

CHAPTER 40-57

MUNICIPAL INