP	398	248
<b>District Type:</b>	CFD	CFD	PID	CFD	MUD	SID	CDD
<b>Bonds Issued:</b>	Special Assessment	General Obligation	Special Assessment	Special Tax	General Obligation	Special Assessment	Special Assessment
<b>Bond Issuance Date:</b>	7/15/2014	5/21/2014	7/17/2013	7/13/2013	7/9/2013	4th Quarter 2014 (Est.)	11/1/2013
<b>Bond Amount:</b>	\$3,367,000	\$3,250,000	\$12,590,000	\$57,420,000	\$4,700,000	Estimated to be \$25,000,000	\$9,630,000
<b>Maximum Bond Term:</b>	25 Years	25 Years	5–15 Years	30 Years	23 Years	20 Years	5–30 Years
<b>Bond Interest Rate:</b>	2% to 5.4%	1.5% to 5%	4.5% to 6%	2% to 5.7%	0.75% to 4%	7% (Estimate)	7.375%–7.500%
<b>Status of Land when Bonds Issued:</b>	Partially Developed	Partially Developed	Planned and Entitled	Major Improvements Completed	Partially Developed	Entitled and Engineered	Limited Development
<b>Value to Lien Ratio:</b>	10 to 1	NAP	3 to 1	3.74 to 1	NAP	Minimum of 3 to 1	No appraisal in Official Statement
<b>Contracts with Builders?</b>	Yes	Yes	Yes	Yes	Yes	Not Determined as of Publication	Yes
<b>Construction or Acquisition District:</b>	Acquisition	Acquisition	Construction	Acquisition	Acquisition	Roadways, Water, Sewer,	Acquisition and Construction
<b>Infrastructure Financed:</b>	Roadways	Roadways	Water, Sewer, Roadways, Drainage Landscaping, Trails	Water, Fire	Water, Sewer, Drainage		Water, Sewer, Roadways, Trails Landscaping, Professional Fees, Community Amenities

# EASTMARK

## Assessment Area No. 2 and General Obligation Bond - Series 2014

Project / Developer Information	Special Assessment Bond	General Obligation Bond
Project Name:	Eastmark	Eastmark
Project Location:	Mesa, AZ	Mesa, AZ
Project Type:	Master Planned Community	Master Planned Community
Size (Acres):	2,170	2,170
Land within Assessment Area:	231	NAP
Developer:	DMB Mesa Proving Ground, LLC	DMB Mesa Proving Ground, LLC

Special District Financing Snapshot		
District Type:	Community Facilities District	Community Facilities District
Issuing Agency:	Eastmark Community Facilities District No. 1	Eastmark Community Facilities District No. 1
Bonds Issued:	Special Assessment	General Obligation
Bond Issuance Date:	15-Jul-14	21-May-14
Bond Amount:	\$3,367,000	\$3,250,000
Maximum Bond Term:	25 Years	25 Years
Bond Interest Rate:	2% to 5.4%	1.5% to 5%
Status of Land when Bonds Issued:	Partially Developed	Partially Developed
Value to Lien Ratio:	10 to 1	NAP
Contracts with Builders?	Yes	Yes
Construction or Acquisition District:	Acquisition	Acquisition
Infrastructure Financed:	Roadways	Roadways





# ESTANCIA HILL COUNTRY

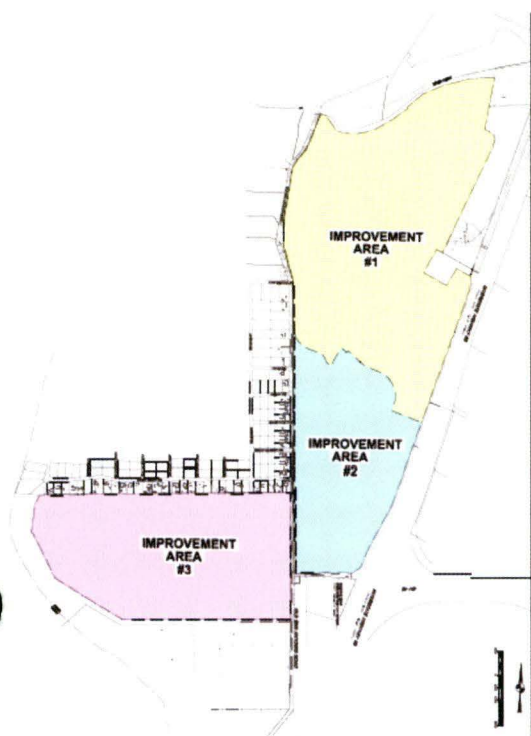
## Assessment Area No. 1

### Project / Developer Information

Project Name:	Estancia Hill Country
Project Location:	Austin, TX
Project Type:	Master Planned Community
Size (Acres):	593
Land within Assessment Area:	216
Developer:	SLF III - Onion Creek L.P. (Stratford Land)

### Special District Financing Snapshot

District Type:	Public Improvement District
Issuing Agency:	City of Austin, Texas
Bonds Issued:	Special Assessment
Bond Issuance Date:	7/17/2013
Bond Amount:	\$12,590,000
Maximum Bond Term:	5 Years to 15 Years
Bond Interest Rate:	4.5% to 6%
Status of Land when Bonds Issued:	Planned and Entitled
Value to Lien Ratio:	3 to 1
Contracts with Builders?	Yes
Construction or Acquisition District:	Construction
Infrastructure Financed:	Water, Sewer, Roadways, Drainage, Landscaping, Trails



# VILLAGE OF SENDERO

## Series 2013 Special Tax Bonds

### Project / Developer Information

Project Name:	Village of Sendero
Project Location:	Orange Cty., CA
Project Type:	Mixed Use Residential
Size (Acres):	416
Developer:	RMV Community Development, LLC

### Special District Financing Snapshot

District Type:	Community Facilities District
Issuing Agency:	Santa Margarita Water District
Bonds Issued:	Special Tax
Bond Issuance Date:	7/13/2013
Bond Amount:	\$57,420,000
Maximum Bond Term:	30 Years
Bond Interest Rate:	2% to 5.7%
Status of Land when Bonds Issued:	Major Improvements Completed
Value to Lien Ratio:	3.74 to 1
Contracts with Builders?	Yes
Construction or Acquisition District:	Acquisition
Infrastructure Financed:	Water, Fire



# SIENNA PLANTATION

## Municipal Utility District No. 10

### Project / Developer Information

Project Name:	Sienna Plantation
Project Location:	Fort Bend Cty., TX
Project Type:	Residential
Size (Acres):	944
Land within Assessment Area:	NAP
Developer:	Sienna/Johnson North L.P.

### Special District Financing Snapshot

District Type:	Metropolitan Utility District
Issuing Agency:	Sienna Plantation Municipal Utility District No. 10
Bonds Issued:	General Obligation
Bond Issuance Date:	7/9/2013
Bond Amount:	\$4,700,000
Maximum Bond Term:	23 Years
Bond Interest Rate:	0.75% to 4%
Status of Land when Bonds Issued:	Partially Developed
Value to Lien Ratio:	NAP
Contracts with Builders?	Yes
Construction or Acquisition District:	Acquisition
Infrastructure Financed:	Water, Sewer, Drainage



# SUMMERLIN

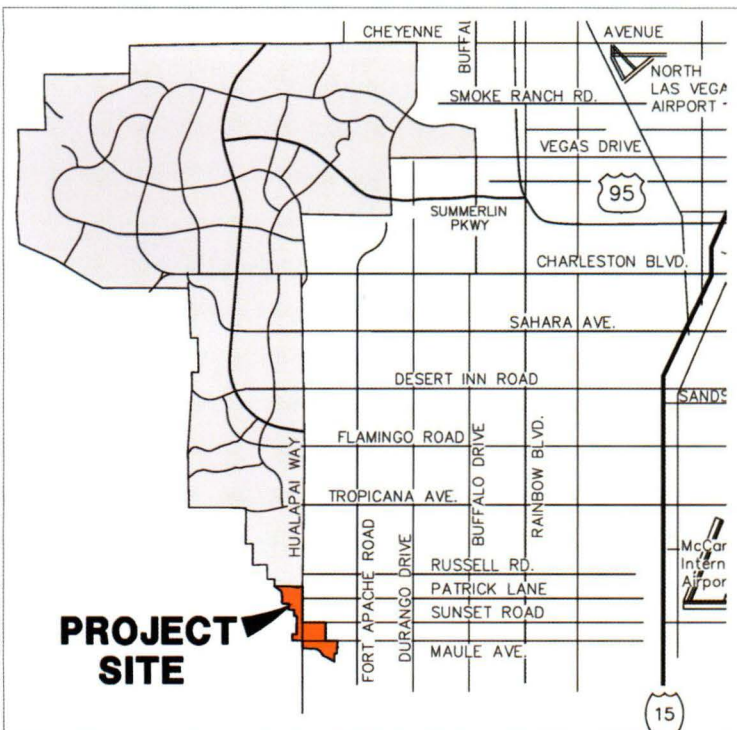
## Village 16A

### Project / Developer Information

Project Name:	Summerlin
Project Location:	Clark Cty., NV
Project Type:	Master Planned Community
Size (Acres):	22,500 (Approx.)
Land within Assessment Area:	398
Developer:	Howard Hughes Company, LLC

### Special District Financing Snapshot

District Type:	Special Improvement District
Issuing Agency:	Clark County, Nevada
Bonds Issued:	Special Assessment
Bond Issuance Date:	1st Quarter 2015
Bond Amount:	Estimated to be \$25,000,000
Maximum Bond Term:	20 Years
Bond Interest Rate:	7% (Estimate)
Status of Land when Bonds Issued:	Entitled and Engineered
Value to Lien Ratio:	Minimum of 3 to 1
Contracts with Builders?	No
Construction or Acquisition District:	Not Determined as of Publication
Infrastructure Financed:	Roadways, Water, Sewer, Storm Drain



# UNION PARK

## Capital Improvement Revenue Bonds, Series 2013A-1/A-2/A-3

### Project / Developer Information

Project Name:	Union Park
Project Location:	Pasco County, Florida
Project Type:	Master Planned Community
Size (Acres):	580 (Approx.)
Land within Assessment Area:	248
Developer:	Metro Development Group (Goldenranch Property, LLC)

### Special District Financing Snapshot

District Type:	Community Development District
Issuing Agency:	Pasco County, Florida
Bonds Issued:	Special Assessment
Bond Issuance Date:	11/1/2013
Bond Amount:	\$9,630,000
Maximum Bond Term:	5-30 Years
Bond Interest Rate:	7.375%-7.500%
Status of Land when Bonds Issued:	Limited Development
Value to Lien Ratio:	No appraisal in Official Statement
Contracts with Builders?	Yes
Construction or Acquisition District:	Acquisition and Construction
Infrastructure Financed:	Water, Sewer, Roadways, Trails, Landscaping, Professional Fees, Community Amenities



Assessment Area A1-A3 (upper right corner of photograph)

# APPENDIX | Exhibit B

## Special Districts – Players and Process

The specific procedures for establishing a Special District differ from state-to-state; however, each state generally follows some common formation procedures. In most states the developer is required to prepare an application and/or plan of finance related to the establishment of the Special District along with a landowner petition requesting establishment of the Special District to the jurisdiction in which the development project is located (e.g. municipality / county). In most instances the developer/landowner will also be asked deposit funds ranging from \$10,000 to \$40,000 to pay for the jurisdiction's staff time as well as the jurisdiction's outside consultants (see Special District Financing Team Section below). During the petition and formation process, an operating agreement is typically created which covers such topics and procedures as: (i) the construction of public improvements; (ii) the governance of the District; (iii) the operations of the Special District; and (iv) the issuance of bonds.

The following sections provide additional information on the professionals typically involved in a Special District financing; a typical transaction procedural outline, as well as common underwriting criteria for Special District bond issuances.

### Typical Special District Financing Team

Special District financing is a type of public/private partnership in which the jurisdiction, developer and/or Special District representatives work together to create the Special District and issues bonds to fund public improvements which not only further a jurisdiction's public policy goals but also drive economic growth. In addition to the developer's and the jurisdiction's staff, there are many other professionals who are typically involved in a Special District financing as follows:

- 1. Underwriter** – The entity who is retained by the Special District to prepare the official statement related to the bond offering, purchases the bonds from the issuer, and sells the bonds to investors via the underwriter's distribution network.
- 2. Underwriter Counsel** – Typically a private sector attorney or law firm engaged to represent the interests of the underwriter in connection with the Special District underwriting. The duties of the underwriter's counsel may include the review of the bond resolution and documentation on behalf of the underwriter; review of the accuracy of the disclosure in the official statement; preparation of purchase contract and/or official statement; and delivery of the Internal Revenue Code 10b-5 opinion as to the completeness and accuracy of the information presented in the official statement.
- 3. Disclosure Counsel** – An attorney or law firm retained by the Special District to provide advice on Special District obligations and prepare the official statement and/or continuing disclosure agreement. The disclosure counsel and underwriter counsel are often one and the same.
- 4. Bond Counsel** – An attorney or law firm engaged by the Special District to give the traditional bond counsel opinion. Such opinion customarily opines that the Special District bonds have been validly issued and that the bonds are tax-exempt. The bond opinion may also address related Special District matters such as state and local tax exemption and the enforceability of certain security provisions. Additionally, the bond counsel may prepare or review and advise the issuer regarding, authorizing resolutions, bond contacts, official statements and validation proceedings. The bond counsel is engaged by the Special District while the underwriter counsel is retained by the underwriter.
- 5. Developer Counsel** – The attorney or law firm engaged to represent the interests of the developer in connection with the Special District underwriting. The duties of the developer's counsel may include the review of the bond resolution and documentation on behalf of the developer, and review of the accuracy of the developer's disclosure in the official statement.
- 6. Developer Financial Advisor** – A firm that advises the developer in relation to the Special District and typically prepares all of the necessary applications and petitions required by the jurisdiction establishing the Special District. Additionally, the firm may advise as to which Special District and/or bond type best addresses the developer's business plan and timing requirements. The advisor may also assist in matters of cash flow analysis and the review of bond documents.
- 7. Jurisdictional Financial Advisor** – An individual or firm that advises the municipality and/or Special District on matters pertinent to the Special District bond issue such as structure, timing, marketing, fairness of pricing, terms and bond rating. The financial advisor may also provide services related to advising on cash flow and investment matters.
- 8. Appraiser** – The individual or firm who prepares the appraisal for the property securing the Special District assessment or special tax levy bond issue. Appraisals are typically not required for general obligation bond issuances. The appraiser is generally hired by the underwriter.
- 9. Market Consultant** – The individual or firm who prepares the market study of property securing the Special District bond issue if required as part of the bond issuance. The market consultant is typically retained by the underwriter.

**10. Trustee** – The financial institution designated by the Special District to act in a fiduciary manner for the benefit of the bondholders and enforces the terms of the bond contract. In many cases the trustee acts as custodian, paying agent, registrar and transfer agent for the bonds.

**Typical Transaction Process/Time Line**

Depending upon the type of Special District being established, it generally takes between 9 and 12 months to establish the Special District and to issue bonds.

The diagram below provides a high-level view of the transaction process related to typical Special District formation and bond issuance.



# Special District Underwriting Criteria

Similar to traditional bank financing, it is easier for development entities that have large balance sheets and are generating significant cash flow to obtain Special District financing than for those development entities that do not have such resources. Additionally, the underwriting criteria for Special Districts vary according to the type of Special District being utilized as different districts have different rules, and the type of bond being issued, as different bond types have different collateral. The guidelines below are meant to provide a general framework of typical underwriting criteria and/or issues.

## Developer/Project Related Considerations

- 1. Development Plan** – What is the developer’s business plan surrounding the project? Do they intend to sell raw land, semi-improved development parcels or finished lots? Does the conceptual land use plan appear to be in line with current and/or expected market conditions? Has the developer entered into any agreements with home builders and/or other end users that will assist in diversifying the tax base?
- 2. Regulatory Hurdles** – Has the developer obtained all of the entitlements and permits necessary to develop and provide public services (e.g. water/sewer/drainage/roadways/utilities/ etc.) to the project? Are there any environmental issues or legal challenges that could delay or derail the project from moving forward and thus the ability of the developer to repay the Special District bonds?
- 3. Project Status** – What is the current development status of the Project? Has the developer provided any public infrastructure to the project? Have any parcels been sold to home builder or commercial users that would help to diversify the tax base and diffuse the risk of a single developer property tax payer who is not making their Special District tax payments?
- 4. Developer Experience** – Does the developer have experience in developing projects similar to the type for which Special District bonds are being sold? Has the developer ever utilized Special District financing in the past, and have they made their debt service payments in a timely manner?
- 5. Developer Reputation** – Does the developer have a good reputation for doing what they say they are going to do and delivering on their promises (both written and verbal)?
- 6. Property Tax Payments** – Is the developer current on its property tax payments on the land to be contained within the boundaries of the Special District? Has the developer ever defaulted on Special District bond payments in the past?
- 7. Current Developer Credit Lines** – Has the developer secured other lines of credit to finance the development of the project? Does the developer have sufficient financial resources and/or commitments to complete the project as well as meet any unexpected shortfalls (this could come from cash, credit lines, third party debt, equity, partners, product sales, etc.)?
- 8. Developer Equity** – Has the developer invested significant dollars into the project so that they have “skin in the game” to ensure that they are motivated to have the project succeed?
- 9. Current Market Conditions** – What is the current and near-term market outlook for the land uses contained within the project? Is there sufficient demand for the land uses to be developed?
- 10 Land Value** – Is there sufficient value in the land to support current underwriting criteria and bond buyer expectations?



Sienna Plantation



## Special Assessment/ Special Tax Levy Bonds

With special assessment bonds and special tax levy bonds, the repayment of the bonds is secured by a specific lien on the property and is paid off over time through the annual assessment payment or special tax levy, which is generally collected as part of the property owner's regular property tax bill.

Typically these bonds are not rated by the rating agencies as they are considered riskier than other municipal bonds, so the bondholders expect additional security as follows:

- 1. Foreclosure Covenant** – As the jurisdiction establishing the Special District typically has no obligation to fund the debt obligations of the Special District (e.g. no financial exposure), if the property owners within the boundaries of the Special District fail to pay the Special District taxes and/or assessment payments, the Special District covenants allow the municipality to bring foreclosure proceedings against the district's delinquent property owners. Generally this provision is initiated when the Special District delinquency rate exceeds 5 percent. However, in Special Districts with large concentrations of commercial buildings, this covenant could be triggered when any property falls delinquent. Once initiated, the foreclosure sale's proceeds are utilized to pay off the assessment lien on the delinquent property or properties. The timing related to the foreclosure process varies from state-to-state.
- 2. Value-to-Lien Ratio** – As the land is the ultimate security for the assessment or special tax levy bonds, the bond buyers want to be assured that there is sufficient value in the property to pay off the underlying property lien in the event of default. For this reason many Special Districts (and investors) require that the property value subject to the lien or special tax be at least 3 times the principal amount of the bonds sold. In other words, the Special District property should have a "value-to-lien" ratio of 3 to 1. In most cases, the property subject to the assessment or special tax lien is appraised by a Member of the Appraisal Institute, who values the fair market value of the property assuming the sale of the assessed property to one buyer within a 12-month marketing window and that the improvements to be financed by the Special District and/or for which completion guarantees have been provided are in place as of the date of the appraisal.
- 3. Reserve Fund** – Land secured bonds also require a reserve fund, which is a cash fund reserve equal to the lesser of 10 percent of the bond amount; 125 percent of the average annual debt service; or the maximum annual debt service on the bonds. The reserve fund is utilized to fund the debt service related to delinquent assessment or special tax payments. To the extent that the reserve fund is not utilized the balance in the fund is utilized to make the last year's debt service payment.

## General Obligation Bonds

- 1. Tax Levy** – The security for repayment of Special District general obligation bonds is an increase in the ad valorem property tax levied by the Special District on property contained within the district boundary. Depending on which state the Special District is established and what type of Special District is being utilized, the Special District tax levy may be limited to a maximum tax levy, as is the case with a Colorado metropolitan district, or it may be an unlimited ad valorem tax, as is the case with Arizona's community facilities districts. To the extent property taxes including the Special District's ad valorem tax go unpaid; such unpaid taxes become a tax lien on the property. Generally the tax lien is not satisfied or removed until the taxes are paid or the property is finally vested in a purchaser under a tax lien sale.
- 2. Guarantees** – In some instances a corporate entity may be asked to provide a guarantee to fund the difference between the actual debt service requirement related to the general obligation bonds and a pre-determined target Special District ad valorem tax rate ("Target Tax Rate"). Typically, guarantees are only provided in instances where the Special District is issuing general obligation bonds in an amount greater than that which the existing assessed valuation of the Special District may finance at the Target Tax Rate.
- 3. Reserve Fund** – Depending upon the circumstances surrounding the bond issuance, the amount of the reserve fund is determined by the Special District, underwriters and financial advisors at the time of bond issuance.
- 4. Bond Insurance** – In some instances, to make the bonds more marketable or to achieve an investment grade rating for the bonds, bond insurance is obtained. Bond insurance is a type of insurance policy that is purchased to guarantee the repayment of principal and interest payments to the bondholders in the event of a default. The provision of bond insurance will typically lower an issuers cost of borrowing.

## Revenue Bonds

- 1. Revenue Generation** – The security for the issuance of Special District revenue bonds is the income stream generated by the facilities financed by the Special District. For instance, if the Special District financed a public parking garage, the income derived from monthly and daily parking revenues would be utilized to repay the principal and interest of the revenue bonds.
- 2. Debt Service Coverage Ratio** – In sizing the amount of the revenue bond, Special Districts will often require that certain debt service coverage ratio (“DSCR”) be utilized. The DSCR is ratio of cash available to meet the principal and interest payments on the bonds. A DSCR of 1.0 means that the cash generated equals the amount of debt service payment on the bonds. A DSCR of less than 1.0 indicates that there are insufficient funds available to meet the bond debt service obligation, while a DSCR in excess of 1.0 indicates excess available after meeting the debt service payment of the bonds. Depending upon the type of public improvement being financed, DSCR requirements may vary from 1.3 to 2.0 or higher. To the extent that the funds collected in excess of the debt service requirement are not needed, they are ultimately utilized to fund eligible construction costs not funded through bond proceeds.



Eastmark

## Bond Funds

Once a Special District bond has been issued, the bond proceeds are deposited with the bond trustee in separate interest bearing accounts as outlined below:

- 1. Project or Acquisition Fund** – Utilized to pay the costs of constructing and/or acquiring the public improvements, typically under a construction draw-down process in the case of a Construction District or through a one-time pay-out in the case of an Acquisition District.
- 2. Cost of Issuance Fund** – Established to pay the costs associated related to the establishment of the Special District as well as the fees of the underwriter, legal counsel, financial advisor, trustee, appraiser and market consultant as appropriate.
- 3. Capitalized Interest Fund** – Created to fund interest payments on the bonds during the construction period for a period not to exceed 3 years.
- 4. Bond Fund** – Established to collect Special District taxes and/or assessment payments which are then utilized to make the debt service payments on the outstanding bonds.
- 5. Reserve Fund** – The Special District typically requires that the portion of the funds raised through the bond issue be set aside in a reserve fund for the purpose of funding debt service should a default occur. The reserve fund is equal to the lesser of 125 percent of the average annual debt service, 10 percent of the principal amount of the bonds or the maximum annual debt service. The Reserve Fund can also be used to pay debt service and can be applied to abate the special assessments at the end of the financing term.

Although Special District bonds may also be issued on a taxable basis, the majority of the Special District bond issuances are structured to ensure the interest on the bonds is exempt from federal, and in many cases, local income taxes. To achieve tax exemption, the bonds must not be deemed as “private activity bonds” as outlined in the Internal Revenue Code 141(b). A “private activity bond” is a bond that finances improvements utilized in a private trade or business. If a bond issue is deemed a private activity bond, the interest on the bonds is taxable for federal, state and local income tax purposes. The bond counsel to the transaction will opine on whether the bonds qualify for tax-exemption or not.



## Innovative Infrastructure Finance Resources from NAHB

NAHB has developed extensive, credentialed resources on an array of infrastructure financing approaches that fund new roads, schools, water and sewer capacity, and on, in a manner that does not place a disproportionate burden on the buyers of new homes. These municipal finance tools are more necessary and relevant than ever before as funding streams remain constrained for both the public and private sectors. These resources highlight the need for the public and private sectors to collaborate on effective solutions and use multiple financing tools in combination.

They include the three-part series *Building for Tomorrow: Innovative Infrastructure Solutions*, *Infrastructure Finance: Does Your State Encourage Innovation?*, and *Infrastructure Solutions: Best Practices for Process-Oriented States*; a January 2012 report on *Municipal Finance Development Tools after the Great Recession*; and an *Impact Fee Handbook* and supplemental critique *Proportionate Share Impact Fees*.

All of these reports are downloadable for free from NAHB's web site [www.nahb.org](http://www.nahb.org):

**[Municipal Finance Development Tools After The Great Recession](#)**

**[Impact Fee Handbook](#)**

**[Proportionate Share Impact Fees](#)**

**[Building for Tomorrow: Innovative Infrastructure Solutions](#)**

**[Infrastructure Finance: Does Your State Encourage Innovation?](#)**

**[A Summary of State Legislation to Encourage Innovative Infrastructure Finance Options](#)**

**[Infrastructure Solutions: Best-Practices for Process-Oriented States](#)**

SB 2375  
2.5.15  
2F



## Disclaimer

The information provided herein was collected and provided for the convenience of the reader and is not intended to be a comprehensive discussion of the subject matter.

While effort was made to ensure that the information is accurate and up-to-date, neither the authors nor the National Association of Home Builders certify the accuracy of the information presented herein.

The information provided herein is provided for informational purposes only and is not intended to be and does not constitute financial, legal and/or other advice, is general in nature and not specific to individual circumstances. Before utilizing Special District financings one should seek the advice of financial and legal advisors in addition to undertaking one's own due diligence.

SB2375  
2.5.15  
2F

# Bakken

## Housing Company

February 4, 2015

By Email

Senator Brad Bekkedahl  
Mr. Jeff Zarling

Re: SB2375

Dear Sirs:

In Williston, our company has constructed affordable and market-rate apartment buildings, and master-planned 640 acres, 160 of which is under development as "Hawkeye Village." The principals of our company have over sixty years of large project development experience.

The infrastructure finance framework in North Dakota would benefit greatly from addition of Special Purpose Taxing Districts. Most jurisdictions avoid the secondary credit risk available tools for infrastructure financing impose (*e.g.*, tax increment financing and special assessment districts). Consequently, most developers phase infrastructure construction, essentially waiting to construct streets and utilities for mid- and late-project phases until early phases are sold. When infrastructure construction requires private placement of equity, development cost increases substantially as private investors require rates-of-return at least double those required by special purpose public bond holders.

Most purchasers of residential lots and commercial lots will not fully commit to new construction until their site becomes "shovel ready." Access to adequate infrastructure capital early in a project will shorten a development's timeline, making sites available in the normal course rather than when capital and weather, allow. This will reduce the cost of housing, retail goods and services throughout the state.

Thank you considering our opinion regarding SB2375.

Very truly yours,



John T. Sessions  
Manager

411 University St., Suite 1200, Seattle, WA 98101 • 206.979.5646



SB2375  
2.5.15  
2.6

February 4, 2015

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Rusty Wysocki  
Betty McDonald, Executive Officer

**STAFF**

Kim Schneider, Executive Officer  
Heather Austin, Office & Comm. Coord.

Dear Members of the Senate Political Subdivision,

My name is Kim Schneider and I am the Executive Officer with the North Dakota Association of Builders. On behalf of the over 2,000 members, I submit this letter in Support of SB2375.

Access to affordable lots is a key success factor in building affordable homes. More communities are moving away from special assessments to fund public infrastructure in land development and requiring the private developer to fund the public infrastructure. This is driven by a desire to limit city/county exposure to long-term risk if the development absorption does not materialize and also relieves pressure on city/county debt loads and bond ratings.

Special Purpose Taxing Districts provide a mechanism to finance public infrastructure in land development without liability on the bonds by the city or county and these bonds can be issued at lower rates. Oftentimes, these rates are between 5-7%, are the responsibility of the Special District and are secured by the land and improvements inside the district only.

The lower cost capital provides for lower cost lots resulting in lower cost housing and real estate.

On behalf of the North Dakota Association of Builders, we respectfully ask for your support in a yes vote on SB2375.

Sincerely,

Kim Schneider  
Executive Officer  
kim@ndbuild.com  
701.222.2401

Dan Lindquist  
NDAB Government Affairs Chairman  
danlindquist@cableone.net  
701.261.8230

SB 2375  
2.5.15  
#3

February 5, 2015

**The Honorable Senator Randall Burckhard  
Senate Political Subdivision Committee**

Mr. Chairman and members of the committee:

My name is Carter Froelich and I am the managing principal of the Development Planning & Financing Group, Inc. and I'm here speaking on behalf a consortium of public and private stakeholders in support of SB2375.

Before I get started and as a matter of background over the last 23 years our firm has been involved in the establishment of over 2,100 special taxing districts in the states of Colorado, Texas, New Mexico, Nevada, Arizona, California, Florida, North and South Carolina and Idaho.

I would also like to let the committee members know that while I now reside in Phoenix, Arizona, I was born and raised in Dickinson where my family was in the building material business and we have experienced the ups and downs of the oil business

Before I get into the details of SB2375, I think it is important to provide some context related to where we are in relation to timely and cost efficient provision of infrastructure.

The banking crisis, which occurred in late 2008, resulted in a major shift in which land development projects are financed. Basically, the commercial banks, which were doing the upfront lending on land development projects, quit financing land development projects and they continue to shy away from such projects today.

This shift has created a huge void in finding up front funding to cover the significant costs of land development. The financing gap is currently being filled by expensive private equity that is typically three to five times more expensive than traditional lending sources if it were available.

The expensive financing generally stops many projects from moving forward or drives up the costs of housing. Lastly, much of the excess infrastructure capacity constructed during the boom has been utilized leaving no additional capacity for growth.

Over the past years the growth of North Dakota's economy has been the envy of the nation but it has also placed a strain on jurisdiction's ability to provide infrastructure in advance of growth. North Dakota is not alone in this regard as other high growth states including Florida, California, Colorado and Texas have or are currently facing similar challenges.

If you couple the challenges of providing public infrastructure to meet growth demands with the reluctance of traditional capital markets to providing financing for infrastructure the challenges become ten fold. This is currently where I see North Dakota as well as other areas of the country.

Faced with these obstacles high growth states have instituted the use of special purpose taxing districts, such as the community facilities district, which is the subject of SB2375, to assist in the financing of public improvements.

In a nutshell, special taxing districts are separate political subdivisions established over specific geographic new growth areas for the purpose of issuing tax-exempt bonds to fund public improvements.

As the districts are separate political subdivisions from that of the state, county and/or city, there is no liability on the part of the state, county or city for the debt obligations of the bonds. The only recourse bondholders have for repayment of the debt is the real property securing the bonds.

Additionally, as the special purpose-taxing district is typically established over undeveloped land only, existing residents are not burdened with added taxes to fund the public improvements required by new growth. Special districts are the most equitable means to make "growth pay for growth".

The main tenants of SB2375 are as follows:

1. The bill allows for the establishment of CFDs in cities and counties for the purpose of issuing bonds to finance public infrastructure.
2. The CFD board is managed by five members selected by the governing body establishing the CFD.
3. The CFD has the ability to issue special assessment, general obligation and/or revenue bonds.
4. Eligible public infrastructure includes: streets, water, sewer, storm water, public safety, public parks, pedestrian malls and parking.
5. The county or city is **NOT LIABLE** for the debt obligations of the CFD.
6. CFDs allow the financing of public improvements at tax exempt interest rates ranging from 4 to 6.5% interest and are paid back over 30 year terms (thereby reducing the need for high cost equity capital and thereby reducing the costs of public infrastructure and homes).
7. The obligation to repay the debt service of the bonds is that of the property owners purchasing property within the boundaries of the CFD. Existing residents of the City are not impacted by the CFD.
8. Public bidding is required for all public infrastructure financed through the CFD.



9. Upon the completion of the public infrastructure the facilities are turned over to the appropriate agency for on-going ownership, operations and maintenance.

Other points include:

1. The use of CFDs will only allow for the financing of a portion of the public facilities related to a development. Developers will still be required to have significant capital invested in the project however the special district will fill the void left by traditional lending sources.
2. All buyers of new homes in the CFD are notified of the existence of the district through public reports, title insurance, marketing materials as well as through the signing of documents acknowledging the financial implications of the CFD during the closing process.

Lastly, I would like to point out that SB2375 is not indented to be a western North Dakota financing tool but rather indented a state wide application with flexibility to finance roadways in the western portion of the state, parking structures in downtown Fargo or public improvements necessary to service manufacturing plants in Jamestown and Grand Forks.

What we are asking for you to do today is to add another financing tool to the financial toolbox that will provide low cost of capital to finance public infrastructure.

Thank you for the opportunity to speak with you and I will now stand for questions.

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2.5.15  
#4

February 5, 2015  
The Honorable Senator Randall Burckhard  
Political Subdivisions Committee  
Re: Support for Senate Bill 2375

Chairman Burckhard and members of the committee:

Thank you for the opportunity to provide testimony on Senate Bill 2375. My name is Steve Iverson, owner of L2H Development, LLC and Brokers Commercial Property located at 123 Broadway, Suite 123, Fargo, ND. I stand in strong support of Senate Bill 2375.

Holding degrees in Landscape Architecture and Environmental Design from NDSU, and a Master of Business Administration from the University of Mary, I have spent my entire career in virtually every discipline related to land development including: public works specialist for the City of Moorhead, MN; zoning administrator of the City of Fargo, ND; operations manager of a municipal civil contractor; director of development services for Fargo's leading land developer/construction manager, and for the past two years, representing myself as real estate developer / construction manager.

Over the course of my career, "affordable housing" has always been the goal and desire of municipalities. I have worked in and have had limited success in delivering a truly affordable housing option that is also accepted by the community as a viable and compatible product with adjacent neighborhoods. This is due to many factors including access to affordable capital.

In today's land development world, traditional lenders are very hesitant to provide financing for the initial acquisition. If a developer is able to secure the raw land and get it entitled, the next task would be to then finance the horizontal construction process necessary to sell lots - sewer, water, curb, gutter and paving.

The reality is traditional financing is virtually unattainable as the down payment will be upwards of 50% and interest rates will be in the high teens at best. At this point, "affordable housing" is dead on arrival as the two first steps of turning raw land into saleable lots has sunk costs and interest rates so high the developer needs to have high costs to break even, let alone have the project perform at a level that the traditional lender would even consider another development loan.

A solution is to have a mechanism allowing access to private capital along with the ability to utilize municipal bonds. It doesn't take a CPA to conclude carrying a \$1,000,000 horizontal construction loan at 5% will provide measurable savings versus the same note at 15-20% interest. For this reason, I stand before the committee to strongly support the passage of Senate Bill 2375. SB2375 does not favor east versus west, it does not force the hand of the municipality considering creation of the CFD, nor does it look for state monies to fund publicly benefitting

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2.5.15

4.2

projects. It merely provides another tool in the toolbox and alleviates the risk of the municipality by allowing the district to bear the obligation, not the city.

I support SB2375 to the point I had commissioned similar legislation that proposes identical ideas that have been used successfully around the country. My bill was unsuccessful in finding a sponsor, leading me to support SB2375.

**Senate Political Subdivisions Committee**

**Proposed Amendments to SB 2375**

**Offered by ACEC/ND (American Council of Engineering Companies)**

Insert in page 1 row 8

"Architect" means an individual registered as an architect under chapter 43-03.

Insert in page 2 row 3

"Engineer" means an individual registered as an engineer under chapter 43-19.1.

Insert in page 14 row 15 two new subsections to 40-64-09;

- 8. The district shall procure plans, drawings, and specifications for the improvement from an architect or engineer.
- 9. The district shall employ the architect or engineer furnishing the plans as provided in this chapter or some other qualified person to provide construction administration and construction observation services for which the plans and specifications are prepared. The architect or engineer shall assist the district in determining that the contractor performs the work in accordance with the intent of the plans and specifications. As part of a site visit or construction observation, the architect or engineer may not supervise, direct, or have control over the contractor's work. The architect or engineer may not exercise control over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by the contractor, the quality control of the work, the security or safety on the site, any safety precaution or program incident to the contractor's work, the failure of the contractor to comply with any law or rule applicable to the contractor's furnishing of or performance of the work, or the failure of the contractor to furnish or perform the work in accordance with the construction contract. The architect or engineer is entitled to receive a reasonable compensation to be fixed by the district. Any duty imposed or power conferred upon the district by this chapter applies to a successor to the district.

Re-number accordingly.

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# 5.2

A, SMaj-Sec - Doan, Renae

---

From: Lee, Judy E.  
Sent: Thursday, February 05, 2015 9:05 AM  
To: NDLA, SMaj-Sec - Doan, Renae  
Subject: Fwd: SB 2375 needs amendments or it must be defeated.

Can you please have a page make 10 copies of Mr. Volk's message for the Pol. Subs. committee and have someone bring it to Red River?

Judy Lee  
1822 Brentwood Court  
West Fargo, ND 58078  
Phone: 701-282-6512  
e-mail: [jlee@nd.gov](mailto:jlee@nd.gov)

Begin forwarded message:

**From:** Jeff Volk <[JVolk@mooreengineeringinc.com](mailto:JVolk@mooreengineeringinc.com)>  
**Date:** February 4, 2015 at 10:46:37 PM CST  
**To:** "Lee, Judy E." <[jlee@nd.gov](mailto:jlee@nd.gov)>  
**Cc:** Bonnie Staiger <[bonnie@bis.midco.net](mailto:bonnie@bis.midco.net)>, Stacy Staiger Krumwiede <[stacy@bis.midco.net](mailto:stacy@bis.midco.net)>  
**Subject:** SB 2375 needs amendments or it must be defeated.

Judy

Thursday morning the Senate Political Subdivisions committee will be hearing SB 2375. It appears the intent of the bill is to allow developers to have complete control of contracting and constructing public improvements.

The bill as written creates a couple of public health, safety and welfare issues. ACEC/ND will be providing testimony addressing these concerns. In short we believe any public improvement constructed by the new district authority created in SB 2375 must hire an architect or engineer for the design and construction of the project.

Personally, I also have concerns with how the governance and operations & maintenance of the constructed public improvements will be managed after the developer sells the lots and is no longer connected to the development. I look at this as being similar to a developer creating a homeowners association, building amenities and having no practical means for the association to complete the required O & M, except the amenities resulting from this bill will be all of the infrastructure the development needs to exist!

Following is the e-mail I sent to Bonnie Staiger earlier this evening to support her testimony on behalf of ACEC/ND.

Thank you for your support.

Bonnie

Following is my recommended amendment to SB 2375. My formatting for amendments needs to be corrected.

Insert in page 1 row 8

"Architect" means an individual registered as an architect under chapter 43-03.

Insert in page 4 row 23

"Engineer" means an individual registered as an engineer under chapter 43-19.1.

Insert in page 14 row 15 two new subsections;

40-64-09. 8. The district shall procure plans, drawings, and specifications for the improvement from an architect or engineer.

40-64-09. 9. The district shall employ the architect or engineer furnishing the plans as provided in this chapter or some other qualified person to provide construction administration and construction observation services for which the plans and specifications are prepared. The architect or engineer shall assist the district in determining that the contractor performs the work in accordance with the intent of the plans and specifications. As part of a site visit or construction observation, the architect or engineer may not supervise, direct, or have control over the contractor's work. The architect or engineer may not exercise control over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by the contractor, the quality control of the work, the security or safety on the site, any safety precaution or program incident to the contractor's work, the failure of the contractor to comply with any law or rule applicable to the contractor's furnishing of or performance of the work, or the failure of the contractor to furnish or perform the work in accordance with the construction contract. The architect or engineer is entitled to receive a reasonable compensation to be fixed by the district. Any duty imposed or power conferred upon the district by this chapter applies to a successor to the district.

Renumber 40-64-09. 8. To 40-64-09. 10.

This language is from Chapter 48-01.2

Jeffrey J. Volk, PE & RLS

*RICHLAND COUNTY  
WATER RESOURCE DISTRICT*

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2.05.15  
5.4

**CHAIRMEN:**

Don Moffet, Chr. (Barney)  
Robert Rostad, Vice Chr. (Colfax)  
Arv Burvee (Fairmount)  
James Haugen (McLeod)  
Gary Friskop (Wahpeton)

**SECRETARY/TREASURER:**

Monica Zentgraf  
(701)642-7773 (Phone)  
(701)642-6332 (Fax)  
mzentgraf@co.richland.nd.us (E-mail)

## MEMORANDUM

**DATE:** February 2, 2015  
**TO:** North Dakota Senate Political Subdivisions Committee Members  
**FROM:** Richland County Water Resource District  
**RE:** SB 2375

The Richland County Water Resource District strongly encourages you to vote against SB 2375. This bill is an effort by larger cities to eliminate water resource districts and rural water systems. Water resource districts are existing political subdivisions with jurisdiction and authority to develop, construct, and manage drainage and flood control systems. Rural water systems are existing political subdivisions with jurisdiction and authority to develop, construct, and manage water supply systems in rural areas. The new "community facilities districts" proposed under this bill are unnecessary and simply create an additional layer of government. Passage of this bill would create uncertainty in rural areas and would result in unnecessary litigation amongst the various entities in rural areas that would all seemingly have the same jurisdiction.

Please vote "no" on SB 2375. Thank you.

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2.5.15  
# 6.1

**Testimony of Eric Volk, Executive Director**

**ND Rural Water Systems Association**

**Senate Bill 2375**

**Senate Political Subdivisions Committee – February 5, 2015**

Chairman Burckhard and members of the Senate Political Subdivisions Committee, my name is Eric Volk. I am the executive director of the North Dakota Rural Water Systems Association (NDRWSA) which serves a membership of more than 250 cities, 28 rural/regional water systems, and four tribal systems.

The NDRWSA is committed to ensuring all of North Dakota's residents receive affordable drinking water of excellent quality and sufficient quantity. NDRWSA is committed to completing and maintaining North Dakota's water infrastructure for economic growth and quality of life. Today I am submitting testimony in opposition of Senate Bill 2375, relating to formation of a community facilities district for public improvements.

For the record, we are not opposed to better or new ways of financing public improvements. However, this bill goes much further than simply providing a financing mechanism; in fact, the bill contemplates a completely new political subdivision that would possess conflicting jurisdiction and authority relative to rural water systems and other water entities. If the objective is to provide a financing option for public infrastructure, the bill should be narrowly tailored to accomplish that objective. Instead, this bill contains sweeping language regarding a new government entity with superior authority over existing political subdivisions that have obligations to our constituents and customers. We do not oppose the concept of providing a mechanism for financing public projects, but we do oppose the creation of an



unnecessary additional layer of government in areas where we already have existing government entities.

**SB 2375 Conflicts with Federal Law and Existing State Law**

**Pg. 14, lines 1-3:**

*A district that proposes to provide domestic water service in the certificated area of a public service corporation serving domestic water shall provide just compensation to the public service corporation.*

The federal government adopted a policy (referred to today as 7 U.S.C. Section 1926(b)) in 1961 in which federally indebted water districts received territorial protection, to be the exclusive water service providers in their service areas. This policy (which is now over 50 years old) has been an enormous success. It has caused development to flourish throughout the United States, particularly in rural areas. The policy was (and is) so good, that North Dakota adopted an identical policy in 1997 (6-09.4-22), in which the state granted the same level of exclusivity to water districts indebted to state affiliated lenders. SB 2375 ignores and conflicts with the territorial protection created by Section 1926(b) and 6-09.4-22.

**The purposes of 7 U.S.C. Section 1926(b):**

- 1) Encourage rural development;
- 2) Spread fixed costs over a large group of users (create an economy of scale);
- 3) Prevent rural water costs from becoming prohibitively expensive to any one user;
- 4) Provide fresh and clean water to rural areas; and
- 5) Protect the federal government as insurer of the loan

Section 6-09.4-22 contemplates identical policy considerations, but with protection of the State of North Dakota's investment as one of its objectives:

**6-09.4-22. Protection of service during term of loan.**

1. The service provided or made available by a political subdivision through the construction or acquisition of an improvement, or the revenues there from, financed in whole or in part with a loan to the political subdivision from the

public finance authority or any other state agency or enterprise, may not be curtailed or limited by inclusion of all or any part of the area served by the political subdivision within the boundaries of any other political subdivision, or by the granting of any private franchise for similar service within the area served by the political subdivision, during the term of the loan. The political subdivision providing the service may not be required to obtain or secure any franchise, license, or permit as a condition of continuing to serve the area if it is included within the boundaries of another political subdivision during the term of the loan.

2. Under the circumstances described in subsection 1, nothing prevents the two political subdivisions, with the public finance authority or other state agency or enterprise, from negotiating an agreement for the right or obligation to provide the service in question, provided that any agreement is invalid and unenforceable unless the public finance authority or other state agency or enterprise is a party to the agreement and unless the agreement contains adequate safeguards to ensure the security and timely payment of any outstanding bonds of the public finance authority issued to fund the loan.

These federal and state law protections are lifelines for rural water districts seeking to serve their territories and their residents. SB 2375 does not recognize or acknowledge these protections and, instead, would permit a new entity to step in and take over rural water districts territory; the bill would threaten rural water systems' abilities to repay their outstanding federal and state debts; the bill would create conflicting jurisdictions, a result that would create confusion that would be prime for litigation; and the bill would significantly weaken the authorities of rural water systems and other important water entities in North Dakota.

The proposed language in Section 40-64-09(A)(1) suggests a community facilities district would not have the authority to proceed *only if* a rural water system were already providing service in that area (an area where there would not be any existing development so a rural water system would not have any reason to be serving that property already). This language does not recognize the fact that, under federal law, even if a rural water district is not already providing service (to a development not yet constructed), the rural water district has legal authority to provide the water to the development, and to own, design, construct, and operate the water

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infrastructure. This section, and really the entirety of the legislation, fails to recognize the 1926(b) implications. More significantly, rural water districts would have to be engaged much earlier in the process than is contemplated in this legislation. In those instances, the rural water system would have to consent to the construction by the community facilities district under Federal and State law; the USDA and the North Dakota Public Finance Authority would have to consent; and even then the legislation does not provide any guidance regarding practical issues, (e.g., design of the system to meet the rural water system's specs, ownership automatically vesting in the rural water system, construction issues such as warranty and insurance protection for the subsequent owners of the systems).

We oppose the creation of this type of entity, but even if the Legislature wants to investigate this type of financing option for developers, water entities would have to be engaged much earlier in the process than SB 2375 contemplates. We would have to be engaged in the planning regarding the source of the water; we would have to be engaged to consider design standards; we would have to ultimately approve the design; we would have to be involved in the contract bidding and administration to ensure proper protections regarding warranties and construction; we would have to resolve membership issues early in the process; and we would have to resolve a myriad of other issues early in the process if this type of scenario.

**2013 session laws regarding water service areas and agreements:**

Water issues are complex, especially with regard to new development, and SB 2375 would only further complicate those issues by adding a new entity with new and conflicting interests. The Legislature wrestled with territorial and jurisdictional issues regarding water service to accommodate new development during the 2013 session. The result of that complex process was the following:

**61-35-26.1. Statement of intent.**

It is the intent of the legislative assembly that potable water should be available in sufficient quality and quantity to meet citizens' needs for a healthy and safe standard of living and to promote economic growth and development. In order to meet this objective in the most economical way, water service districts and city water service systems shall coordinate their service plans. Competition for users and duplication of service must be avoided whenever possible.

**61-35-26.2. Plans for water service by providers - Filing plans - Existing agreements.**

1. A city planning to expand water service through annexation shall develop a city water service area plan. The city shall consult with any other water service provider, including a district, whose water service area is affected by the city's water service area plan of the establishment of the plan.

2. The city shall file the city water service area plan with the commission. Upon filing of the plan with the commission, the city may proceed with water service to the annexed area as provided in section 61-35-26. A city water service area plan is enforceable when there is a water service agreement among the water service providers, including a district, that are encompassed by or which abut the water service area boundary.

3. Sections 61-35-26.1 through 61-35-26.4 do not supersede an existing water service agreement between a city and a district.

**61-35-26.3. State water commission funding.**

Before providing a grant or loan to a district or city for a water service project in any area within the extraterritorial zoning jurisdiction of any affected city, the commission shall require that district and city to have a water service agreement. The absence of a water service agreement may not affect the funding by the commission of other projects for a district or city which are not related to potable water service and are not located within the extraterritorial zoning jurisdiction.

As you can see, this is a very delicate and complicated issue. By saying "just compensation" is not enough assurance to already existing water providers.

**Conclusion**

Like I stated at the beginning of my testimony, we are not opposed to better or new ways of financing public improvements. However, we are concerned about the significant

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ramifications this particular framework would have regarding the jurisdiction, territories, and customers of our rural water systems.

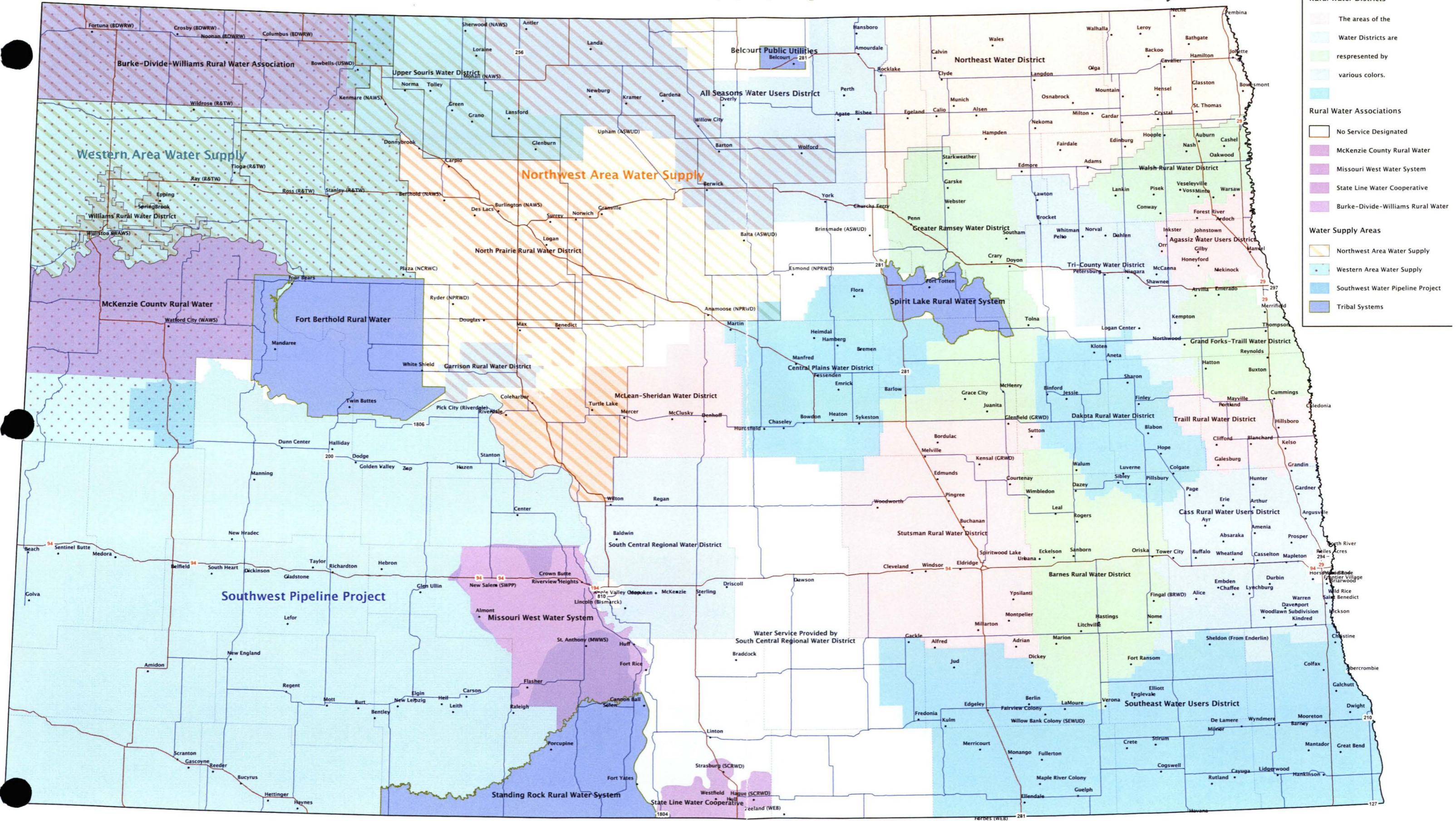
I am concerned we are rushing into this concept without adequate opportunity for stakeholders to even consider all of the long-term ramifications. We recognize the need for orderly development, but SB 2375 does not recognize several key players, and certainly does not consider all of the possible issues that might arise with this new layer of government. If the State does want to further investigate other options for financing public improvements, we support that, but water entities have to be at the table much earlier in the process. In our estimation, SB 2375 would create more confusion and duplication of jurisdiction; those types of elements are prime ingredients for litigation, and not orderly development as SB 2375 purports to promote.

We respectfully request a Do Not Pass on SB 2375. Thank you for your time. EV



# North Dakota Water Supply Systems

SB2375  
2.5.15  
#6B



*Hoghouse  
Draft*

*SB2375  
2.20.15  
#1*

Introduced by

Senators Bekkedahl, Unruh

Representatives Hatlestad, Steiner, Streyle, Zubke

1 A BILL for an Act to create and enact chapter 40-64 of the North Dakota Century Code, relating  
2 to formation of a community facilities district for public improvements.

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

4 **SECTION 1.** Chapter 40-64 of the North Dakota Century Code is created and enacted as  
5 follows:

6 **40-64-01. Definitions.**

7 In this chapter, unless the context otherwise requires:

- 8 1. "Clerk" means the individual appointed by the district board to be the district clerk.
- 9 2. "County" means a county that forms a community facilities district pursuant to this  
10 chapter in an unincorporated area within a city's extra territorial zone.
- 11 3. "Debt service" means the principal of, interest on and premium, if any, on the bonds,  
12 when due, whether at maturity or prior redemption and fees and costs of registrars,  
13 trustees, paying agents, or other agents necessary to handle the bonds and the costs  
14 of credit enhancement or liquidity support.
- 15 4. "District" means a community facilities district formed under to this chapter  
16 by a city or by a county in an unincorporated area within a city's extra territorial zone  
17 with the city's consent.
- 18 5. "District board" means the board of directors of the district appointed under section 40-  
19 64-02.
- 20 6. "Enhanced municipal services" means public service provided by a county or  
21 city within the district at a higher level or to a greater degree than provided  
22   
23   
24

in the remainder of the county or city, including such services as public safety, fire protection, street or sidewalk cleaning, or landscape maintenance in public areas.

7. "General obligation bond" means a bond that is issued pursuant to section 40-64-15 and that is secured by a pledge of ad valorem taxes levied by the district.

8. "General plan" means the general plan as the plan may be amended.

9. "Governing body" means the city council or commission or board of county commissioners.

10. "Owner" means the person who, on the day the action, election, or proceeding is begun or held, appears to be the owner of real property as shown on the property tax assessment roll.

—11. "Public infrastructure" means all improvements and development fees listed in this subsection which will result in a beneficial use principally to land within the geographical limits of the district and may include a district's share of any improvements listed in this subsection if the district board determines such share is reasonably proportionate to the beneficial use of such improvements to land within the geographical limits of the district, improvements within or outside the geographical limits of the district, necessary or incidental work, whether newly constructed, renovated or existing, and all necessary or desirable appurtenances. For the purposes of this subsection, adoption by the district board of a resolution of intent pursuant to section 40-64-11 shall conclusively establish that the improvements or, if applicable, share of the improvements that are the subject of the resolution will result in a beneficial use principally to land within the geographical limits of the district. Public infrastructure improvements are:

a. Sanitary sewage systems, including collection, transport, storage, treatment, dispersal, effluent use, and discharge.

b. Highways, streets, roadways, and parking facilities, including all areas for vehicular use for travel, ingress, egress, and parking.

c. Areas for pedestrian, equestrian, bicycle, or other nonmotor vehicle use for travel, ingress, egress, and parking.

d. Pedestrian malls, parks, recreational facilities, and open space areas for the use of members of the public for entertainment, assembly, and recreation with the appropriate park district approvals as may be required.



- 13 e. Landscaping, including earthworks, structures, lakes and other water features,  
14 plants, trees.
- 15 f. Public buildings, public safety facilities, and fire protection facilities.  
16 g. Lighting systems.
- 17 h. Traffic control systems and devices, including signals, controls, markings, and  
18 signage.
- 19 i. Development fees charged by the county or city.  
20 j. Equipment, vehicles, furnishings, and other personalty related to the items listed  
21 in this subsection.
- 22 k. Easements, rights of way, licenses, and other rights benefits, enjoyments, and  
23 interests, tangible and intangible, and whether in the nature of personal property  
24 or real property, incidental to or necessary or appropriate in connection with the  
25 items listed in this subsection.
- l. Permissible "public infrastructure" improvements under this Chapter 40-64 do not include:
- (i) Drainage and flood control systems, including collection, transport, diversion, storage, detention, retention, dispersal, recharge, use and discharge.
  - (ii) Water systems for domestic, industrial, irrigation, municipal or fire protection purposes, production, collection, storage, treatment, transport, delivery, connection and dispersal, but not including facilities for agricultural irrigation purposes unless for the repair or replacement of existing facilities when required by other improvements permitted by this article.

- 26 12. "Public infrastructure purpose" means:
- 27 a. Planning, design, engineering, permitting, fees, construction, acquisition, or  
28 installation of public infrastructure.
- 29 b. Acquiring, converting, renovating, or improving existing facilities for public  
30 infrastructure.
- 31 c. Acquiring interests in real property for public infrastructure.

d. Establishing, maintaining and replenishing reserves from any source described in section 40-64-13 or from any other source in order to secure payment of debt service on bonds.

e. Funding and paying from bond proceeds interest accruing on bonds for a period of not to exceed three years from their date of issuance.

f. Providing for the timely payment of debt service on bonds or other indebtedness of the district.

g. Refinancing any matured or unmatured bonds with new bonds.

h. Incurring expenses of the district incident to and reasonably necessary to carry out the purposes specified in this subsection.

i. Providing for the funding of financing costs incurred by the district or owner related to the provision of public infrastructure or public infrastructure purposes.

j. Providing for public safety and other public services for districts located in unincorporated areas of the county within the extraterritorial zoning authority of a city.

13. "Revenue bonds" means those bonds that are issued pursuant to section 40-64-16 and that are secured by a pledge of revenues of the district or revenues collected by the county or city and returned to the district.

14. "Treasurer" includes any individual or official appointed by the district board as the district treasurer.

**40-64-02. District Formation.**

Notwithstanding anything to the contrary, upon the presentation of a petition to the city or county signed by all of the owners of property to be included in a district, the governing board may order the establishment of the district.

Upon the establishment of a district pursuant this section, the governing body will appoint five directors from a listing of ten names with qualifications consistent with section 40-64-07 subsection 2. nominated by the owners.

Upon the establishment of district under this section, other than the reporting of the district formation to state and county agencies and other actions as contained in this article, the city or county shall have no further responsibilities with respect to the district.

As it relates to a district established pursuant to this section, the district will contract with qualified third party providers of professional services to administer the operations of the district as well as legal professionals, finance professionals, underwriters and other professionals as approved by the district board.

**40-64-03. Notice and conduction of elections.**

Any election under this article shall be a nonpartisan election called by posting notices in three public places within the boundaries of the district not less than twenty days before the election. Notice shall also be published in a newspaper of general circulation in the city or county or if there is no newspaper so circulated in the city in a newspaper of general circulation in the county in which the city is located once a week for two consecutive weeks before the election. The notice shall state:

- a. The place of holding the election.
- b. The hours during the day, not less than six, in which the polls will be open.
- c. If it is a bond election, the amount of bonds to be authorized for the district, the maximum rate of interest to be borne on the bonds, the maximum term of the bonds, not exceeding thirty years, and the purposes for which the monies raised will be used.
- d. If it is an ad valorem tax levy election pursuant to section 40-64-19, the maximum mill levy to be imposed including a limitation, if any, on the ad valorem mill levy, the purposes for which the monies raised will be used and the existing maximum mill levy, if any.
- e. That a general plan is on file with the clerk.

The district board or the governing body, as applicable, shall determine the date of the election and the polling places for the election. Electors shall be owners within the boundaries of the district and the vote will be done through a majority acreage voting system with each land owner having the number of votes equal to the number of acres or portions of acres they own rounded to the nearest one fifth acre. An election held pursuant to this article may be held at any time.

Except as otherwise provided by this article, the election shall comply with the general election laws of this state, except that the words to appear on the ballots shall be for a bond election "bonds, yes" and "bonds, no", for a tax election if no tax is in place "tax, yes" and "tax, no" and for a tax election to change an existing maximum or eliminate an existing tax "tax change, yes" and "tax change, no". The bond election question shall include authorization for a mill levy, including a limitation, if any, on the ad valorem property tax to pay debt service on the bonds. The returns of election shall be made to the district board.

Within fourteen days after an election, the district board shall meet and canvass the returns, and if a majority of the votes cast at the election is in favor of issuing the bonds, imposing the tax or changing the tax, the district board shall enter that fact on its minutes. The canvass may be continued from time to time. Failure of a majority to vote in favor of the matter submitted does not prejudice the submission of the same or similar matters at a later election.

If a person listed on the assessor's roll is no longer the owner of land in the district and the name of the successor owner becomes known and is verified by recorded deed or other similar evidence of transfer of ownership, the successor owner is deemed to be the owner for the purposes of this article.

**40-64-04. Formation**

Upon the order of formation of the district by the governing body, the governing body shall appoint the initial directors of the district board, set the district boundaries and order that a map showing the district boundaries be drawn and a copy of the order forming the district be delivered to the county assessor and the board of commissioners of the county in which the district is located and to the department of revenue. A notice of the formation showing the number and date of the order and giving a description of the land included in the district shall be recorded with the county recorder.

Except as otherwise provided in this section, a district is considered to be a municipal corporation and political subdivision of this state, separate and apart from the city or county. As such, the municipality or the county will not be liable for any debt obligations of the district. Under no circumstances may the amount of indebtedness evidenced by general obligation bonds issued pursuant to section 40-64-15, and revenue bonds issued pursuant to section 40-64-16 exceed the estimated cost of the public infrastructure improvements plus all costs connected with the public infrastructure purposes and issuance and sale of bonds, including, without limitation, credit enhancement and liquidity support fees and costs.

On formation of the district, the district board shall administer, in a reasonable manner, the implementation of the general plan for the public infrastructure of the district and any development agreement entered between the governing body and owners of land in the district. The district board shall be considered a party to that agreement.

Fees and other charges assessed by a city or county in connection with the submission and review of an application or petition to form a district shall not exceed fifteen thousand dollars.

4       **40-64-05. Powers of a community facilities district.**

5       1. In addition to the powers otherwise granted to a district pursuant to this chapter, to  
6       further the general plan, a district may:

7       a. Enter into contracts and expend moneys for any public infrastructure purpose  
8       with respect to the district.

9       b. Enter into intergovernmental agreements for the planning, design, inspection,  
10       ownership, control, maintenance, operation, or repair of public infrastructure or  
11       the provision of enhanced municipal services by the city or county in  
12       the district.

13       c. Sell, lease, or otherwise dispose of district property if the sale, lease, or  
14       conveyance is not a violation of the terms of any contract or bond resolution of

- 15                    the district.
- 16                    d. Reimburse the county or city for providing enhanced municipal
- 17                    services in the district.
- 18                    e. Reimburse the county for providing public safety and other services in districts
- 19                    located in the unincorporated areas of the county.
- 20                    f. Operate, maintain, and repair public infrastructure.
- 21                    g. Establish, charge, and collect user fees, rates, or charges for the use of any
- 22                    public infrastructure or service.
- 23                    h. Employ staff, counsel, and consultants.
- 24                    i. Reimburse the city or county for staff and consultant services and
- 25                    support facilities supplied by the city or county.
- 26                    j. Accept gifts or grants and incur and repay loans for any public infrastructure
- 27                    purpose.
- 28                    k. Enter into agreements with landowners and the city or county for the
- 29                    collection of fees and charges from landowners for public infrastructure purposes,
- 30                    the advance of moneys by landowners for public infrastructure purposes, or the
- 31                    granting of real property by the landowner for public infrastructure purposes.
- 
- l. By resolution, levy and assess the costs of any public infrastructure purpose on
- 2                    any land benefited in the district.
- 3                    m. Pay the financial, legal, and administrative costs of the district.
- 4                    n. Enter into contracts, agreements, and trust indentures to obtain credit
- 5                    enhancement or liquidity support for its bonds and process the issuance,
- 6                    registration, transfer, and payment of its bonds and the disbursement and
- 7                    investment of proceeds of the bonds.
- o. With the consent of the governing body of the city or county which
- 9                    formed the district, enter into agreements with persons outside of the district to
- 10                    provide services to persons and property outside of the district.
- 11                    p. Use public easements and rights of way in or across public property, roadways,
- 12                    highways, streets, or other thoroughfares and other public easements and rights
- 13                    of way, whether in or out of the geographical limits of the district, the
- 14                    city, or the county.
- q. Enter into development agreements with private operators pursuant to chapter
- 48-02.1.

15        2. This chapter does not authorize:

16            a. A district to acquire, construct, operate, or maintain an electric generation or  
17            distribution system or natural gas distribution system without the written consent  
18            of any affected public service corporation, electric cooperative, agricultural  
19            improvement or power district, or other district, the service area of which  
20            encompasses all or part of the district, if that entity is providing electrical utility  
21            service or natural gas utility service in the district.

22            b. A district to provide service outside its boundaries without the written consent of  
23            any affected public service corporation, electric cooperative, agricultural  
24            improvement or power district, or other district with a service area that lies  
25            outside of the district, if that entity is providing or is capable of adequately  
26            providing electrical utility service or natural gas utility service in the area that the  
27            district proposes to serve.

c. A district to construct, operate, or maintain drainage and flood control systems, including collection, transport, diversion, storage, detention, retention, dispersal, recharge, use and discharge, with the exception of municipal storm sewer systems.

d. A district to construct, operate, or maintain water systems for domestic, industrial, irrigation, municipal or fire protection purposes, production, collection, storage, treatment, transport, delivery, connection and dispersal, but not including facilities for agricultural irrigation purposes unless for the repair or replacement of existing facilities when required by other improvements permitted by this article.

e. A district to own, operate or maintain a sewage treatment plant.

28        3. If a district is granted written consent pursuant to this section, the district shall provide  
29        a copy to the governor, the president of the senate, the speaker of the house of  
30        representatives, and the secretary of state no later than thirty days after consent is  
31        granted.

4. In connection with any power authorized by statute, the district may:

2            a. Contract.

3            b. Enter into intergovernmental agreements.

4            c. Adopt and change a seal.

5            d. Sue and be sued.

6            e. Enter into development agreements with a city or county.

7            f. Exercise the same right and power of eminent domain

to acquire any property or right of way, except political subdivision,

county, state, or federal property, for any public infrastructure purpose.

9  
10 5. Public infrastructure other than personalty may be located only in or on lands owned  
14 by the state, county, city, or district or dedicated or otherwise designated as  
15 public roadways, highways, streets, thoroughfares, easements, or rights of way,  
16 whether in or out of the district or the city. Personalty may be used only for  
17 purposes authorized by the district board.

18 7-6. An agreement pursuant to this section may include agreements to repay all or part of  
19 such advances, fees, and charges from the proceeds of bonds if issued or from  
20 advances, fees, and charges collected from other landowners or users or those having  
21 a right to use any public infrastructure. A person does not have authority to compel the  
22 issuance or sale of the bonds of the district or the exercise of any taxing power of the  
23 district to make repayment under any agreement.

24 8-7. Public infrastructure to be financed through the district shall be publicly bid pursuant to  
48-01-02.

7 **40-64-06. Perpetual succession.**

8 The district has perpetual succession.

9 **40-64-07. Records - Board of directors - Open meetings.**

10 The district shall keep the following records, which must be open to public inspection:

- a. Minutes of all meetings of the district board.
- b. All resolutions.
- c. Accounts showing all moneys received and disbursed.
- d. The annual budget.
- e. All other records required to be maintained by law.

16 The resolution ordering formation of the district will state that the district will be governed  
17 by a district board appointed by the governing body, each appointed director shall serve for a  
18 term of six years, except that two directors initially appointed by the governing body in the  
19 resolution shall serve for a term of four years. The resolution shall state which directors shall  
20 serve four-year terms and which shall serve six-year terms. On the expiration of the term of an  
21 appointed director, the governing body from a list of at least three persons nominated by the  
22 owner, shall appoint a person to fill the position. If a vacancy occurs on the district board  
23 because of death, resignation, or inability of the director to discharge the duties of director, the  
24 vacancy shall be filled by appointment made by the governing body from a list of at least three  
25 persons nominated by the owner. A director appointed by the governing body shall hold office

26 for the remainder of the unexpired term until a successor is appointed. An appointed director  
27 may not be an owner owning more than one hundred acres in the district, an elected  
28 official of the city or county, or an employee or agent of the city or  
29 county but may be a director of more than one district. The director may be an employee or  
30 agent of the owner.

1 The board of directors shall comply with public meeting laws as a separate political  
2 subdivision.

The district manager, district clerk, district treasurer, and other district staff positions  
which may be required shall be appointed by the district board.

5 **40-64-08. Participation by city or county.**

The governing body of the city or county, by resolution, may summarily order  
7 the participation by the city or county in the costs of any public infrastructure  
8 purpose.

9 **40-64-09. Other districts or improvements.**

10 The formation of a district under this chapter does not prevent the subsequent  
11 establishment of similar districts or the improvement or assessment of land in the district by the  
12 city or county or the exercise by the city or county of any of its powers including but not  
limited to zoning, subdivision and other police powers on the same basis as all other land in its  
corporate boundaries.

14 **40-64-10. Change in district boundaries or general plan.**

15 An area may be deleted from the district only following adoption of a resolution of intention  
to do so by the district board and approval by the majority of owners of land in the district. Deleted  
areas remain subject to the levy for debt service on any bonds issued before the date of deletion.

21 At any time after adoption of the formation of the district an area may be added  
to the district on adoption by the governing board of a resolution of intention to do so,  
and approval by the district board following the receipt of a petition from all of the  
owners of land in the proposed addition to the district.

1 The district board may amend the general plan in any manner which it determines will not  
substantially reduce the benefits to be received by any land in the district from the public  
infrastructure on completion of the work to be performed under the general plan.

The board shall hold a public hearings related to deletions and additions to the district and  
provide notice of the hearing by publication not less than ten days in advance of the hearing in the official  
newspaper of the city or county.

7 **40-64-11. Project approval.**

8 Before constructing or acquiring any public infrastructure, the district board shall cause a  
9 study of the feasibility and benefits of the project to be prepared by engineers and other



10 qualified persons, which shall include a description of the public infrastructure to be constructed  
11 or acquired and all other information useful to understand the project, a map showing, in  
12 general, the location of the project, an estimate of the cost to construct, acquire, operate, and  
13 maintain the project, an estimated schedule for completion of the project, a map or description  
14 of the area to be benefited by the project, and a plan for financing the project. The board shall  
15 hold a public hearing on the report and provide notice of the hearing by publication not less than  
16 ten days in advance in the official newspaper of the city or county. After the hearing, the district  
board may reject, amend, or approve the  
19 report. If the report is amended substantially, a new hearing shall be held before approval. If the  
20 report is approved, the district board shall adopt a resolution of intent which identifies the public  
21 infrastructure of the project, the areas benefited, the expected method of financing, and an  
22 appropriate system of providing revenues to operate and maintain the project.

23 **40-64-12. Budget.**

The fiscal year of each district shall commence on the first day of January of each year and shall terminate on the thirty-first day of December of that same year. On or before September tenth, the district treasurer shall prepare a proposed budget for the ensuing fiscal year to be submitted to the district board for approval. The board shall indicate its approval of the budget by resolution, which shall provide for a hearing on the budget as approved. Notice of the hearing on the budget shall be provided in the manner prescribed by section 40-64-11. At the conclusion of the budget hearing, the district board, by resolution, shall adopt the budget as finally approved by the board. In no case shall the budget be adopted later than October tenth of each year.

1        **40-64-13. Finances.**

2        The projects to be constructed or acquired as shown in the general plan may be financed  
3        from the following sources of revenue:

- 4        1. Proceeds received from the sale of bonds of the district.
- 5        2. Moneys of the city or county contributed to the district.
- 6        3. Annual tax levies.
- 7        4. Special assessments.
- 8        5. State or federal grants or contributions.
- 9        6. Private contributions.
- 10       7. User, landowner, and other fees and charges.
- 11       8. Proceeds of loans or advances.
- 12       9. Any other moneys available to the district by law.

13       **40-64-14. Recording documents.**

14       The district shall file and record with the county recorder the order forming the district, the  
15       general plan of the district, the canvass of any general obligation bond election, and any special  
          assessments levied by the district.

17       **40-64-15. General obligation bond - Tax levy.**

18       At any time after the hearing on formation of the district, the district board may from time to  
19       time order and call a general obligation bond election to submit to the owners of the  
20       district or to those persons who are qualified to vote pursuant to section 40-64-03 the question  
21       of authorizing the district board to issue general obligation bonds of the district to provide  
22       moneys for any public infrastructure purposes consistent with the general plan.

24       If general obligation bonds are approved at an election, the district board may issue and sell  
          general obligation bonds of the district.

26       If the bonds are to be sold in a public offering, no bonds may be issued by the district  
27       unless the bonds receive one of the four highest investment grade ratings by a nationally  
28       recognized bond rating agency.

29       The district may issue and sell refunding bonds to refund any general obligation bonds of  
30       the district. If general obligation bonds are issued to refund any general obligation bonds of the  
31       district, no election on the issuance of such refunding bonds is required.

1 After the bonds are issued, the district board shall enter in its minutes a record of the bonds  
2 sold and their numbers and dates and unless otherwise limited by the bond election, shall

3 annually levy and cause an ad valorem tax to be collected, at the same time and in the same  
4 manner as other taxes are levied and collected on all taxable property in the district, sufficient,  
5 together with any moneys from the sources described in section 40-64-13, to pay debt service  
6 on the bonds when due. In pledging the proceeds of an ad valorem property tax, the district  
7 board may limit the rate of taxation or the amount of ad valorem tax dollars that it is obligated to  
8 impose or collect to pay any securities as set forth in the bond election described in section  
9 40-64-03. Moneys derived from the levy of the tax provided in this section when collected  
10 constitute funds to pay the debt service on the bonds and shall be kept separately from other  
11 funds of the district.

12 **40-64-16. Revenue bonds - Fees and charges.**

13 At any time after the hearing on formation of the district, the district board may hold a  
14 hearing on the question of authorizing the district board to issue revenue bonds of the district to  
15 provide moneys for any public infrastructure purposes consistent with the general plan.

16 If revenue bonds are approved by resolution, the district board may issue and sell revenue  
17 bonds of the district.

18 If the bonds are to be sold in a public offering, no bonds may be issued by the district  
19 unless the bonds receive one of the four highest investment grade ratings by a nationally  
20 recognized bond rating agency.

21 The district board may pledge to the payment of its revenue bonds any revenues of the  
22 district or revenues to be collected by the city or county in trust for the district and  
23 returned to the district.

24 The district shall prescribe fees and charges, and shall revise them when necessary, to  
25 generate revenue sufficient, together with any moneys from the sources described in section  
26 40-64-13, to pay when due the principal and interest of all revenue bonds for the payment of  
27 which revenue has been pledged. The establishment or revision of any rates, fees, and charges  
28 shall be identified and noticed concurrently with the annual budget process of the district  
29 pursuant to section 40-64-12.

1 If, in the resolution of the district board, the revenues to be pledged were limited to certain  
2 types of revenues, only those types of revenues may be pledged and only those revenues must  
3 be maintained.

4 No holder of revenue bonds issued under this chapter may compel any exercise of the  
5 taxing power of the district, municipality, or county to pay the bonds or the interest on the bonds.  
6 Revenue bonds issued under this chapter are not a debt of the district, city, or  
7 county, nor is the payment of revenue bonds enforceable out of any moneys other than the  
8 revenue pledged to the payment of the bonds.

9 The district may issue and sell refunding bonds to refund any revenue bonds of the district.

10 **40-64-17. Special assessments - Assessment lien bonds.**

11 The district board, by resolution and pursuant to the procedures prescribed by sections  
12 40-22-08 through 40-22-19, as nearly as practicable, or such other procedures as the district  
13 board provides, may levy an assessment of the costs of any public infrastructure purpose, any  
14 operation and maintenance of public infrastructure, any enhanced municipal services or  
15 operations of the district on any land in the district based on the benefit determined by the  
16 district board to be received by the land. Prior to the issuance of special assessment bonds, the  
17 district may enter into a written agreement with a landowner as to the manner in which the  
18 assessment is to be allocated if the land is to be divided into more than one parcel. If an issue  
19 of special assessment lien bonds finances more than one purpose or service, the benefit  
20 received by the land, in the discretion of the district, may be determined by reference to the  
21 purposes and services as a whole or individually. The assessment may be based on estimated  
22 costs and amended to reflect actual costs, and the preparation of plans and specifications and  
23 the awarding of the contract are not a prerequisite to the levying of the assessment. An owner  
24 of land on which an assessment has been levied may seek judicial review of whether the land is  
25 benefited by the proposed infrastructure, on the merits, by special action filed with the court of  
26 appeals, within thirty days of the effective date of the resolution.

28 After adoption by the district board of a resolution levying a special assessment on property  
29 in the district, the district board may issue and sell special  
30 assessment lien bonds payable from amounts collected from the special assessments, from  
31 amounts available from time to time in any reserve fund established for those bonds, and from

1 any other amounts available for those purposes as prescribed by section 40-64-13. The district  
2 and the county treasurer for the county in which the district is located may enter into an  
3 agreement for the county treasurer to collect the district's special assessments in the manner  
4 and by the officers provided by law for the collection and enforcement of general taxes. The  
5 district and the county treasurer may provide by agreement for the payment of the county  
6 treasurer's collection expenses directly related to the levy of the special assessment and, if so  
7 provided, the levy of the special assessment may include an amount for compensation of the  
8 county treasurer directly related to the collection of the special assessment. The district board  
9 may also issue and sell bond anticipation notes. The assessment shall be a first lien on the  
10 property assessed subject only to general property taxes and prior special assessments. In the  
11 event of nonpayment of an assessment and except as otherwise provided in an agreement  
12 between the district and the county treasurer pursuant to this section, the procedures for  
13 collection of delinquent assessments, sale of delinquent property property procedures under title  
14 57 apply, as nearly as  
15 practicable, except that in no event is the district, county or the city required to purchase the  
16 delinquent land at the sale if there is no other purchaser. If the landowner owns more than one  
17 parcel in the district, the district board may provide procedures for the collection and  
18 enforcement of assessments as the board deems appropriate by contract with a landowner to  
19 permit the sale of any or all of the landowner's parcels in the district if the landowner becomes  
20 delinquent as to any parcel that the landowner owns in the district.

21 On adoption of the resolution, but before issuance of the special assessment lien bonds,  
22 the district may direct the treasurer to make demand on the owners of the property so  
23 assessed, as shown on the property tax roll, for advance payment of the amount assessed. The  
24 demand shall state a date not less than twenty days after the date of adoption of the ordinance  
25 after which the treasurer may refuse to accept advance payments of the assessment. The  
26 treasurer shall certify to the clerk on or after the date specified in the demand the amount  
27 collected and the assessments remaining unpaid against each parcel of land assessed. Special  
28 assessment lien bonds may not be issued in an amount in excess of the amount assessed in  
29 the ordinance or, if advance payments are demanded, the amount certified to the clerk. The  
30 district may adopt procedures for prepayment and provisions for payment and reallocation of  
31 assessments.

1 The district may issue and sell refunding bonds to refund any special assessment bonds of  
2 the district.

3 **40-64-18. Terms of bonds.**

4 With respect to any bonds the district board shall  
5 prescribe the denominations of the bonds, the size of each issue and the form of the bonds and  
6 shall establish the maturities, interest payment dates, and interest rates, whether fixed or  
7 variable, not exceeding the maximum rate stated in the notice of the election or the resolution of  
8 the district board. The bonds may be sold by competitive bid or negotiated sale for public or  
9 private offering at, below or above par. If the bonds are sold below par, the aggregate amount of  
10 discount and interest to be paid on the bonds shall not exceed the amount of interest which  
11 would have been payable on those bonds pursuant to the maturity schedule prescribed by the  
12 district board at the maximum rate set out in the bond resolution. The proceeds of the sales  
13 shall be deposited with the treasurer, or with a trustee or agent designated by the district board,  
14 to the credit of the district to be withdrawn for the purposes provided by this chapter. Pending  
15 that use, the proceeds may be invested as determined by the district. The bonds may contain  
16 such terms, conditions, covenants, and agreements as the district board deems proper. The  
17 bonds may be payable from any combination of taxes, revenues, or special assessments of the  
18 types described in sections 40-64-15, 40-64-16, and 40-64-17 and as specified in the bonds  
19 provided that all applicable requirements of those sections are met.

20 **40-64-19. District taxes - Annual financial estimate and budget.**

21 Except as provided in this section and at any time after the formation of the  
22 district, the district board, may call an election to  
23 submit to the owners of the district the question of authorizing the district board to levy an ad  
24 valorem tax on the  
25 assessed value of all the real and personal property in the district at a rate or rates which do not  
26 exceed the maximum rate or rates specified in the ballot. All taxes attributable to the operation  
27 and maintenance expenses of the district, excluding expenses for an area described in section  
28 40-64-05, shall not exceed an amount equal to five mills true and full valuation for all real and  
29 personal property in the district, unless a higher mill levy  
30 is approved by a vote of the electors of the district, or by the persons who are qualified to  
31 vote as provided in section 40-64-03.

Once approved at an election, the maximum rate remains in effect until increased or  
2 decreased at a subsequent election. If a maximum rate is in effect, the district board, on petition  
3 of twenty-five percent of the owners of the district, or by those persons owning twenty-

Sixty-fourth  
Legislative Assembly

4 five percent of the land area who are qualified to vote pursuant to section 40-64-03, shall call an  
5 election to reduce the maximum tax rate but not below the lesser of that rate determined by the  
district board to be necessary to operate the district, maintain the district's facilities and  
6 improvements or the actual  
7 rate then in effect. On the presentation to the district board of a petition signed by the owners of  
8 a majority of the property in the district, the district board shall adopt a resolution to reduce or  
9 eliminate the portion of the tax, beginning the next fiscal year, required for one or more  
10 enhanced municipal services specified in the petition. Signatures on a petition to reduce or  
11 eliminate a tax are valid for a period of sixty days.

12 Provided the district is not limited by the bond election, the district may not levy, other than  
13 for the payment of debt service on general obligation bonds, at a rate or rates in excess of the  
14 maximum rate then in effect.

15 When levying an ad valorem tax, taking into account any limitation pursuant to the bond  
16 election, the district board shall make annual statements and estimates of the operation and  
17 maintenance expenses of the district, the costs of capital improvements to be financed by the  
18 tax levy or levies, and the amount of all other expenditures for public infrastructure and  
19 enhanced municipal services proposed to be paid from the tax levy or levies and of the amount  
20 to be raised to pay general obligation bonds of the district, all of which shall be provided for by  
21 the levy and collection of ad valorem taxes on the assessed value of all the real and personal  
22 property in the district. The district board shall file the annual statements and estimates with the  
23 clerk. The district board shall publish a notice of the filing of the estimate, shall hold hearings on  
24 the portions of the estimate not relating to debt service on general obligation bonds, and shall  
25 adopt a budget. The board, on or before the date set by law for certifying the annual budget of  
26 the county or municipality, shall fix, levy, and assess the amounts to be raised by ad valorem  
27 taxes of the district and shall cause certified copies of the order to be delivered to the board of  
28 county commissioners and to the county auditors. All statutes relating to the  
29 levy and collection of general county taxes, including the collection of delinquent taxes and sale  
30 of property for nonpayment of taxes, apply to the district taxes provided for by this section.

1        **40-64-20. Dissolution of district.**

2        1. The district may be dissolved by the district board by a resolution of the district board if  
3        the following conditions exist:

4            a. All of the property owned by the district has been or will be conveyed to the  
5            city, county, or school district; and

6            b. Either the district has no obligations or the city or county has  
7            assumed all of the obligations of the district.

8        2. The district board shall comply with the conditions prescribed by subsection 1 and  
9        shall dissolve the district if both of the following occur:

10           a. The governing body has consented to comply with the conditions prescribed by  
11           subsection 1 and either:

12                (1) Dissolution has been approved by a vote of the persons who are qualified to  
13                vote pursuant to section

14                        40-64-03 voting in an election called for that purpose.

15                (2) The district board determines that the district has been inactive for at least  
16                five consecutive years and has no future purpose.

17            b. The district board adopts a resolution dissolving the district and records the  
18            resolution in the office of the county recorder.

19        3. The district board may call such an election and shall call such an election if requested  
20        to do so in a petition signed by ten percent of the persons who are qualified to vote  
21        pursuant to section 40-64-03.

22        4. The election shall be called and held in the same manner as a bond or tax levy  
23        election, except that the ballot shall contain the words "dissolution, yes" and  
24        "dissolution, no".

25        5. All property in the district, except federal, state, county, and city property,  
26        remains subject to the lien for the payment of general obligation bonds, and any  
27        property subject to a special assessment lien remains subject to the lien  
28        notwithstanding dissolution of the district. The district may not be dissolved if any  
29        revenue bonds of the district remain outstanding unless an amount of money  
30        sufficient, together with investment income thereon, to make all payments due on the  
31        revenue bonds either at maturity or prior redemption has been deposited with a trustee



1           or escrow agent and pledged to the payment and redemption of the bonds. The district  
2           may continue to operate after dissolution only as needed to collect money and make  
3           payments on any outstanding bonds.

4           **40-64-21. Wastewater treatment projects - Loan repayment agreements - Definitions.**

6           Notwithstanding any other law, a community facilities district may finance the expansion  
              of an existing wastewater treatment facility with

8           moneys borrowed from or financial assistance including forgivable principal provided by the  
9           clean water fund.

10          To repay a loan from the clean water fund, a district may enter into a loan repayment  
11          agreement with the authority. A loan repayment agreement is payable from any revenues  
12          otherwise authorized by law to be used to pay long-term obligations.

13          The board of directors shall obtain approval for the loan repayment agreement in the same  
14          manner provided by law for approving and issuing other long-term obligations payable from  
15          those revenues that are to be used to pay the loan.

16          A loan repayment agreement entered into pursuant to this section shall contain the  
17          covenants and conditions pertaining to the construction, acquisition, or improvement of a  
18          wastewater treatment facility and repayment  
19          of the loan as the authority deems proper. Loan agreements may provide for the  
20          payment of interest on the unpaid principal balance of that agreement at the rates established in  
21          the agreement. These costs may be included in the assessment amounts pledged to repay the  
22          loan. Districts are bound by and shall fully perform the loan repayment agreements, and the  
23          agreements are incontestable after the loan is funded by the clean water fund. The  
24          community facilities district shall also agree to pay the authority's cost in issuing bonds or  
25          otherwise borrowing to fund a loan.

26          A loan repayment agreement under this section does not create a debt of the community  
27          facilities district, and the authority shall not require that payment of a loan agreement be made  
28          from other than those sources permitted in this section.

29          A community facilities district may employ or contract for the services of attorneys,  
30          accountants, financial consultants and other experts in their fields as deemed necessary to  
31          perform services with respect to the loan repayment agreement.

1        This section is supplemental and alternative to any other law under which a district may  
2 borrow money or issue bonds. This section shall be construed as the exclusive authorization to  
3 enter into loan agreements with the authority.

4        For purposes of this section:

5        1. "Authority" means the state department of health and/or the public finance authority.  
6  
7 —

February 19, 2015

SB 2375  
2.20.15  
#2

PROPOSED AMENDMENTS TO SENATE BILL NO. 2375

Page 1, line 8, remove "includes any person or official who performs the duties of clerk of the"

Page 1, line 9, replace "municipality or county or any person" with "means the individual"

Page 1, line 12, replace "municipality's" with "city's"

Page 1, line 18, remove "tax levying"

Page 1, line 19, replace "municipality" with "city"

Page 1, line 20, replace "municipality's" with "city's"

Page 1, line 21, remove ", which shall be five"

Page 1, line 22, remove "directors"

Page 1, line 22, remove "by the governing body"

Page 1, line 24, replace "municipality" with "city"

Page 2, line 1, replace "municipality" with "city"

Page 2, line 6, remove "body or board which by law is constituted as the"

Page 2, line 7, replace "legislative department of the municipality" with "city council or commission"

Page 2, line 7, after the second "or" insert "board of"

Page 2, line 7, after "county" insert "commissioners"

Page 2, line 8, remove "\"Municipality\" means an incorporated city."

Page 2, line 9, remove "11."

Page 2, line 12, replace "12." with "11."

Page 2, line 27, remove "Drainage and flood control systems, including collection, transport, diversion,"

Page 2, remove lines 28 through 31

Page 3, remove lines 1 and 2

Page 3, line 3, remove "d."

Page 3, line 5, replace "e." with "c."

Page 3, line 7, replace "f." with "d."

Page 3, line 8, after "recreation" insert "with the appropriate park district approvals as may be required"

Page 3, line 9, replace "g." with "e."

Page 3, line 11, replace "h." with "f."

Page 3, line 12, replace "i." with "g."

Page 3, line 13, replace "j." with "h."

Page 3, line 15, replace "k." with "i."

Page 3, line 15, replace "municipality" with "city"

Page 3, line 16, replace "l." with "j."

Page 3, line 18, replace "m." with "k."

Page 3, line 22, replace "13." with "12."

Page 4, line 11, after "county" insert "within the extraterritorial zoning authority of a city"

Page 4, line 12, replace "14." with "13."

Page 4, line 14, replace "municipality" with "city"

Page 4, line 15, replace "15." with "14."

Page 4, line 15, replace "person" with "individual"

Page 4, line 16, remove "pursuant to section 40-64-11"

Page 4, line 18, after "by" insert "at least seventy-five percent of"

Page 4, line 19, remove "of at least twenty-five percent"

Page 4, line 22, replace "municipality" with "city"

Page 5, line 2, remove "pursuant to section 40-64-05"

Page 5, line 20, replace "municipality" with "city"

Page 5, line 27, replace "municipality" with "city"

Page 5, line 27, remove ", if there is one, or, if there is no"

Page 5, remove line 28

Page 5, line 29, remove "which the municipality is located"

Page 6, line 3, replace "municipality" with "city"

Page 6, line 9, replace "40-60-04" with "40-64-04"

Page 6, line 11, replace "pm" with "p.m."

Page 6, line 21, remove "by a tape recorder"

Page 6, line 21, remove the second "tape"

Page 6, line 27, replace "superior" with "district"

Page 7, line 1, remove "tape"

Page 7, line 8, replace "40-60-05" with "40-64-05"

Page 7, line 14, replace "owner" with "owners"

Page 7, line 17, remove "of this"

Page 7, line 18, replace "state and other landowners" with "of the district"

Page 7, line 30, remove "for special action"

Page 7, line 30, after "the" insert "district"

Page 7, line 30, remove "of appeals"

Page 7, line 30, remove "The special action shall be"

Page 7, remove line 31

Page 8, line 1, remove "in conflict with this chapter."

Page 8, line 3, after the second "the" insert "district"

Page 8, line 3, remove "of appeals"

Page 8, line 4, remove "of appeals"

Page 8, line 4, remove "special"

Page 8, line 18, replace "a" with "the official"

Page 8, line 18, remove "general circulation in"

Page 8, line 18, replace "municipality" with "city"

Page 8, line 19, remove "or if there is no newspaper so circulated in the municipality in a newspaper of general"

Page 8, remove line 20

Page 8, line 21, remove "weeks before the election"

Page 8, line 29, replace "assessed" with "true and full"

Page 9, line 7, replace "registered voters" with "qualified electors"

Page 10, line 5, replace "municipality" with "city"

Page 10, line 8, replace "municipality" with "city"

Page 11, remove line 3

Page 11, line 4, remove "chapter IX of the Constitution of North Dakota."

Page 11, line 5, remove "municipal corporation and"

Page 11, line 6, replace the first "municipality" with "city"

Page 11, line 6, replace the second "municipality" with "city"

Page 11, line 11, remove ", without limitation,"

Page 11, line 21, replace "municipality" with "city"

Page 12, line 1, replace "municipality" with "city"

Page 12, line 6, replace "municipality" with "city"

Page 12, line 14, replace "municipality" with "city"

Page 12, line 15, replace "municipality" with "city"

Page 12, line 18, replace "municipality" with "city"

Page 12, line 29, replace "municipality" with "city"

Page 13, line 3, replace "municipality" with "city"

Page 13, line 27, replace "municipality" with "city"

Page 13, line 28, remove "as a public service"

Page 13, line 29, remove "corporation"

Page 14, line 1, remove "A district that proposes to provide domestic water service in the certificated area of a"

Page 14, remove lines 2 and 3

Page 14, line 4, remove "6."

Page 14, line 7, replace "municipality" with "city"

Page 14, line 9, replace "7." with "6."

Page 14, line 10, after "fees" insert an underscored comma

Page 14, line 15, replace "8." with "7."

Page 15, line 16, replace "fifty" with "one hundred"

Page 15, line 17, replace the first "municipality" with "city"

Page 15, line 17, replace the second "municipality" with "city"

Page 15, line 23, replace "**municipality**" with "**city**"

Page 15, line 24, replace "municipality" with "city"

Page 15, line 25, replace "municipality" with "city"

Page 15, line 29, replace the first "municipality" with "city"

Page 15, line 29, remove "pursuant to section 40-64-02"

Page 15, line 29, replace the second "municipality" with "city"

Page 17, line 1, replace "municipality" with "city"

Page 17, line 1, remove "or, if none in the"

Page 17, remove line 2

Page 17, line 3, remove "of the municipality"

Page 17, line 14, replace "adopt the budget as finally approved by the board. The budget shall be adopted" with "forward its budget and levy request to the governing body of each participating city and county"

Page 17, line 15, replace "October" with "July"

Page 17, line 20, replace "municipality" with "city"

Page 19, line 7, replace "municipality" with "city"

Page 19, line 20, replace "municipality" with "city"

Page 20, line 12, remove "pursuant to section 40-64-09"

Page 20, line 27, remove "and issuance and effect of the"

Page 20, line 28, replace "superintendent's deed prescribed by" with "property procedures under"

Page 20, line 29, replace "municipality" with "city"

Page 22, line 11, replace "assessed" with "true and full"

Page 23, line 11, replace "tax commissioners" with "county auditors"

Page 23, line 18, replace "municipality" with "city"

Page 23, line 19, replace "municipality" with "city"

Page 24, line 7, replace "municipal" with "city"

Page 25, line 19, remove "board of directors"

Page 25, remove lines 20 through 29

Page 26, remove lines 1 through 7

Renumber accordingly

Sixty-fourth  
Legislative Assembly  
of North Dakota

SENATE BILL NO. 2375

Introduced by

Senators Bekkedahl, Unruh

Representatives Hatlestad, Steiner, Streyle, Zubke

1 A BILL for an Act to create and enact chapter 40-64 of the North Dakota Century Code, relating  
2 to formation of a community facilities district for public improvements.

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

4 **SECTION 1.** Chapter 40-64 of the North Dakota Century Code is created and enacted as  
5 follows:

6 **40-64-01. Definitions.**

7 In this chapter, unless the context otherwise requires:

- 8 1. "Clerk" includes any person or official who performs the duties of clerk of the  
9 municipality or county or any person means the individual appointed by the district  
10 board to be the district clerk.
- 11 2. "County" means a county that forms a community facilities district pursuant to this  
12 chapter in an unincorporated area or in an incorporated area with the  
13 municipality's city's consent.
- 14 3. "Debt service" means the principal of, interest on and premium, if any, on the bonds,  
15 when due, whether at maturity or prior redemption and fees and costs of registrars,  
16 trustees, paying agents, or other agents necessary to handle the bonds and the costs  
17 of credit enhancement or liquidity support.
- 18 4. "District" means a tax levying community facilities district formed under to this chapter  
19 by a municipality city or by a county in an unincorporated area or in an incorporated  
20 area with the municipality's city's consent.
- 21 5. "District board" means the board of directors of the district, which shall be five  
22 directors appointed by the governing body under section 40-64-05.
- 23 6. "Enhanced municipal services" means public service provided by a county or  
24 municipality city within the district at a higher level or to a greater degree than provided



1 in the remainder of the county or municipalitycity, including such services as public  
2 safety, fire protection, street or sidewalk cleaning, or landscape maintenance in public  
3 areas.

4 7. "General obligation bond" means a bond that is issued pursuant to section 40-64-19  
5 and that is secured by a pledge of ad valorem taxes levied by the district.

6 8. "General plan" means the general plan described in section 40-64-02.

7 9. "Governing body" means the body or board which by law is constituted as the  
8 legislative department of the municipalitycity council or commission or board of county  
9 commissioners.

10 10. "Municipality" means an incorporated city.

11 ~~11.~~ "Owner" means the person who, on the day the action, election, or proceeding is  
12 begun or held, appears to be the owner of real property as shown on the property tax  
13 assessment roll.

14 ~~12.~~11. "Public infrastructure" means all improvements and development fees listed in this  
15 subsection which will result in a beneficial use principally to land within the  
16 geographical limits of the district and may include a district's share of any  
17 improvements listed in this subsection if the district board determines such share is  
18 reasonably proportionate to the beneficial use of such improvements to land within the  
19 geographical limits of the district, improvements within or outside the geographical  
20 limits of the district, necessary or incidental work, whether newly constructed,  
21 renovated or existing, and all necessary or desirable appurtenances. For the purposes  
22 of this subsection, adoption by the district board of a resolution of intent pursuant to  
23 section 40-64-15 shall conclusively establish that the improvements or, if applicable,  
24 share of the improvements that are the subject of the resolution will result in a  
25 beneficial use principally to land within the geographical limits of the district. Public  
26 infrastructure improvements are:

27 a. Sanitary sewage systems, including collection, transport, storage, treatment,  
28 dispersal, effluent use, and discharge.

29 b. Drainage and flood control systems, including collection, transport, diversion,  
30 storage, detention, retention, dispersal, recharge, use, and discharge.

- 1 ~~c.~~ Water systems for domestic, industrial, irrigation, municipal or fire protection  
2 purposes, production, collection, storage, treatment, transport, delivery,  
3 connection and dispersal, but not including facilities for agricultural irrigation  
4 purposes unless for the repair or replacement of existing facilities when required  
5 by other improvements permitted by this chapter.
- 6 ~~d.~~ Highways, streets, roadways, and parking facilities, including all areas for  
7 vehicular use for travel, ingress, egress, and parking.
- 8 ~~e.c.~~ Areas for pedestrian, equestrian, bicycle, or other nonmotor vehicle use for  
9 travel, ingress, egress, and parking.
- 10 ~~f.d.~~ Pedestrian malls, parks, recreational facilities, and open space areas for the use  
11 of members of the public for entertainment, assembly, and recreation with the  
12 appropriate park district approvals as may be required.
- 13 ~~g.e.~~ Landscaping, including earthworks, structures, lakes and other water features,  
14 plants, trees, and related water delivery systems.
- 15 ~~h.f.~~ Public buildings, public safety facilities, and fire protection facilities.
- 16 ~~i.g.~~ Lighting systems.
- 17 ~~j.h.~~ Traffic control systems and devices, including signals, controls, markings, and  
18 signage.
- 19 ~~k.i.~~ Development fees charged by the county or ~~municipality~~city.
- 20 ~~l.j.~~ Equipment, vehicles, furnishings, and other personalty related to the items listed  
21 in this subsection.
- 22 ~~m.k.~~ Easements, rights of way, licenses, and other rights benefits, enjoyments, and  
23 interests, tangible and intangible, and whether in the nature of personal property  
24 or real property, incidental to or necessary or appropriate in connection with the  
25 items listed in this subsection.
- 26 ~~13-12.~~ "Public infrastructure purpose" means:
- 27 a. Planning, design, engineering, permitting, fees, construction, acquisition, or  
28 installation of public infrastructure.
- 29 b. Acquiring, converting, renovating, or improving existing facilities for public  
30 infrastructure.
- 31 c. Acquiring interests in real property for public infrastructure.

- 1           d. Establishing, maintaining, and replenishing reserves from any source described
- 2                   in section 40-64-17 or from any other source in order to secure payment of debt
- 3                   service on bonds.
- 4           e. Funding and paying from bond proceeds interest accruing on bonds for a period
- 5                   of not to exceed three years from their date of issuance.
- 6           f. Providing for the timely payment of debt service on bonds or other indebtedness
- 7                   of the district.
- 8           g. Refinancing any matured or unmatured bonds with new bonds.
- 9           h. Incurring expenses of the district incident to and reasonably necessary to carry
- 10                   out the purposes specified in this subsection.
- 11           i. Providing for the funding of financing costs incurred by the district or owner
- 12                   related to the provision of public infrastructure or public infrastructure purposes.
- 13           j. Providing for public safety and other public services for districts located in
- 14                   unincorporated areas of the county within the extraterritorial zoning authority of a
- 15                   city.

16 ~~14-13.~~ "Revenue bonds" means those bonds that are issued pursuant to section 40-64-20

17 and that are secured by a pledge of revenues of the district or revenues collected by

18 the county or municipalitycity and returned to the district.

19 ~~15-14.~~ "Treasurer" includes any personindividual or official appointed by the district board as

20 the district treasurer pursuant to section 40-64-11.

21           **40-64-02. Resolution declaring intention to form district.**

22           If the public convenience and necessity require, and on presentation of a petition signed by

23 at least seventy-five percent of the owners of at least twenty-five percent of the land area

24 proposed to be included in the district, the governing body may adopt a resolution declaring its

25 intention to form a community facilities district to include contiguous or noncontiguous property

26 which shall be wholly within the corporate boundaries of the municipalitycity or county. The

27 resolution shall state the following:

- 28           1. The area or areas to be included in the district.
- 29           2. The purposes for which the district is to be formed.
- 30           3. That a general plan for the district is on file with the clerk.
- 31           4. The date, time, and place of the hearing to be held on the formation of the district.

1        5. The place where written objections to the formation of the district may be filed.

2        6. That formation of the district may result in the levy of taxes to pay the costs of  
3        improvements constructed by the district and for their operation and maintenance.

4        7. A reference to this chapter.

5        8. That the district will be governed by a district board comprised of five directors  
6        appointed by the governing body pursuant to section 40-64-05.

7        Before adopting a resolution under this section, a general plan for the district must be filed  
8        with the clerk setting out a general description of the public infrastructure improvements for  
9        which the district is proposed to be formed and the general areas to be improved.

10        **40-64-03. Notice.**

11        The clerk shall execute a notice which must read substantially as follows:

12        To whom it may concern:

13        The governing body of the (city) (county) of \_\_\_\_\_, on (date), adopted the attached  
14        resolution declaring its intention to form a tax levying community facilities district. A hearing on  
15        formation will be held on (date), at (time) at (location). All persons owning or claiming an interest  
16        in property in the proposed district who object to the inclusion of their land in the district, to the  
17        formation of the district, or to the contents of the general plan must file a written objection with  
18        the undersigned at the following address before the time set for the hearing.

19        (Date) \_\_\_\_\_

20        \_\_\_\_\_

21        Clerk

22        \_\_\_\_\_

23        Address

24        (Name of municipality city or county)

25        A copy of the resolution declaring the governing body's intention to form the district must be  
26        attached to the notice and the clerk shall cause a copy to be mailed to the owners of real  
27        property in the district as shown on the most recent property tax assessment roll and to all other  
28        persons claiming an interest in such property who have filed a written request for a copy of the  
29        notice within the six months preceding or at any time following the adoption of the resolution of  
30        intent to form the district. The clerk shall also publish a copy of the notice and resolution at least  
31        once in the official newspaper of the municipality city or county. ~~if there is one, or, if there is no~~

1 official newspaper of the municipality, in a newspaper of general circulation in the county in  
2 which the municipality is located. The mailing and publication must be completed at least twenty  
3 days before the date set for hearing. The clerk shall execute an affidavit of mailing stating the  
4 date of mailing and the names and addresses of the persons to whom the notices and copies of  
5 the resolutions were mailed. The clerk shall obtain an affidavit from the newspaper in which the  
6 publication was made. The clerk shall cause both affidavits to be placed in the official records of  
7 the municipality or county. The affidavits are conclusive evidence of the mailing and  
8 publishing of notice. Notice may not be held invalid for failure of delivery to the addressee.

9 If the clerk is informed that the person listed on the assessment roll is no longer the owner  
10 and the name and address of the successor owner become known, the clerk shall cause a copy  
11 of the notice and resolution to be mailed to the successor owner as soon as practicable after  
12 learning of the change of ownership.

13 **40-60-0440-64-04. Hearing on objections.**

14 Any person claiming an interest in real property that the resolution discloses is situated in  
15 the district may file a written objection with the clerk before five p.m. on the business day  
16 preceding the date and time set for the hearing. The objection may raise one or more of the  
17 following:

- 18 1. That the objector's property would not be benefited from the improvements set forth in  
19 the general plan and that the property should be excluded from the district.
- 20 2. That the district should not be formed, stating the specific reasons.
- 21 3. That the general plan should be modified, stating the reasons for modification.

22 At the hearing, including any adjournments or continuances, the governing body shall hear  
23 and pass only on the written objections and the testimony and evidence presented in support of  
24 or opposition to the objections. The hearing must be either transcribed by a court reporter or  
25 recorded by a tape recorder. The court reporter's transcript or a transcription of the tape  
26 recording certified to be true and correct by the clerk must be filed in the official records of the  
27 governing body.

28 In furtherance of the hearing, the clerk, on written request or praecipe being presented,  
29 shall issue subpoenas or subpoenas duces tecum to compel the attendance and testimony of  
30 any person or the submission of any documents at the hearing. Compliance with the subpoena  
31 shall be enforced as if the subpoena were issued by a clerk of the superior district court.

1 Testimony at the hearing need not be under oath, unless requested by any owner or  
2 required by the governing board. Requests by owners that the testimony be under oath must be  
3 made in writing and be filed with, or served on, the clerk before the hearing begins or the  
4 request is deemed waived.

5 The minutes or a copy of a written transcript or a ~~tape~~ recording of the proceedings of a  
6 hearing conducted pursuant to this section must be open to public inspection three working  
7 days after the conclusion of a hearing. Any person may request to examine or be furnished  
8 copies, printouts, photographs, transcripts, or recordings of a hearing during regular office hours  
9 of the governing body. The custodian of the records shall furnish the copies, printouts,  
10 photographs, transcripts, or recordings and may charge a reasonable fee which does not  
11 exceed the actual cost of reproducing the item requested.

12 **40-60-0540-64-05. Order forming district - Election.**

13 After the hearing, the governing body may adopt a resolution ordering the formation of the  
14 district, deleting any property determined not to be benefited by the district or modifying the  
15 general plan and then ordering the formation of the district or determining that the district not be  
16 formed. A resolution ordering formation of the district shall state that the district will be governed  
17 by a district board comprised of five directors appointed by the governing body from a list of at  
18 least ten names nominated by the ~~owner~~owners. The resolution must contain the names of the  
19 five initial directors and the terms of office of each.

20 If the governing body determines that the district should be formed, it shall submit the  
21 formation to an election of the owners of land in the district who are qualified electors ~~of this~~  
22 ~~state and other landowners~~of the district, unless a petition is presented to the governing body  
23 pursuant to section 40-64-07. Each owner has the number of votes or portions of votes equal to  
24 the number of acres or portions of acres rounded upward to the nearest one-fifth of an acre  
25 owned by that owner in the submitted district. In addition to holding the landowner election  
26 required by this subsection or receipt of the landowner petition pursuant to section 40-64-07  
27 and subject to section 40-64-07, the governing body shall submit the formation of the district to  
28 a vote of any qualified electors who reside within the boundaries of the proposed district.

29 **40-64-06. Judicial review.**

30 An owner or other person claiming an interest in the property who filed a written objection  
31 and who presented testimony or evidence at the hearing may seek review of the order forming

1 the district and the decision of the governing body at the hearing by filing, within thirty days after  
2 the adoption of the resolution prescribed in section 40-64-05 which ordered the forming of the  
3 district, a petition ~~for special action~~ with the ~~district court of appeals~~. ~~The special action shall be~~  
4 ~~governed by the rules of civil procedure relating to special actions so far as applicable and not~~  
5 ~~in conflict with this chapter~~. The governing body shall transmit the transcript of the hearing, the  
6 order forming the district, and the affidavits of mailing and publication of the notice and  
7 resolution of intent to form the district to the ~~district court of appeals~~. The petitioner shall bear  
8 the cost of preparing the record for appeal. The court ~~of appeals~~ shall place the ~~special~~ action  
9 on its calendar and give it precedence for hearing over all other civil actions except election  
10 contests. The review shall be limited to a review of the transcript of the hearing, the order  
11 forming the district, and the affidavits of mailing and publication of the notice and resolution  
12 declaring the governing body's intention to form the district. The court may review, on the  
13 merits, whether the formation of the district and the adoption of the general plan complied with  
14 this chapter and the laws and constitution of this state and whether land is benefited by the  
15 district.

16 Land in an area deleted by order of the court or in a district ordered by the court to not be  
17 formed may not be included in a community facilities district for one year after the date the  
18 court's order is entered unless otherwise provided in the court's order or otherwise agreed to by  
19 the owner.

20 **40-64-07. Notice and conduct of elections - Waiver.**

21 Any election under this chapter must be a nonpartisan election called by posting notices in  
22 three public places within the boundaries of the district not less than twenty days before the  
23 election. Notice must also be published in ~~at the official newspaper of general circulation in the~~  
24 ~~municipality city or county or if there is no newspaper so circulated in the municipality in a~~  
25 ~~newspaper of general circulation in the county in which the municipality is located once a week~~  
26 ~~for two consecutive weeks before the election~~. The notice must state:

- 27 1. The place of holding the election.
- 28 2. The hours during the day, not less than six, in which the polls will be open.
- 29 3. If it is a formation election, the boundaries of the proposed district.

1       4. If it is a bond election, the amount of bonds to be authorized for the district, the  
2           maximum rate of interest to be borne on the bonds, the maximum term of the bonds,  
3           not exceeding thirty years, and the purposes for which the moneys raised will be used.

4       5. If it is an ad valorem tax levy election pursuant to section 40-64-23, the maximum tax  
5           rate per one hundred dollars of assessed true and full valuation to be imposed  
6           including a limitation, if any, on the ad valorem tax levy, the purposes for which the  
7           moneys raised will be used, and the existing maximum tax rate, if any.

8       6. That a general plan is on file with the clerk.

9       The district board or the governing body, as applicable, shall determine the date of the  
10       election and the polling places for the election and may consolidate county precincts. For other  
11       than a formation election pursuant to section 40-64-05 and an election held pursuant to this  
12       section, precinct registers shall be used. The county recorder shall submit precinct registers on  
13       the request of the clerk, and if the district includes land lying partly in and partly out of any  
14       county election precinct, the precinct registers may contain the names of all registered  
15       voters qualified electors in the precinct and the election boards at those precincts shall require  
16       that a prospective elector execute an affidavit stating that the elector is also a qualified elector  
17       of the district. For formation elections and elections held pursuant to this section, a prospective  
18       elector shall execute an affidavit stating that the elector is the owner of land in the proposed  
19       district and is a qualified elector of this state or otherwise qualified to vote through a majority of  
20       acreage voting system and stating the area of land in acres owned by the elector. Election  
21       board members may administer oaths or take all affirmations for these purposes. A community  
22       facilities district election held pursuant to this chapter may be held at any time.

23       Except as otherwise provided by this chapter, the election shall comply with the general  
24       election laws of this state, except that the words to appear on the ballots shall be for a formation  
25       election "district, yes" and "district, no", for a bond election "bonds, yes" and "bonds, no", for a  
26       tax election if no tax is in place "tax, yes" and "tax, no", and for a tax election to change an  
27       existing maximum or eliminate an existing tax "tax change, yes" and "tax change, no". The bond  
28       election question shall include authorization for a tax levy, including a limitation, if any, on the  
29       ad valorem property tax to pay debt service on the bonds. The returns of election must be made  
30       to the governing body or, if after formation, to the district board.



1 Within fourteen days after an election, the governing body, or if after formation, the district  
2 board shall meet and canvass the returns, and if a majority of the votes cast at the election is in  
3 favor of formation, issuing the bonds, imposing the tax, or changing the tax, the governing body  
4 or the district board, as appropriate, shall enter that fact on its minutes. The canvass may be  
5 continued from time to time. Failure of a majority to vote in favor of the matter submitted does  
6 not prejudice the submission of the same or similar matters at a later election.

7 If a person listed on the assessment roll is no longer the owner of land in the district and the  
8 name of the successor owner becomes known and is verified by recorded deed or other similar  
9 evidence of transfer of ownership, the successor owner is deemed to be the owner for the  
10 purposes of this chapter.

11 Notwithstanding any other provision of this chapter, if a petition for formation is signed by  
12 owners of all of the land in the district described in the petition, provided it is not a district being  
13 established pursuant to section 40-64-26, the municipality or county shall waive any or all  
14 requirements of posting, publication, mailing, notice, hearing, and landowner election. On  
15 receipt of such a petition, and after approval by an election of resident electors, if any, the  
16 municipality or county shall declare the district formed without being required to comply with  
17 the provisions of this chapter for posting, publication, mailing, notice, hearing, or landowner  
18 election.

19 Notwithstanding any other provision of this chapter, if no person has registered to vote  
20 within the district within fifty days immediately preceding any scheduled election date, any  
21 election required to be held pursuant to this chapter shall be held with the vote by the owners of  
22 land within the district who are qualified electors of this state and other landowners. Each owner  
23 has the number of votes or portion of votes equal to the number of acres or portion of acres  
24 rounded upward to the nearest one-fifth of an acre owned in the district by that person.

25 For a district that is proposed to be formed by a county, so long as it is not a district being  
26 formed pursuant to section 40-64-26, a district may be formed only if a petition for formation is  
27 signed by the owners of all of the land in the district that is described in the petition and if it is  
28 approved by the county. If the petition is signed by the owners of all of the land in the district,  
29 the county may waive any or all requirements of posting, publication, mailing, notice, hearing  
30 and landowner election. On receipt of such a petition, and after approval by an election of one

1 hundred percent of the resident electors, if any, the county shall declare the district formed  
2 without being required to comply with the provisions of this chapter for posting.

3 **40-64-08. Formation - Debt limitation.**

4 If the formation of the district is approved by a majority of the votes cast at the election, the  
5 governing body shall order the formation, appoint the initial directors of the district board, set the  
6 district boundaries, and order that a map showing the district boundaries be drawn and a copy  
7 of the order forming the district be delivered to the county director of tax equalization and the  
8 board of county commissioners of the county in which the district is located and to the tax  
9 commissioner. A notice of the formation showing the number and date of the order and giving a  
10 description of the land included in the district shall be recorded with the county recorder.

11 ~~On its formation, the district is a special purpose district for purposes of section 19 of~~  
12 ~~chapter IX of the Constitution of North Dakota.~~ Except as otherwise provided in this section, a  
13 district is considered to be a ~~municipal corporation and~~ political subdivision of this state,  
14 separate and apart from the ~~municipality~~city or county. As such, the ~~municipality~~city or the  
15 county will not be liable for any debt obligations of the district. Under no circumstances may the  
16 amount of indebtedness evidenced by general obligation bonds issued pursuant to section  
17 40-64-19 and revenue bonds issued pursuant to section 40-64-20 exceed the estimated cost of  
18 the public infrastructure improvements plus all costs connected with the public infrastructure  
19 purposes and issuance and sale of bonds, including, ~~without limitation,~~ credit enhancement and  
20 liquidity support fees and costs. The total aggregate outstanding amount of bonds and any  
21 other indebtedness for which the full faith and credit of the district are pledged shall not exceed  
22 sixty percent of the aggregate of the estimated market value of the real property and  
23 improvements in the district after the public infrastructure of the district is completed plus the  
24 value of the public infrastructure owned or to be acquired by the district with the proceeds of the  
25 bonds.

26 On formation of the district, the district board shall administer, in a reasonable manner, the  
27 implementation of the general plan for the public infrastructure of the district and any  
28 development agreement entered between the governing body and owners of land in the district.  
29 The district board shall be considered a party to that agreement.

1 Fees and other charges assessed by a municipality or county in connection with the  
2 submission and review of an application or petition to form a district may not exceed fifteen  
3 thousand dollars.

4 **40-64-09. Powers of a community facilities district.**

5 1. In addition to the powers otherwise granted to a district pursuant to this chapter, to  
6 further the general plan, a district may:

7 a. Enter into contracts and expend moneys for any public infrastructure purpose  
8 with respect to the district.

9 b. Enter into intergovernmental agreements for the planning, design, inspection,  
10 ownership, control, maintenance, operation, or repair of public infrastructure or  
11 the provision of enhanced municipal services by the municipality or county in  
12 the district.

13 c. Sell, lease, or otherwise dispose of district property if the sale, lease, or  
14 conveyance is not a violation of the terms of any contract or bond resolution of  
15 the district.

16 d. Reimburse the county or municipality for providing enhanced municipal  
17 services in the district.

18 e. Reimburse the county for providing public safety and other services in districts  
19 located in the unincorporated areas of the county.

20 f. Operate, maintain, and repair public infrastructure.

21 g. Establish, charge, and collect user fees, rates, or charges for the use of any  
22 public infrastructure or service.

23 h. Employ staff, counsel, and consultants.

24 i. Reimburse the municipality or county for staff and consultant services and  
25 support facilities supplied by the municipality or county.

26 j. Accept gifts or grants and incur and repay loans for any public infrastructure  
27 purpose.

28 k. Enter into agreements with landowners and the municipality or county for the  
29 collection of fees and charges from landowners for public infrastructure purposes,  
30 the advance of moneys by landowners for public infrastructure purposes, or the  
31 granting of real property by the landowner for public infrastructure purposes.

- 1            l. By resolution, levy and assess the costs of any public infrastructure purpose on  
2            any land benefited in the district.
- 3            m. Pay the financial, legal, and administrative costs of the district.
- 4            n. Enter into contracts, agreements, and trust indentures to obtain credit  
5            enhancement or liquidity support for its bonds and process the issuance,  
6            registration, transfer, and payment of its bonds and the disbursement and  
7            investment of proceeds of the bonds.
- 8            o. With the consent of the governing body of the municipality or county which  
9            formed the district, enter into agreements with persons outside of the district to  
10           provide services to persons and property outside of the district.
- 11           p. Use public easements and rights of way in or across public property, roadways,  
12           highways, streets, or other thoroughfares and other public easements and rights  
13           of way, whether in or out of the geographical limits of the district, the  
14           municipality, or the county.
- 15           2. This chapter does not authorize:
- 16           a. A district to acquire, construct, operate, or maintain an electric generation or  
17           distribution system or natural gas distribution system without the written consent  
18           of any affected public service corporation, electric cooperative, agricultural  
19           improvement or power district, or other district, the service area of which  
20           encompasses all or part of the district, if that entity is providing electrical utility  
21           service or natural gas utility service in the district.
- 22           b. A district to provide service outside its boundaries without the written consent of  
23           any affected public service corporation, electric cooperative, agricultural  
24           improvement or power district, or other district with a service area that lies  
25           outside of the district, if that entity is providing or is capable of adequately  
26           providing electrical utility service or natural gas utility service in the area that the  
27           district proposes to serve.
- 28           3. If a district is granted written consent pursuant to this section, the district shall provide  
29           a copy to the governor, the president of the senate, the speaker of the house of  
30           representatives, and the secretary of state no later than thirty days after consent is  
31           granted.

- 1       4. In connection with any power authorized by statute, the district may:
- 2       a. Contract.
- 3       b. Enter into intergovernmental agreements.
- 4       c. Adopt and change a seal.
- 5       d. Sue and be sued.
- 6       e. Enter into development agreements with a ~~municipality~~city or county.
- 7       f. Exercise the same right and power of eminent domain ~~as a public service~~
- 8       corporation to acquire any property or right of way, except political subdivision,
- 9       county, state, or federal property, for any public infrastructure purpose.
- 10      5. ~~A district that proposes to provide domestic water service in the certificated area of a~~
- 11      ~~public service corporation serving domestic water shall provide just compensation to~~
- 12      ~~the public service corporation.~~
- 13      ~~6.~~ Public infrastructure other than personalty may be located only in or on lands owned
- 14      by the state, county, municipality, or district or dedicated or otherwise designated as
- 15      public roadways, highways, streets, thoroughfares, easements, or rights of way,
- 16      whether in or out of the district or the ~~municipality~~city. Personalty may be used only for
- 17      purposes authorized by the district board.
- 18      ~~7.6.~~ An agreement pursuant to this section may include agreements to repay all or part of
- 19      such advances, fees, and charges from the proceeds of bonds if issued or from
- 20      advances, fees, and charges collected from other landowners or users or those having
- 21      a right to use any public infrastructure. A person does not have authority to compel the
- 22      issuance or sale of the bonds of the district or the exercise of any taxing power of the
- 23      district to make repayment under any agreement.
- 24      ~~8.7.~~ Notwithstanding chapter 48-01.2 or section 40-64-02, the district at the option of the
- 25      district board may enter into contracts for the performance of district projects with
- 26      landowners in the district after calling for bids but before publishing notice of the award
- 27      of a contract if all of the following conditions are met:
- 28      a. The landowner or landowners own three-fourths or more of the total land area of
- 29      the district.

- 1           b. The landowner or landowners contract to perform the work at a cost that does not  
2           exceed the cost specified in the bid of the bidder who would have been awarded  
3           that bid.
- 4           c. The work for which the contract was let is to be financed pursuant to this chapter.
- 5           d. All contracts and work executed pursuant to this section are subject to those  
6           rules as the district board may prescribe.

7           **40-64-10. Perpetual succession.**

8           The district has perpetual succession.

9           **40-64-11. Records - Board of directors - Open meetings.**

10          The district shall keep the following records, which must be open to public inspection:

- 11          1. Minutes of all meetings of the district board.
- 12          2. All resolutions.
- 13          3. Accounts showing all moneys received and disbursed.
- 14          4. The annual budget.
- 15          5. All other records required to be maintained by law.

16          If the resolution ordering formation of the district provides that the district will be governed  
17          by a district board appointed by the governing body, each appointed director shall serve for a  
18          term of six years, except that two directors initially appointed by the governing body in the  
19          resolution shall serve for a term of four years. The resolution shall state which directors shall  
20          serve four-year terms and which shall serve six-year terms. On the expiration of the term of an  
21          appointed director, the governing body from a list of at least three persons nominated by the  
22          owner, shall appoint a person to fill the position. If a vacancy occurs on the district board  
23          because of death, resignation, or inability of the director to discharge the duties of director, the  
24          vacancy shall be filled by appointment made by the governing body from a list of at least three  
25          persons nominated by the owner. A director appointed by the governing body shall hold office  
26          for the remainder of the unexpired term until a successor is appointed. An appointed director  
27          may not be a landowner owning more than fiftyone hundred acres in the district, an elected  
28          official of the municipality or county, or an employee or agent of the municipality or  
29          county but may be a director of more than one district. The director may be an employee or  
30          agent of the owner.

1        The board of directors shall comply with public meeting laws as a separate political  
2 subdivision.

3        The district manager, district clerk, district treasurer, and other district staff positions which  
4 may be required shall be appointed by the district board.

5        **40-64-12. Participation by municipality or county.**

6        The governing body of the municipality or county, by resolution, may summarily order  
7 the participation by the municipality or county in the costs of any public infrastructure  
8 purpose.

9        **40-64-13. Other districts or improvements.**

10       The formation of a district under this chapter does not prevent the subsequent  
11 establishment of similar districts or the improvement or assessment of land in the district by the  
12 municipality or county pursuant to section 40-64-02 or the exercise by the municipality or  
13 county of any of its powers on the same basis as on all other land in its corporate boundaries.

14       **40-64-14. Change in district boundaries or general plan.**

15       After the formation election, an area may be deleted from the district only following a  
16 hearing on notice to the owners of land in the district, given in the manner prescribed for the  
17 formation hearing, adoption of a resolution of intention to do so by the district board and  
18 approval by the owners of land in the district pursuant to section 40-64-05 or section 40-64-07.  
19 Deleted areas remain subject to the levy for debt service on any bonds issued before the date  
20 of deletion.

21       At any time after adoption of the resolution of intention to form the district, an area may be  
22 added to the district on adoption by the governing board of a resolution of intention to do so,  
23 and approval by the district board following a hearing on notice to the owners of land in the  
24 proposed addition to the district in the manner prescribed for the formation hearing. Approval for  
25 addition of the area to the district shall be received from the owners of land in the proposed  
26 addition area pursuant to section 40-64-05 or section 40-64-07 if the approval by the owners of  
27 land in the proposed addition includes in its petition a waiver of any requirement for a separate  
28 resolution of intention by the district board and a waiver of any requirement of posting,  
29 publication, mailing, notice, hearing, and election as to that addition to the district.

1        The district board may amend the general plan in any manner which it determines will not  
2 substantially reduce the benefits to be received by any land in the district from the public  
3 infrastructure on completion of the work to be performed under the general plan.

4        The hearings required by this section shall be conducted in the same manner as a hearing  
5 on formation, and the right to object to the change in the district or the general plan shall be the  
6 same as for the hearing on formation.

7        **40-64-15. Project approval.**

8        Before constructing or acquiring any public infrastructure, the district board shall cause a  
9 study of the feasibility and benefits of the project to be prepared by engineers and other  
10 qualified persons, which shall include a description of the public infrastructure to be constructed  
11 or acquired and all other information useful to understand the project, a map showing, in  
12 general, the location of the project, an estimate of the cost to construct, acquire, operate, and  
13 maintain the project, an estimated schedule for completion of the project, a map or description  
14 of the area to be benefited by the project, and a plan for financing the project. The board shall  
15 hold a public hearing on the report and provide notice of the hearing by publication not less than  
16 ten days in advance in the official newspaper of the municipalitycity or county-or, if none in the  
17 municipality, a newspaper of general circulation in the county and by mail to the governing body  
18 of the municipality. After the hearing, the district board may reject, amend, or approve the  
19 report. If the report is amended substantially, a new hearing shall be held before approval. If the  
20 report is approved, the district board shall adopt a resolution of intent which identifies the public  
21 infrastructure of the project, the areas benefited, the expected method of financing, and an  
22 appropriate system of providing revenues to operate and maintain the project.

23        **40-64-16. Budget.**

24        On or before July fifteenth each year, the district treasurer shall prepare a proposed budget  
25 for the ensuing fiscal year to be submitted to the district board for approval. The board shall  
26 indicate its approval of the budget by resolution, which shall provide for a hearing on the budget  
27 as approved. Notice of the hearing on the budget shall be provided in the manner prescribed by  
28 section 40-64-15. At the conclusion of the budget hearing, the district board, by resolution, shall  
29 adopt the budget as finally approved by the board. The budget shall be adoptedforward its  
30 budget and levy request to the governing body of each participating city and county before  
31 OctoberJuly first each year.



1        **40-64-17. Finances.**

2        The projects to be constructed or acquired as shown in the general plan may be financed  
3 from the following sources of revenue:

- 4        1. Proceeds received from the sale of bonds of the district.
- 5        2. Moneys of the municipality or county contributed to the district.
- 6        3. Annual tax levies.
- 7        4. Special assessments.
- 8        5. State or federal grants or contributions.
- 9        6. Private contributions.
- 10       7. User, landowner, and other fees and charges.
- 11       8. Proceeds of loans or advances.
- 12       9. Any other moneys available to the district by law.

13       **40-64-18. Recording documents.**

14       The district shall file and record with the county recorder the order forming the district, the  
15 general plan of the district, the canvass of any general obligation bond election, and any special  
16 assessments levied by the district.

17       **40-64-19. General obligation bond - Tax levy.**

18       At any time after the hearing on formation of the district, the district board may from time to  
19 time order and call a general obligation bond election to submit to the qualified electors of the  
20 district or to those persons who are qualified to vote pursuant to section 40-64-07 the question  
21 of authorizing the district board to issue general obligation bonds of the district to provide  
22 moneys for any public infrastructure purposes consistent with the general plan. The election  
23 may be held in conjunction with the formation election.

24       If general obligation bonds are approved at an election, the district board may issue and sell  
25 general obligation bonds of the district.

26       If the bonds are to be sold in a public offering, no bonds may be issued by the district  
27 unless the bonds receive one of the four highest investment grade ratings by a nationally  
28 recognized bond rating agency.

29       The district may issue and sell refunding bonds to refund any general obligation bonds of  
30 the district. If general obligation bonds are issued to refund any general obligation bonds of the  
31 district, no election on the issuance of such refunding bonds is required.

1 After the bonds are issued, the district board shall enter in its minutes a record of the bonds  
2 sold and their numbers and dates and unless otherwise limited by the bond election, shall  
3 annually levy and cause an ad valorem tax to be collected, at the same time and in the same  
4 manner as other taxes are levied and collected on all taxable property in the district, sufficient,  
5 together with any moneys from the sources described in section 40-64-17, to pay debt service  
6 on the bonds when due. In pledging the proceeds of an ad valorem property tax, the district  
7 board may limit the rate of taxation or the amount of ad valorem tax dollars that it is obligated to  
8 impose or collect to pay any securities as set forth in the bond election described in section  
9 40-64-07. Moneys derived from the levy of the tax provided in this section when collected  
10 constitute funds to pay the debt service on the bonds and shall be kept separately from other  
11 funds of the district.

12 **40-64-20. Revenue bonds - Fees and charges.**

13 At any time after the hearing on formation of the district, the district board may hold a  
14 hearing on the question of authorizing the district board to issue revenue bonds of the district to  
15 provide moneys for any public infrastructure purposes consistent with the general plan.

16 If revenue bonds are approved by resolution, the district board may issue and sell revenue  
17 bonds of the district.

18 If the bonds are to be sold in a public offering, no bonds may be issued by the district  
19 unless the bonds receive one of the four highest investment grade ratings by a nationally  
20 recognized bond rating agency.

21 The district board may pledge to the payment of its revenue bonds any revenues of the  
22 district or revenues to be collected by the municipality or county in trust for the district and  
23 returned to the district.

24 The district shall prescribe fees and charges, and shall revise them when necessary, to  
25 generate revenue sufficient, together with any moneys from the sources described in section  
26 40-64-17, to pay when due the principal and interest of all revenue bonds for the payment of  
27 which revenue has been pledged. The establishment or revision of any rates, fees, and charges  
28 shall be identified and noticed concurrently with the annual budget process of the district  
29 pursuant to section 40-64-16.

1 If, in the resolution of the district board, the revenues to be pledged were limited to certain  
2 types of revenues, only those types of revenues may be pledged and only those revenues must  
3 be maintained.

4 No holder of revenue bonds issued under this chapter may compel any exercise of the  
5 taxing power of the district, municipality, or county to pay the bonds or the interest on the bonds.  
6 Revenue bonds issued under this chapter are not a debt of the district, ~~municipality~~city, or  
7 county, nor is the payment of revenue bonds enforceable out of any moneys other than the  
8 revenue pledged to the payment of the bonds.

9 The district may issue and sell refunding bonds to refund any revenue bonds of the district.

10 **40-64-21. Special assessments - Assessment lien bonds.**

11 The district board, by resolution and pursuant to the procedures prescribed by sections  
12 40-22-08 through 40-22-19, as nearly as practicable, or such other procedures as the district  
13 board provides, may levy an assessment of the costs of any public infrastructure purpose, any  
14 operation and maintenance of public infrastructure, any enhanced municipal services or  
15 operations of the district on any land in the district based on the benefit determined by the  
16 district board to be received by the land. Prior to the issuance of special assessment bonds, the  
17 district may enter into a written agreement with a landowner as to the manner in which the  
18 assessment is to be allocated if the land is to be divided into more than one parcel. If an issue  
19 of special assessment lien bonds finances more than one purpose or service, the benefit  
20 received by the land, in the discretion of the district, may be determined by reference to the  
21 purposes and services as a whole or individually. The assessment may be based on estimated  
22 costs and amended to reflect actual costs, and the preparation of plans and specifications and  
23 the awarding of the contract are not a prerequisite to the levying of the assessment. An owner  
24 of land on which an assessment has been levied may seek judicial review of whether the land is  
25 benefited by the proposed infrastructure, on the merits, by special action filed with the court of  
26 appeals pursuant to the procedures of section 40-64-06, within thirty days of the effective date  
27 of the resolution.

28 After adoption by the district board of a resolution levying a special assessment on property  
29 in the district ~~pursuant to section 40-64-09~~, the district board may issue and sell special  
30 assessment lien bonds payable from amounts collected from the special assessments, from  
31 amounts available from time to time in any reserve fund established for those bonds, and from

1 any other amounts available for those purposes as prescribed by section 40-64-17. The district  
2 and the county treasurer for the county in which the district is located may enter into an  
3 agreement for the county treasurer to collect the district's special assessments in the manner  
4 and by the officers provided by law for the collection and enforcement of general taxes. The  
5 district and the county treasurer may provide by agreement for the payment of the county  
6 treasurer's collection expenses directly related to the levy of the special assessment and, if so  
7 provided, the levy of the special assessment may include an amount for compensation of the  
8 county treasurer directly related to the collection of the special assessment. The district board  
9 may also issue and sell bond anticipation notes. The assessment shall be a first lien on the  
10 property assessed subject only to general property taxes and prior special assessments. In the  
11 event of nonpayment of an assessment and except as otherwise provided in an agreement  
12 between the district and the county treasurer pursuant to this section, the procedures for  
13 collection of delinquent assessments, sale of delinquent property ~~and issuance and effect of the~~  
14 ~~superintendent's deed prescribed by~~ property procedures under title 57 apply, as nearly as  
15 practicable, except that in no event is the district or the ~~municipality~~city required to purchase the  
16 delinquent land at the sale if there is no other purchaser. If the landowner owns more than one  
17 parcel in the district, the district board may provide procedures for the collection and  
18 enforcement of assessments as the board deems appropriate by contract with a landowner to  
19 permit the sale of any or all of the landowner's parcels in the district if the landowner becomes  
20 delinquent as to any parcel that the landowner owns in the district.

21 On adoption of the resolution, but before issuance of the special assessment lien bonds,  
22 the district may direct the treasurer to make demand on the owners of the property so  
23 assessed, as shown on the property tax roll, for advance payment of the amount assessed. The  
24 demand shall state a date not less than twenty days after the date of adoption of the ordinance  
25 after which the treasurer may refuse to accept advance payments of the assessment. The  
26 treasurer shall certify to the clerk on or after the date specified in the demand the amount  
27 collected and the assessments remaining unpaid against each parcel of land assessed. Special  
28 assessment lien bonds may not be issued in an amount in excess of the amount assessed in  
29 the ordinance or, if advance payments are demanded, the amount certified to the clerk. The  
30 district may adopt procedures for prepayment and provisions for payment and reallocation of  
31 assessments.

1 The district may issue and sell refunding bonds to refund any special assessment bonds of  
2 the district.

3 **40-64-22. Terms of bonds.**

4 Notwithstanding section 40-64-02, with respect to any bonds the district board shall  
5 prescribe the denominations of the bonds, the size of each issue and the form of the bonds and  
6 shall establish the maturities, interest payment dates, and interest rates, whether fixed or  
7 variable, not exceeding the maximum rate stated in the notice of the election or the resolution of  
8 the district board. The bonds may be sold by competitive bid or negotiated sale for public or  
9 private offering at, below or above par. If the bonds are sold below par, the aggregate amount of  
10 discount and interest to be paid on the bonds shall not exceed the amount of interest which  
11 would have been payable on those bonds pursuant to the maturity schedule prescribed by the  
12 district board at the maximum rate set out in the bond resolution. The proceeds of the sales  
13 shall be deposited with the treasurer, or with a trustee or agent designated by the district board,  
14 to the credit of the district to be withdrawn for the purposes provided by this chapter. Pending  
15 that use, the proceeds may be invested as determined by the district. The bonds may contain  
16 such terms, conditions, covenants, and agreements as the district board deems proper. The  
17 bonds may be payable from any combination of taxes, revenues, or special assessments of the  
18 types described in sections 40-64-19, 40-64-20, and 40-64-21 and as specified in the bonds  
19 provided that all applicable requirements of those sections are met.

20 **40-64-23. District taxes - Annual financial estimate and budget.**

21 Except as provided in this section and at any time after the hearing on formation of the  
22 district, the district board, or, if before formation, the governing body, may call an election to  
23 submit to the qualified electors of the district or to the persons qualified to vote pursuant to  
24 section 40-64-07 the question of authorizing the district board to levy an ad valorem tax on the  
25 assessed value of all the real and personal property in the district at a rate or rates which do not  
26 exceed the maximum rate or rates specified in the ballot. All taxes attributable to the operation  
27 and maintenance expenses of the district, excluding expenses for an area described in section  
28 40-64-09, shall not exceed an amount equal to thirty cents per one hundred dollars of  
29 assessed true and full valuation for all real and personal property in the district, unless a higher  
30 rate is approved by a vote of the electors of the district, or by the persons who are qualified to  
31 vote as provided in section 40-64-07. The election may be held in conjunction with the formation

1 election. Once approved at an election, the maximum rate remains in effect until increased or  
2 decreased at a subsequent election. If a maximum rate is in effect, the district board, on petition  
3 of twenty-five percent of the qualified electors of the district, or by those persons owning twenty-  
4 five percent of the land area who are qualified to vote pursuant to section 40-64-07, shall call an  
5 election to reduce the maximum tax rate but not below the lesser of that rate determined by the  
6 district board to be necessary to maintain the district's facilities and improvements or the actual  
7 rate then in effect. On the presentation to the district board of a petition signed by the owners of  
8 a majority of the property in the district, the district board shall adopt a resolution to reduce or  
9 eliminate the portion of the tax, beginning the next fiscal year, required for one or more  
10 enhanced municipal services specified in the petition. Signatures on a petition to reduce or  
11 eliminate a tax are valid for a period of sixty days.

12 Provided the district is not limited by the bond election, the district may not levy, other than  
13 for the payment of debt service on general obligation bonds, at a rate or rates in excess of the  
14 maximum rate then in effect.

15 When levying an ad valorem tax, taking into account any limitation pursuant to the bond  
16 election, the district board shall make annual statements and estimates of the operation and  
17 maintenance expenses of the district, the costs of capital improvements to be financed by the  
18 tax levy or levies, and the amount of all other expenditures for public infrastructure and  
19 enhanced municipal services proposed to be paid from the tax levy or levies and of the amount  
20 to be raised to pay general obligation bonds of the district, all of which shall be provided for by  
21 the levy and collection of ad valorem taxes on the assessed value of all the real and personal  
22 property in the district. The district board shall file the annual statements and estimates with the  
23 clerk. The district board shall publish a notice of the filing of the estimate, shall hold hearings on  
24 the portions of the estimate not relating to debt service on general obligation bonds, and shall  
25 adopt a budget. The board, on or before the date set by law for certifying the annual budget of  
26 the county or municipality, shall fix, levy, and assess the amounts to be raised by ad valorem  
27 taxes of the district and shall cause certified copies of the order to be delivered to the board of  
28 county commissioners and to the tax commissionerscounty auditors. All statutes relating to the  
29 levy and collection of general county taxes, including the collection of delinquent taxes and sale  
30 of property for nonpayment of taxes, apply to the district taxes provided for by this section.

1       **40-64-24. Dissolution of district.**

2       1. The district may be dissolved by the district board by a resolution of the district board if  
3       the following conditions exist:

4       a. All of the property owned by the district has been or will be conveyed to the  
5       municipalitycity, county, or school district; and

6       b. Either the district has no obligations or the municipalitycity or county has  
7       assumed all of the obligations of the district.

8       2. The district board shall comply with the conditions prescribed by subsection 1 and  
9       shall dissolve the district if both of the following occur:

10       a. The governing body has consented to comply with the conditions prescribed by  
11       subsection 1 and either:

12       (1) Dissolution has been approved by a vote of the qualified electors of the  
13       district or by the persons who are qualified to vote pursuant to section  
14       40-64-07 voting in an election called for that purpose.

15       (2) The district board determines that the district has been inactive for at least  
16       five consecutive years and has no future purpose.

17       b. The district board adopts a resolution dissolving the district and records the  
18       resolution in the office of the county recorder.

19       3. The district board may call such an election and shall call such an election if requested  
20       to do so in a petition signed by ten percent of the qualified electors of the district, or by  
21       the persons who are qualified to vote pursuant to section 40-64-07.

22       4. The election shall be called and held in the same manner as a bond or tax levy  
23       election, except that the ballot shall contain the words "dissolution, yes" and  
24       "dissolution, no".

25       5. All property in the district, except federal, state, county, and municipalcity property,  
26       remains subject to the lien for the payment of general obligation bonds, and any  
27       property subject to a special assessment lien remains subject to the lien

28       notwithstanding dissolution of the district. The district may not be dissolved if any  
29       revenue bonds of the district remain outstanding unless an amount of money

30       sufficient, together with investment income thereon, to make all payments due on the  
31       revenue bonds either at maturity or prior redemption has been deposited with a trustee

1 or escrow agent and pledged to the payment and redemption of the bonds. The district  
2 may continue to operate after dissolution only as needed to collect money and make  
3 payments on any outstanding bonds.

4 **40-64-25. Wastewater treatment or drinking water facility and nonpoint source**  
5 **projects - Loan repayment agreements - Definitions.**

6 Notwithstanding any other law, a community facilities district may construct, acquire, or  
7 improve a wastewater treatment facility, drinking water facility, or nonpoint source project with  
8 moneys borrowed from or financial assistance including forgivable principal provided by the  
9 state water commission.

10 To repay a loan from the state water commission, a district may enter into a loan repayment  
11 agreement with the authority. A loan repayment agreement is payable from any revenues  
12 otherwise authorized by law to be used to pay long-term obligations.

13 The board of directors shall obtain approval for the loan repayment agreement in the same  
14 manner provided by law for approving and issuing other long-term obligations payable from  
15 those revenues that are to be used to pay the loan.

16 A loan repayment agreement entered into pursuant to this section shall contain the  
17 covenants and conditions pertaining to the construction, acquisition, or improvement of a  
18 wastewater treatment facility, drinking water facility, or nonpoint source project and repayment  
19 of the loan as the state water commission deems proper. Loan agreements may provide for the  
20 payment of interest on the unpaid principal balance of that agreement at the rates established in  
21 the agreement. These costs may be included in the assessment amounts pledged to repay the  
22 loan. Districts are bound by and shall fully perform the loan repayment agreements, and the  
23 agreements are incontestable after the loan is funded by the state water commission. The  
24 community facilities district shall also agree to pay the commission's cost in issuing bonds or  
25 otherwise borrowing to fund a loan.

26 A loan repayment agreement under this section does not create a debt of the community  
27 facilities district, and the authority shall not require that payment of a loan agreement be made  
28 from other than those sources permitted in this section.

29 A community facilities district may employ or contract for the services of attorneys,  
30 accountants, financial consultants and other experts in their fields as deemed necessary to  
31 perform services with respect to the loan repayment agreement.



1        This section is supplemental and alternative to any other law under which a district may  
2 borrow money or issue bonds. This section shall be construed as the exclusive authorization to  
3 enter into loan agreements with the water infrastructure finance authority.

4        For purposes of this section:

5        1. "Authority" means the state water commission.

6        2. "Board" means the state water commission ~~board of directors.~~

7        ~~40-64-26. Alternative district formation method.~~

8        ~~Notwithstanding anything to the contrary, upon the presentation of a petition to the~~  
9 ~~municipality or county signed by all of the owners of property to be included in a district in~~  
10 ~~excess of seventy five acres, and provided there are no qualified residential electors residing~~  
11 ~~within the proposed district as evidenced by a report provided by the county voter registration~~  
12 ~~and elections department, the public welfare, necessity, and convenience require that the~~  
13 ~~district be established.~~

14        ~~Upon the establishment of a district pursuant this section, the governing body will appoint~~  
15 ~~five directors from a listing of ten names with qualifications consistent with section 40-64-11~~  
16 ~~nominated by the owners.~~

17        ~~Upon the establishment of a district under this section, other than the reporting of the district~~  
18 ~~formation to state and county agencies as contained in this chapter, the municipality or county~~  
19 ~~shall have no further responsibilities with respect to the district.~~

20        ~~As it relates to a district established pursuant to this section, the district will contract with~~  
21 ~~qualified third party providers of professional services to administer the operations of the district~~  
22 ~~as well as legal professionals, finance professionals, underwriters, and other professionals as~~  
23 ~~approved by the district board.~~

February 20, 2015

SB2375  
2.23.15  
#1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2375

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact chapter 40-64 of the North Dakota Century Code, relating to formation of a community facilities district for public improvements.

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

**SECTION 1.** Chapter 40-64 of the North Dakota Century Code is created and enacted as follows:

**40-64-01. Definitions.**

In this chapter, unless the context otherwise requires:

1. "Clerk" means the individual appointed by the district board to be the district clerk.
2. "County" means a county that forms a community facilities district pursuant to this chapter in an unincorporated area within a city's extraterritorial zone.
3. "Debt service" means the principal of, interest on and premium, if any, on the bonds, when due, whether at maturity or prior redemption and fees and costs of registrars, trustees, paying agents, or other agents necessary to handle the bonds and the costs of credit enhancement or liquidity support.
4. "District" means a community facilities district formed under to this chapter by a city or by a county in an unincorporated area within a city's extraterritorial zone with the city's consent.
5. "District board" means the board of directors of the district appointed under section 40-64-02.
6. "Enhanced municipal services" means public service provided by a county or city within the district at a higher level or to a greater degree than provided in the remainder of the county or city, including such services as public safety, fire protection, street or sidewalk cleaning, or landscape maintenance in public areas.
7. "General obligation bond" means a bond that is issued pursuant to section 40-64-15 and that is secured by a pledge of ad valorem taxes levied by the district.
8. "General plan" means the general plan as the plan may be amended.
9. "Governing body" means the city council or commission or board of county commissioners.

10. "Owner" means the person who, on the day the action, election, or proceeding is begun or held, appears to be the owner of real property as shown on the property tax assessment roll.
11. "Public infrastructure" means all improvements and development fees listed in this subsection which will result in a beneficial use principally to land within the geographical limits of the district and may include a district's share of any improvements listed in this subsection if the district board determines such share is reasonably proportionate to the beneficial use of such improvements to land within the geographical limits of the district, improvements within or outside the geographical limits of the district, necessary or incidental work, whether newly constructed, renovated or existing, and all necessary or desirable appurtenances. For the purposes of this subsection, adoption by the district board of a resolution of intent pursuant to section 40-64-11 shall conclusively establish that the improvements or, if applicable, share of the improvements that are the subject of the resolution will result in a beneficial use principally to land within the geographical limits of the district. Public infrastructure improvements are:
- a. Sanitary sewage systems, including collection, transport, storage, treatment, dispersal, effluent use, and discharge.
  - b. Highways, streets, roadways, and parking facilities, including all areas for vehicular use for travel, ingress, egress, and parking.
  - c. Areas for pedestrian, equestrian, bicycle, or other nonmotor vehicle use for travel, ingress, egress, and parking.
  - d. Pedestrian malls, parks, recreational facilities, and open space areas for the use of members of the public for entertainment, assembly, and recreation with the appropriate park district approvals as may be required.
  - e. Landscaping, including earthworks, structures, lakes and other water features, plants, trees.
  - f. Public buildings, public safety facilities, and fire protection facilities.
  - g. Lighting systems.
  - h. Traffic control systems and devices, including signals, controls, markings, and signage.
  - i. Development fees charged by the county or city.
  - j. Equipment, vehicles, furnishings, and other personally related to the items listed in this subsection.
  - k. Easements, rights of way, licenses, and other rights benefits, enjoyments, and interests, tangible and intangible, and whether in the nature of personal property or real property, incidental to or necessary or appropriate in connection with the items listed in this subsection.
  - l. Permissible "public infrastructure" improvements under this chapter do not include:

- (1) Drainage and flood control systems, including collection, transport, diversion, storage, detention, retention, dispersal, recharge, use and discharge.
- (2) Water systems for domestic, industrial, irrigation, municipal or fire protection purposes, production, collection, storage, treatment, transport, delivery, connection and dispersal, but not including facilities for agricultural irrigation purposes unless for the repair or replacement of existing facilities when required by other improvements permitted by this chapter.

12. "Public infrastructure purpose" means:

- a. Planning, design, engineering, permitting, fees, construction, acquisition, or installation of public infrastructure.
- b. Acquiring, converting, renovating, or improving existing facilities for public infrastructure.
- c. Acquiring interests in real property for public infrastructure.
- d. Establishing, maintaining and replenishing reserves from any source described in section 40-64-13 or from any other source in order to secure payment of debt service on bonds.
- e. Funding and paying from bond proceeds interest accruing on bonds for a period of not to exceed three years from their date of issuance.
- f. Providing for the timely payment of debt service on bonds or other indebtedness of the district.
- g. Refinancing any matured or unmatured bonds with new bonds.
- h. Incurring expenses of the district incident to and reasonably necessary to carry out the purposes specified in this subsection.
- i. Providing for the funding of financing costs incurred by the district or owner related to the provision of public infrastructure or public infrastructure purposes.
- j. Providing for public safety and other public services for districts located in unincorporated areas of the county within the extraterritorial zoning authority of a city.

13. "Revenue bonds" means those bonds that are issued pursuant to section 40-64-16 and that are secured by a pledge of revenues of the district or revenues collected by the county or city and returned to the district.

14. "Treasurer" includes any individual or official appointed by the district board as the district treasurer.

**40-64-02. District formation.**

Notwithstanding anything to the contrary, upon the presentation of a petition to the city or county signed by all of the owners of property to be included in a district, the governing board may order the establishment of the district.

Upon the establishment of a district pursuant to this section, the governing body will appoint five directors from a listing of ten names with qualifications consistent with section 40-64-07 nominated by the owners.

Upon the establishment of a district under this section, other than the reporting of the district formation to state and county agencies and other actions as contained in this article, the city or county shall have no further responsibilities with respect to the district.

As it relates to a district established pursuant to this section, the district will contract with qualified third-party providers of professional services to administer the operations of the district as well as legal professionals, finance professionals, underwriters, and other professionals as approved by the district board.

#### **40-64-03. Notice and conduction of elections.**

Any election under this article shall be a nonpartisan election called by posting notices in three public places within the boundaries of the district not less than twenty days before the election. Notice shall also be published in a newspaper of general circulation in the city or county or if there is no newspaper so circulated in the city, in a newspaper of general circulation in the county in which the city is located once a week for two consecutive weeks before the election. The notice shall state:

1. The place of holding the election.
2. The hours during the day, not less than six, in which the polls will be open.
3. If it is a bond election, the amount of bonds to be authorized for the district, the maximum rate of interest to be borne on the bonds, the maximum term of the bonds, not exceeding thirty years, and the purposes for which the moneys raised will be used.
4. If it is an ad valorem tax levy election pursuant to section 40-64-19, the maximum mill levy to be imposed including a limitation, if any, on the ad valorem mill levy, the purposes for which the moneys raised will be used and the existing maximum mill levy, if any.
5. That a general plan is on file with the clerk.

The district board or the governing body, as applicable, shall determine the date of the election and the polling places for the election. Electors shall be owners within the boundaries of the district and the vote will be done through a majority acreage voting system with each land owner having the number of votes equal to the number of acres or portions of acres they own rounded to the nearest one-fifth acre. An election held pursuant to this article may be held at any time.

Except as otherwise provided by this article, the election shall comply with the general election laws of this state, except that the words to appear on the ballots shall be for a bond election "bonds, yes" and "bonds, no", for a tax election if no tax is in place "tax, yes" and "tax, no" and for a tax election to change an existing maximum or eliminate an existing tax "tax change, yes" and "tax change, no". The bond election question shall include authorization for a mill levy, including a limitation, if any, on the ad valorem property tax to pay debt service on the bonds. The returns of election shall be made to the district board.

Within fourteen days after an election, the district board shall meet and canvass the returns, and if a majority of the votes cast at the election is in favor of issuing the bonds, imposing the tax or changing the tax, the district board shall enter that fact on its minutes. The canvass may be continued from time to time. Failure of a majority to vote in favor of the matter submitted does not prejudice the submission of the same or similar matters at a later election.

If a person listed on the assessor's roll is no longer the owner of land in the district and the name of the successor owner becomes known and is verified by recorded deed or other similar evidence of transfer of ownership, the successor owner is deemed to be the owner for the purposes of this article.

#### **40-64-04. Formation.**

Upon the order of formation of the district by the governing body, the governing body shall appoint the initial directors of the district board, set the district boundaries and order that a map showing the district boundaries be drawn and a copy of the order forming the district be delivered to the county director of tax equalization and the board of county commissioners of the county in which the district is located and to the tax commissioner. A notice of the formation showing the number and date of the order and giving a description of the land included in the district shall be recorded with the county recorder.

Except as otherwise provided in this section, a district is considered to be a municipal corporation and political subdivision of this state, separate and apart from the city or county. As such, the municipality or the county will not be liable for any debt obligations of the district. Under no circumstances may the amount of indebtedness evidenced by general obligation bonds issued pursuant to section 40-64-15, and revenue bonds issued pursuant to section 40-64-16 exceed the estimated cost of the public infrastructure improvements plus all costs connected with the public infrastructure purposes and issuance and sale of bonds, including, without limitation, credit enhancement and liquidity support fees and costs.

On formation of the district, the district board shall administer, in a reasonable manner, the implementation of the general plan for the public infrastructure of the district and any development agreement entered between the governing body and owners of land in the district. The district board shall be considered a party to that agreement.

Fees and other charges assessed by a city or county in connection with the submission and review of an application or petition to form a district shall not exceed fifteen thousand dollars.

#### **40-64-05. Powers of a community facilities district.**

1. In addition to the powers otherwise granted to a district pursuant to this chapter, to further the general plan, a district may:
  - a. Enter into contracts and expend moneys for any public infrastructure purpose with respect to the district.
  - b. Enter into intergovernmental agreements for the planning, design, inspection, ownership, control, maintenance, operation, or repair of public infrastructure or the provision of enhanced municipal services by the city or county in the district.

- c. Sell, lease, or otherwise dispose of district property if the sale, lease, or conveyance is not a violation of the terms of any contract or bond resolution of the district.
  - d. Reimburse the county or city for providing enhanced municipal services in the district.
  - e. Reimburse the county for providing public safety and other services in districts located in the unincorporated areas of the county.
  - f. Operate, maintain, and repair public infrastructure.
  - g. Establish, charge, and collect user fees, rates, or charges for the use of any public infrastructure or service.
  - h. Employ staff, counsel, and consultants.
  - i. Reimburse the city or county for staff and consultant services and support facilities supplied by the city or county.
  - j. Accept gifts or grants and incur and repay loans for any public infrastructure purpose.
  - k. Enter into agreements with landowners and the city or county for the collection of fees and charges from landowners for public infrastructure purposes, the advance of moneys by landowners for public infrastructure purposes, or the granting of real property by the landowner for public infrastructure purposes.
  - l. By resolution, levy and assess the costs of any public infrastructure purpose on any land benefited in the district.
  - m. Pay the financial legal and administrative costs of the district.
  - n. Enter into contracts, agreements, and trust indentures to obtain credit enhancement or liquidity support for its bonds and process the issuance, registration, transfer, and payment of its bonds and the disbursement and investment of proceeds of the bonds.
  - o. With the consent of the governing body of the city or county which formed the district, enter into agreements with persons outside of the district to provide services to persons and property outside of the district.
  - p. Use public easements and rights of way in or across public property, roadways, highways, streets, or other thoroughfares and other public easements and rights of way, whether in or out of the geographical limits of the district, the city, or the county.
  - q. Enter into development agreements with private operators pursuant to chapter 48-02.1.
2. This chapter does not authorize:
- a. A district to acquire, construct, operate, or maintain an electric generation or distribution system or natural gas distribution system without the written consent of any affected public service corporation, electric cooperative, agricultural improvement or power district, or other district, the service area of which encompasses all or part of the

district, if that entity is providing electrical utility service or natural gas utility service in the district.

- b. A district to provide service outside its boundaries without the written consent of any affected public service corporation, electric cooperative, agricultural improvement or power district, or other district with a service area that lies outside of the district, if that entity is providing or is capable of adequately providing electrical utility service or natural gas utility service in the area that the district proposes to serve.
  - c. A district to construct, operate, or maintain drainage and flood control systems, including collection, transport, diversion, storage, detention, retention, dispersal, recharge, use and discharge, with the exception of municipal storm sewer systems.
  - d. A district to construct, operate, or maintain water systems for domestic, industrial, irrigation, municipal or fire protection purposes, production, collection, storage, treatment, transport, delivery, connection and dispersal, but not including facilities for agricultural irrigation purposes unless for the repair or replacement of existing facilities when required by other improvements permitted by this article.
  - e. A district to own, operate, or maintain a sewage treatment plant.
3. If a district is granted written consent pursuant to this section, the district shall provide a copy to the governor, the president of the senate, the speaker of the house of representatives, and the secretary of state no later than thirty days after consent is granted.
4. In connection with any power authorized by statute, the district may:
- a. Contract.
  - b. Enter into intergovernmental agreements.
  - c. Adopt and change a seal.
  - d. Sue and be sued.
  - e. Enter into development agreements with a city or county.
  - f. Exercise the same right and power of eminent domain to acquire any property or right of way, except political subdivision, county, state, or federal property, for any public infrastructure purpose.
5. Public infrastructure other than personally may be located only in or on lands owned by the state, county, city, or district or dedicated or otherwise designated as public roadways, highways, streets, thoroughfares, easements, or rights of way, whether in or out of the district or the city. Personally may be used only for purposes authorized by the district board.
6. An agreement pursuant to this section may include agreements to repay all or part of such advances, fees, and charges from the proceeds of bonds if issued or from advances, fees, and charges collected from other landowners or users or those having a right to use any public



infrastructure. A person does not have authority to compel the issuance or sale of the bonds of the district or the exercise of any taxing power of the district to make repayment under any agreement.

7. Public infrastructure to be financed through the district shall be publicly bid pursuant to 48-01-02.

**40-64-06. Perpetual succession.**

The district has perpetual succession.

**40-64-07. Records - Board of directors - Open meetings.**

The district shall keep the following records, which must be open to public inspection:

1. Minutes of all meetings of the district board.
2. All resolutions.
3. Accounts showing all moneys received and disbursed.
4. The annual budget.
5. All other records required to be maintained by law.

The resolution ordering formation of the district will state that the district will be governed by a district board appointed by the governing body, each appointed director shall serve for a term of six years, except that two directors initially appointed by the governing body in the resolution shall serve for a term of four years. The resolution shall state which directors shall serve four-year terms and which shall serve six-year terms. On the expiration of the term of an appointed director, the governing body from a list of at least three persons nominated by the owner, shall appoint a person to fill the position. If a vacancy occurs on the district board because of death, resignation, or inability of the director to discharge the duties of director, the vacancy shall be filled by appointment made by the governing body from a list of at least three persons nominated by the owner. A director appointed by the governing body shall hold office for the remainder of the unexpired term until a successor is appointed. An appointed director may not be an owner owning more than one hundred acres in the district, an elected official of the city or county, or an employee or agent of the city or county but may be a director of more than one district. The director may be an employee or agent of the owner.

The board of directors shall comply with public meeting laws as a separate political subdivision.

The district manager, district clerk, district treasurer, and other district staff positions which may be required shall be appointed by the district board.

**40-64-08. Participation by city or county.**

The governing body of the city or county, by resolution, may summarily order the participation by the city or county in the costs of any public infrastructure purpose.

#### **40-64-09. Other districts or improvements.**

The formation of a district under this chapter does not prevent the subsequent establishment of similar districts or the improvement or assessment of land in the district by the city or county or the exercise by the city or county of any of its powers, including but not limited to zoning, subdivision, and other police powers on the same basis as all other land in its corporate boundaries.

#### **40-64-10. Change in district boundaries or general plan.**

An area may be deleted from the district only following adoption of a resolution of intention to do so by the district board and approval by the majority of owners of land in the district. Deleted areas remain subject to the levy for debt service on any bonds issued before the date of deletion.

At any time after adoption of the formation of the district an area may be added to the district on adoption by the governing board of a resolution of intention to do so, and approval by the district board following the receipt of a petition from all of the owners of land in the proposed addition to the district.

The district board may amend the general plan in any manner which it determines will not substantially reduce the benefits to be received by any land in the district from the public infrastructure on completion of the work to be performed under the general plan.

The board shall hold a public hearing related to deletions and additions to the district and provide notice of the hearing by publication not less than ten days in advance of the hearing in the official newspaper of the city or county.

#### **40-64-11. Project approval.**

Before constructing or acquiring any public infrastructure, the district board shall cause a study of the feasibility and benefits of the project to be prepared by engineers and other qualified persons, which shall include a description of the public infrastructure to be constructed or acquired and all other information useful to understand the project, a map showing, in general, the location of the project, an estimate of the cost to construct, acquire, operate, and maintain the project, an estimated schedule for completion of the project, a map or description of the area to be benefited by the project, and a plan for financing the project. The board shall hold a public hearing on the report and provide notice of the hearing by publication not less than ten days in advance in the official newspaper of the city or county. After the hearing, the district board may reject, amend, or approve the report. If the report is amended substantially, a new hearing shall be held before approval. If the report is approved, the district board shall adopt a resolution of intent which identifies the public infrastructure of the project, the areas benefited, the expected method of financing, and an appropriate system of providing revenues to operate and maintain the project.

#### **40-64-12. Budget.**

The fiscal year of each district shall commence on the first day of January of each year and shall terminate on the thirty-first day of December of that same year. On or before September tenth, the district treasurer shall prepare a proposed budget for the ensuing fiscal year to be submitted to the district board for approval. The board shall indicate its approval of the budget by resolution, which shall provide for a hearing on the budget as approved. Notice of the hearing on the budget shall be provided in

the manner prescribed by section 40-64-11. At the conclusion of the budget hearing, the district board, by resolution, shall adopt the budget as finally approved by the board. In no case shall the budget be adopted later than October tenth of each year.

#### **40-64-13. Finances.**

The projects to be constructed or acquired as shown in the general plan may be financed from the following sources of revenue:

1. Proceeds received from the sale of bonds of the district.
2. Moneys of the city or county contributed to the district.
3. Annual tax levies.
4. Special assessments.
5. State or federal grants or contributions.
6. Private contributions.
7. User, landowner, and other fees and charges.
8. Proceeds of loans or advances.
9. Any other moneys available to the district by law.

#### **40-64-14. Recording documents.**

The district shall file and record with the county recorder the order forming the district. The general plan of the district, the canvass of any general obligation bond election, and any special assessments levied by the district.

#### **40-64-15. General obligation bond - Tax levy.**

At any time after the hearing on formation of the district, the district board may from time-to-time order and call a general obligation bond election to submit to the owners of the district or to those persons who are qualified to vote pursuant to section 40-64-03 the question of authorizing the district board to issue general obligation bonds of the district to provide moneys for any public infrastructure purposes consistent with the general plan.

If general obligation bonds are approved at an election, the district board may issue and sell general obligation bonds of the district.

If the bonds are to be sold in a public offering, no bonds may be issued by the district unless the bonds receive one of the four highest investment grade ratings by a nationally recognized bond rating agency.

The district may issue and sell refunding bonds to refund any general obligation bonds of the district. If general obligation bonds are issued to refund any general obligation bonds of the district, no election on the issuance of such refunding bonds is required.

After the bonds are issued, the district board shall enter in its minutes a record of the bonds sold and their numbers and dates and unless otherwise limited by the bond election, shall annually levy and cause an ad valorem tax to be collected, at the same time and in the same manner as other taxes are levied and collected on all taxable property in the district, sufficient, together with any moneys from the sources described in section 40-64-13, to pay debt service on the bonds when due. In pledging the proceeds of an ad valorem property tax, the district board may limit the rate of taxation or the amount of ad valorem tax dollars that it is obligated to impose or collect to pay any securities as set forth in the bond election described in section 40-64-03. Moneys derived from the levy of the tax provided in this section when collected constitute funds to pay the debt service on the bonds and shall be kept separately from other funds of the district.

#### **40-64-16. Revenue bonds - Fees and charges.**

At any time after the hearing on formation of the district, the district board may hold a hearing on the question of authorizing the district board to issue revenue bonds of the district to provide moneys for any public infrastructure purposes consistent with the general plan.

If revenue bonds are approved by resolution, the district board may issue and sell revenue bonds of the district.

If the bonds are to be sold in a public offering, no bonds may be issued by the district unless the bonds receive one of the four highest investment grade ratings by a nationally recognized bond rating agency.

The district board may pledge to the payment of its revenue bonds any revenues of the district or revenues to be collected by the city or county in trust for the district and returned to the district.

The district shall prescribe fees and charges, and shall revise them when necessary, to generate revenue sufficient together with any moneys from the sources described in section 40-64-13, to pay when due the principal and interest of all revenue bonds for the payment of which revenue has been pledged. The establishment or revision of any rates, fees, and charges shall be identified and noticed concurrently with the annual budget process of the district pursuant to section 40-64-12.

If, in the resolution of the district board, the revenues to be pledged were limited to certain types of revenues, only those types of revenues may be pledged and only those revenues must be maintained.

No holder of revenue bonds issued under this chapter may compel any exercise of the taxing power of the district, municipality, or county to pay the bonds or the interest on the bonds. Revenue bonds issued under this chapter are not a debt of the district, city, or county, nor is the payment of revenue bonds enforceable out of any moneys other than the revenue pledged to the payment of the bonds.

The district may issue and sell refunding bonds to refund any revenue bonds of the district.

#### **40-64-17. Special assessments - Assessment lien bonds.**

The district board, by resolution and pursuant to the procedures prescribed by sections 40-22-08 through 40-22-19, as nearly as practicable, or such other

procedures as the district board provides, may levy an assessment of the costs of any public infrastructure purpose. Any operation and maintenance of public infrastructure, any enhanced municipal services or operations of the district on any land in the district based on the benefit determined by the district board to be received by the land. Prior to the issuance of special assessment bonds, the district may enter into a written agreement with a landowner as to the manner in which the assessment is to be allocated if the land is to be divided into more than one parcel. If an issue of special assessment lien bonds finances more than one purpose or service, the benefit received by the land, in the discretion of the district, may be determined by reference to the purposes and services as a whole or individually. The assessment may be based on estimated costs and amended to reflect actual costs, and the preparation of plans and specifications and the awarding of the contract are not a prerequisite to the levying of the assessment. An owner of land on which an assessment has been levied may seek judicial review of whether the land is benefited by the proposed infrastructure, on the merits, by special action filed with the court of appeals, within thirty days of the effective date of the resolution.

After adoption by the district board of a resolution levying a special assessment on property in the district, the district board may issue and sell special assessment lien bonds payable from amounts collected from the special assessments, from amounts available from time to time in any reserve fund established for those bonds, and from any other amounts available for those purposes as prescribed by section 40-64-13. The district and the county treasurer for the county in which the district is located may enter into an agreement for the county treasurer to collect the district's special assessments in the manner and by the officers provided by law for the collection and enforcement of general taxes. The district and the county treasurer may provide by agreement for the payment of the county treasurer's collection expenses directly related to the levy of the special assessment and, if so provided, the levy of the special assessment may include an amount for compensation of the county treasurer directly related to the collection of the special assessment. The district board may also issue and sell bond anticipation notes. The assessment shall be a first lien on the property assessed subject only to general property taxes and prior special assessments. In the event of nonpayment of an assessment and except as otherwise provided in an agreement between the district and the county treasurer pursuant to this section, the procedures for collection of delinquent assessments, sale of delinquent property procedures under title apply, as nearly as practicable, except that in no event is the district, county, or the city required to purchase the delinquent land at the sale if there is no other purchaser. If the landowner owns more than one parcel in the district, the district board may provide procedures for the collection and enforcement of assessments as the board deems appropriate by contract with a landowner to permit the sale of any or all of the landowner's parcels in the district if the landowner becomes delinquent as to any parcel that the landowner owns in the district.

On adoption of the resolution, but before issuance of the special assessment lien bonds, the district may direct the treasurer to make demand on the owners of the property so assessed, as shown on the property tax roll, for advance payment of the amount assessed. The demand shall state a date not less than twenty days after the date of adoption of the ordinance after which the treasurer may refuse to accept advance payments of the assessment. The treasurer shall certify to the clerk on or after the date specified in the demand the amount collected and the assessments remaining unpaid against each parcel of land assessed. Special assessment lien bonds may not be issued in an amount in excess of the amount assessed in the ordinance or, if advance payments are demanded, the amount certified to the clerk. The district may

adopt procedures for prepayment and provisions for payment and reallocation of assessments.

The district may issue and sell refunding bonds to refund any special assessment bonds of the district.

**40-64-18. Terms of bonds.**

With respect to any bonds the district board shall prescribe the denominations of the bonds, the size of each issue and the form of the bonds and shall establish the maturities, interest payment dates, and interest rates, whether fixed or variable, not exceeding the maximum rate stated in the notice of the election or the resolution of the district board. The bonds may be sold by competitive bid or negotiated sale for public or private offering at, below, or above par. If the bonds are sold below par, the aggregate amount of discount and interest to be paid on the bonds shall not exceed the amount of interest which would have been payable on those bonds pursuant to the maturity schedule prescribed by the district board at the maximum rate set out in the bond resolution. The proceeds of the sales shall be deposited with the treasurer, or with a trustee or agent designated by the district board, to the credit of the district to be withdrawn for the purposes provided by this chapter. Pending that use, the proceeds may be invested as determined by the district. The bonds may contain such terms, conditions, covenants, and agreements as the district board deems proper. The bonds may be payable from any combination of taxes, revenues, or special assessments of the types described in sections 40-64-15, 40-64-16, and 40-64-17 and as specified in the bonds provided that all applicable requirements of those sections are met.

**40-64-19. District taxes - Annual financial estimate and budget.**

Except as provided in this section and at any time after the formation of the district, the district board, may call an election to submit to the owners of the district the question of authorizing the district board to levy an ad valorem tax on the assessed value of all the real and personal property in the district at a rate or rates which do not exceed the maximum rate or rates specified in the ballot. All taxes attributable to the operation and maintenance expenses of the district, excluding expenses for an area described in section 40-64-05, shall not exceed an amount equal to five mills true and full valuation for all real and personal property in the district, unless a higher mill levy is approved by a vote of the electors of the district, or by the persons who are qualified to vote as provided in section 40-64-03.

Once approved at an election, the maximum rate remains in effect until increased or decreased at a subsequent election. If a maximum rate is in effect, the district board, on petition of twenty-five percent of the owners of the district, or by those persons owning twenty-five percent of the land area who are qualified to vote pursuant to section 40-64-03, shall call an election to reduce the maximum tax rate but not below the lesser of that rate determined by the district board to be necessary to operate the district, maintain the district's facilities and improvements, or the actual rate then in effect. On the presentation to the district board of a petition signed by the owners of a majority of the property in the district, the district board shall adopt a resolution to reduce or eliminate the portion of the tax, beginning the next fiscal year, required for one or more enhanced municipal services specified in the petition. Signatures on a petition to reduce or eliminate a tax are valid for a period of sixty days.

Provided the district is not limited by the bond election, the district may not levy, other than for the payment of debt service on general obligation bonds, at a rate or rates in excess of the maximum rate then in effect.

When levying an ad valorem tax, taking into account any limitation pursuant to the bond election, the district board shall make annual statements and estimates of the operation and maintenance expenses of the district, the costs of capital improvements to be financed by the tax levy or levies, and the amount of all other expenditures for public infrastructure and enhanced municipal services proposed to be paid from the tax levy or levies and of the amount to be raised to pay general obligation bonds of the district, all of which shall be provided for by the levy and collection of ad valorem taxes on the assessed value of all the real and personal property in the district. The district board shall file the annual statements and estimates with the clerk. The district board shall publish a notice of the filing of the estimate, shall hold hearings on the portions of the estimate not relating to debt service on general obligation bonds, and shall adopt a budget. The board, on or before the date set by law for certifying the annual budget of the county or municipality, shall fix, levy, and assess the amounts to be raised by ad valorem taxes of the district and shall cause certified copies of the order to be delivered to the board of county commissioners and to the county auditors. All statutes relating to the levy and collection of general county taxes, including the collection of delinquent taxes and sale of property for nonpayment of taxes, apply to the district taxes provided for by this section.

**40-64-20. Dissolution of district.**

1. The district may be dissolved by the district board by a resolution of the district board if the following conditions exist:
  - a. All of the property owned by the district has been or will be conveyed to the city, county, or school district; and
  - b. Either the district has no obligations or the city or county has assumed all of the obligations of the district.
2. The district board shall comply with the conditions prescribed by subsection 1 and shall dissolve the district if both of the following occur:
  - a. The governing body has consented to comply with the conditions prescribed by subsection 1 and either:
    - (1) Dissolution has been approved by a vote of the persons who are qualified to vote pursuant to section 40-64-03 voting in an election called for that purpose.
    - (2) The district board determines that the district has been inactive for at least five consecutive years and has no future purpose.
  - b. The district board adopts a resolution dissolving the district and records the resolution in the office of the county recorder.
3. The district board may call such an election and shall call such an election if requested to do so in a petition signed by ten percent of the persons who are qualified to vote pursuant to section 40-64-03.

4. The election shall be called and held in the same manner as a bond or tax levy election, except that the ballot shall contain the words "dissolution, yes" and "dissolution, no".
5. All property in the district, except federal, state, county, and city property, remains subject to the lien for the payment of general obligation bonds, and any property subject to a special assessment lien remains subject to the lien notwithstanding dissolution of the district. The district may not be dissolved if any revenue bonds of the district remain outstanding unless an amount of money sufficient, together with investment income thereon, to make all payments due on the revenue bonds either at maturity or prior redemption has been deposited with a trustee or escrow agent and pledged to the payment and redemption of the bonds. The district may continue to operate after dissolution only as needed to collect money and make payments on any outstanding bonds.

**40-64-21. Wastewater treatment projects - Loan repayment agreements - Definitions.**

Notwithstanding any other law, a community facilities district may finance the expansion of an existing wastewater treatment facility with moneys borrowed from or financial assistance including forgivable principal provided by the clean water fund.

To repay a loan from the clean water fund, a district may enter into a loan repayment agreement with the authority. A loan repayment agreement is payable from any revenues otherwise authorized by law to be used to pay long-term obligations.

The board of directors shall obtain approval for the loan repayment agreement in the same manner provided by law for approving and issuing other long-term obligations payable from those revenues that are to be used to pay the loan.

A loan repayment agreement entered into pursuant to this section shall contain the covenants and conditions pertaining to the construction, acquisition, or improvement of a wastewater treatment facility and repayment of the loan as the authority deems proper. Loan agreements may provide for the payment of interest on the unpaid principal balance of that agreement at the rates established in the agreement. These costs may be included in the assessment amounts pledged to repay the loan. Districts are bound by and shall fully perform the loan repayment agreements, and the agreements are incontestable after the loan is funded by the clean water fund. The community facilities district shall also agree to pay the authority's cost in issuing bonds or otherwise borrowing to fund a loan.

A loan repayment agreement under this section does not create a debt of the community facilities district, and the authority shall not require that payment of a loan agreement be made from other than those sources permitted in this section.

A community facilities district may employ or contract for the services of attorneys, accountants, financial consultants, and other experts in their fields as deemed necessary to perform services with respect to the loan repayment agreement.

This section is supplemental and alternative to any other law under which a district may borrow money or issue bonds. This section shall be construed as the exclusive authorization to enter into loan agreements with the authority.



For purposes of this section "authority" means the state department of health or the public finance authority, or both."

Renumber accordingly

SB 375  
2.23.15  
#2

Lee, Judy E.

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**From:** John T. Shockley <JShockley@OhnstadLaw.com>  
**Sent:** Monday, February 23, 2015 9:32 AM  
**To:** Lee, Judy E.  
**Subject:** FW: Amendment for LC# 15.1014.01003

Good morning,

Sean asked me to forward my comments to you regarding the pending legislation.

Thanks

John T. Shockley  
Attorney at Law  
Ohnstad Twichell, P.C.  
901 - 13th Avenue East  
P.O. Box 458  
West Fargo, ND 58078-0458  
TEL (701) 282-3249  
FAX (701) 282-0825



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**From:** John T. Shockley  
**Sent:** Monday, February 23, 2015 8:58 AM  
**To:** Sean M. Fredricks  
**Subject:** RE: Amendment for LC# 15.1014.01003

They sent me a previous version and I raised some objections that they tried to address. Specifically, the bill now makes the creation of these districts discretionary and there is a section recognizing the authority of the city/county's zoning and police authority and addressing the need to have city consent for a development in an ET area. However, they were in a hurry and this the first time that I have seen this version of the bill. Here are the issues that I see

**Section 40-64-1:**

- 11 i. - Not sure by what is meant by "development fees"
- 12 e - I am not sure why this subsection is included as typically interest on bonds exceeds three years.

**Section 40-64-17**

Please note that I have never heard of refunding improvement bonds being referred to as special assessment lien bonds in ND.

The first paragraph of this section is inconsistent with how other political subdivisions issue special assessment bonds. Typically a warrant is issued by the district/city/county and then exchanged for a bond.

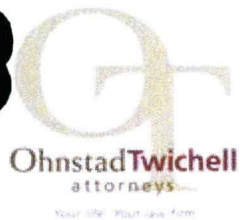
Also ND does not have a court of appeals, I have tried to state that from the beginning that appeals of political subdivisions are governed by 28-34-01 and that appeal goes first to the district court and then to the ND Supreme Court. There is already very detailed process in the century code for special assessments and the process of levying and collecting them. Some of the language in this section appears to contradict that procedure. Typically the political subdivision sends the county a list of the properties to be specially assessed and the county adds it to the tax statement and pays it over to the political subdivision. I am not sure why they added in this provision as there is a procedure in place already and a process for tax forfeiture for non-payment of special assessments.

This section should probably be polished a little more.

Other than the changes to those two sections, my other objections have been satisfied. Please note that does not mean that I am endorsing/supporting the bill.

Hope this helps

John T. Shockley  
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**From:** Sean M. Fredricks  
**Sent:** Sunday, February 22, 2015 10:33 AM  
**To:** John T. Shockley; Lee, Judy E.  
**Subject:** Fwd: Amendment for LC# 15.1014.01003

John, see Senator Lee's email below. It sounds like Senator Lee could use your review and comments asap. Thanks!

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----  
From: "Lee, Judy E." <jlee@nd.gov>  
Date: 02/20/2015 7:41 PM (GMT-06:00)

To: "Sean M. Fredricks" <SFredricks@OhnstadLaw.com>

Subject: Fwd: Amendment for LC# 15.1014.01003

Sean -

I am sorry to send this so late, but I just arrived at home about a half hour ago, and this was unavailable before I left. Can you also forward it to John Shockley? I don't have his address.

We need any comments by 11 on Monday, because we have to vote this out of committee. It has been held for these amendments which have taken John Walstad days to prepare. (I wouldn't have asked for it, but Sen. Bekkedahl is eager to please a constituent. I asked how many have requested it, and it isn't many, but he's had some requests.)

I need info about why we should even consider passing this in the first place, as well as whether or not the amendments make it workable.

Judy Lee

1822 Brentwood Court

West Fargo, ND 58078

Phone: 701-282-6512

cell phone: 701-238-1531

e-mail: [jlee@nd.gov](mailto:jlee@nd.gov)

Begin forwarded message:

**From:** "Bekkedahl, Brad" <[bbekkedahl@nd.gov](mailto:bbekkedahl@nd.gov)>

**Date:** February 20, 2015 at 3:03:28 PM CST

**To:** "Lee, Judy E." <[jlee@nd.gov](mailto:jlee@nd.gov)>, "Anderson, Jr., Howard C." <[hcanderson@nd.gov](mailto:hcanderson@nd.gov)>, "Grabinger, John" <[jgrabinger@nd.gov](mailto:jgrabinger@nd.gov)>, "Dotzenrod, Jim A." <[jdotzenrod@nd.gov](mailto:jdotzenrod@nd.gov)>, "Burckhard, Randall A." <[raburckhard@nd.gov](mailto:raburckhard@nd.gov)>

**Subject:** FW: Amendment for LC# 15.1014.01003

Senators of Political Subs,

Thanks again for all your patience in dealing with this bill. It is much appreciated. Please find attached the electronic version from John Walstad. Feel free to submit to others for review and also call me over the weekend if you have questions or concerns. My cell phone is 701-570-1879. Have a great weekend!

Brad

---

**From:** -Adm-Legislative Council

**Sent:** Friday, February 20, 2015 2:50 PM

**To:** Bekkedahl, Brad

**Subject:** Amendment for LC# 15.1014.01003

Please see attached A version of LC# 15.1014.01003

This email has been scanned by the Secure Email Security System on behalf of [Netrix IT](#). If this email is SPAM please report it by clicking [Submit Spam](#)

Lee, Judy E.

---

**Subject:** FW: Amendment for LC# 15.1014.01003

**From:** Jim R. Brownlee [<mailto:Jim.Brownlee@westfargond.gov>]

**Sent:** Monday, February 23, 2015 7:59 AM

**To:** Lee, Judy E.

**Subject:** RE: Amendment for LC# 15.1014.01003

Judy I reviewed the bill and I don't think the City of West Fargo would ever use it. However I don't see anything overly bad in it. It is really designed for Williston to do assessments outside city limits.

**NDLA, S PSD - Wocken, Mary Jo**

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**From:** Bekkedahl, Brad  
**Sent:** Monday, February 23, 2015 3:34 PM  
**To:** NDLA, S PSD - Wocken, Mary Jo  
**Cc:** NDLA, Intern 01 - Adisa, Femi  
**Subject:** FW: SB 2375 - Questions from ND Rec & Park Association

One of many emails related to SB 2375 we discussed in committee today.

Senator Brad Bekkedahl

---

**From:** Carter Froelich [mailto:Carter.Froelich@dpfg.com]  
**Sent:** Monday, February 23, 2015 6:54 AM  
**To:** jzarling@dawasg.com  
**Cc:** Bekkedahl, Brad  
**Subject:** RE: SB 2375 - Questions from ND Rec & Park Association

Jeff: Please see my comments in RED below.

**Carter T. Froelich**  
**Managing Principal**



5302 East Indian School Road  
Phoenix, AZ 85018  
Office: 602-381-3226 ext. 10  
Fax: 602-381-1203  
[www.dpfg.com](http://www.dpfg.com)

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**From:** Jeff Zarling [mailto:JZarling@dawasg.com]  
**Sent:** Sunday, February 22, 2015 6:36 PM  
**To:** Carter Froelich  
**Subject:** Fwd: SB 2375 - Questions from ND Rec & Park Association

Can u review the comments below and we should discuss.

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

**From:** Dana Schaar Jahner <clearfour@btinet.net>  
**Date:** 02/22/2015 12:05 PM (GMT-06:00)  
**To:** [bbekkedahl@nd.gov](mailto:bbekkedahl@nd.gov), Jeff Zarling <[JZarling@dawasg.com](mailto:JZarling@dawasg.com)>

Cc: "Krueger, Darin" <darin@wprd.us>, Ron Merritt <ronrpz@srt.com>, Blake Crosby <blake@ndlc.org>  
 Subject: FW: SB 2375 - Questions from ND Rec & Park Association

Sen. Bekkedahl and Mr. Zarling:

Several members of the ND Recreation & Park Association (NDPRA) have reviewed the proposed amendment for SB 2375. While we understand the need to find new methods to develop much needed community infrastructure and support that effort, we continue to have some questions about how implementation of a community facilities district may impact park districts.

As you know, park districts are independent political subdivisions in North Dakota, which is fairly unique across the United States. In most other states, public parks and recreation is generally a department within city government.

As we understand it from the bill's initial committee hearing, the goal of the legislation is to allow developers to create a new political subdivision with taxing authority and the ability to secure tax-exempt bonds for infrastructure development. As listed on page two of the amendment under 11.d, parks, recreational facilities and open space areas are included. The addition of the language of "appropriate park district approvals as may be required" has been added to the amendment, and park districts certainly appreciate this inclusion. It appears this approval would primarily be related to land dedication ordinances, which exist in some but not all cities in North Dakota. The approval could also relate to the Park District's willingness to accept public parks for on-going operations and maintenance. The CFD may only finance "public" infrastructure of which parks would be a sub category. If the developer wanted to finance a "public" park, the developer would have to receive the typical approvals from the parks districts related the parks construction in whatever form this may take. If the "approvals" are not obtained and the park district is not willing to "accept" the park, then the park would NOT BE eligible for financing through the CFD. Lastly, if the park were not accepted by the park district, the park would have to be owned and operated by the HOA. The Park District would NOT be responsible for the park.

Also based on the hearing, we understand that parks and recreation facilities could be a part of the development and may be transferred to park districts for operation and maintenance following completion of the development and dissolution of the community facilities district. If this is correct, we are wondering what input park districts would have on the development of these facilities. See prior response. For example, if a developer built an outdoor swimming pool, but this did not fit the park district's master plan, would the park district still have to assume operation at dissolution of the community facilities district? No. The park district would only assume the operations of parks / facilities which it had approved and which meet the criteria of the park district's master plan. The developer would have to work out these details in advance of construction if they wanted the park to be financed with CFD bond proceeds. As we understand it, developers can now build these facilities but typically they would continue to be operated under a homeowner's association. We are unclear if this would be the case with a community facilities district. To the extent that the Park District was unwilling to own and operate the completed facilities the developer would have to fund these facilities through sources other than the CFD. Only infrastructure owned by a public agency may be financed through the CFD. As such, to the extent the Park District was not willing to accept the completed park, the HOA would have to own and operate the facilities. The Park District would NOT be responsible.

Also, if the intent is to turn over the public spaces from a community facilities district to local government, then it appears that park districts should perhaps be added on page 14. There is information about dissolution of the district under 46-64-20. Specifically, 1.a lists city, county or school district, but park district is not listed. It is not the intent of CFDs to own and operate the facilities. Once the facilities are constructed, as a condition of financing through the CFD the facilities are indented to be dedicated to the City (e.g. sewer, streets) or Park Districts (public parks) by the CFD for on-going operations and maintenance. This assumes that the facilities are constructed to city / park district standards and the facilities are of the type that are typically operated by the City / Park District. As the CFD is only a financing tool, the Park District's standard approval processes remain intact.

Thank you for providing this amendment to us for review. We greatly appreciate this opportunity to provide comments and ask questions. I am available by email or cell (701-214-0144) if you would like to discuss this further. Also, I plan to be at the committee discussion tomorrow at 11:15 a.m.

Thanks again,  
Dana

**Dana Schaar Jahner** | Executive Director  
North Dakota Recreation & Park Association  
PO Box 1091 | Bismarck, ND 58502  
701-355-4458 | [clearfour@btinet.net](mailto:clearfour@btinet.net)  
[www.ndrpa.com](http://www.ndrpa.com)

*NDRPA...advancing parks and recreation for  
an enhanced quality of life in North Dakota.*

---

**From:** Blake Crosby [<mailto:blake@ndlc.org>]  
**Sent:** Friday, February 20, 2015 3:24 PM  
**To:** Dana Schaar Jahner; 'Eric Volk'; Mike Dwyer  
**Subject:** FW: SB 2375

Here it is...again.

## R Blake Crosby

ND League of Cities | *Executive Director*  
410 E Front Ave | Bismarck, ND 58504  
701-223-3518 800-472-2692

<image001.jpg> <image002.png> <image003.jpg>

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**From:** Brent Bogar [<mailto:bcbogar@jadestoneconsulting.com>]  
**Sent:** Friday, February 20, 2015 3:14 PM  
**To:** Kelvin Hullet (Kelvin Hullet); William Wocken; Blake Crosby; [krstrege@gmail.com](mailto:krstrege@gmail.com); Russell Hanson (Russell Hanson)  
**Subject:** SB 2375

Senate Bill 2375 in hopefully the correct final version for consideration. The committee plans to meeting Monday morning to discuss and move out. They want those that have ideas to review the bill over the weekend and provide feedback prior to the meeting.

I would suggest that if you have questions or comments that you contact Jeff Zarling at [jzarling@dawasg.com](mailto:jzarling@dawasg.com) as he has been the one leading the charge and can get in contact with Carter Froelich who has helped to draft the legislation. I know in the past Jeff had said that it would be possible to do a conference call with Carter on this if people wanted more detail.

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SB 2375

3.19.15

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House Political Subdivisions Committee

March 19, 2015

The Honorable Representative Lawrence Klemin, Chairman

**Testimony for Senate Bill 2375**

Chairman Klemin and Committee Members,

For the record, I am Brad Bekkedahl, Senator from District 1, representing Williston and I stand before you to introduce Senate Bill 2375. This bill was drafted as enabling legislation for the formation of Community Facilities Districts in North Dakota to provide for the financing and construction of public improvements. Otherwise known as Special Purpose Taxing Districts, they provide a mechanism for developers to access lower cost capital to fund public infrastructure in real estate developments without putting cities and counties in debt or at risk.

Traditionally, it is common for the cities and/or counties to finance a portion of the public infrastructure in land development such as water, sewer, drainage, and streets through municipal bonds and recover the funds through a special assessment on the resulting property over a twenty to thirty year period. Many western North Dakota communities have taken the position not to finance the infrastructure in a development and special assess it back to subsequent property owners as they once did, due in no small measure to the amount of debt the cities carried after the oil development ceased in the 1980's. As such, land developers are funding projects primarily through equity and private lending. The average cost of debt capital for this funding has been in the 13-15% range or higher. The cost of equity is also at that rate and can range as high as 30%. The result is significantly higher costs for the same infrastructure that would have been financed at 4-5% municipal bond rates and impacts the cost of developed lots, housing, and commercial property. Community Facilities Districts are designed to be formed around a defined geographic area and issue bonds to fund a portion of the infrastructure development. These bonds are secured by the land and improvements in the district and therefore do not affect the bond capacity, credit, or debt load of the cities or counties they are used in.

Mr. Chairman, SB 2375 had great intentions as you can see by the explanation of the intent and how these Districts would work without impacting political subdivisions. However, even with three attempts at amending the original legislation to address concerns by other entities, there was not enough Legislative time in the calendar to get it passed in the form needed to work in North Dakota. Therefore, it has been amended as you see now into a study resolution for consideration by Legislative Management, and I ask for your support with a Do Pass for this worthwhile public benefit concept to have that opportunity. Thank you for your attention and consideration. I am happy to stand for any questions you may have at this time.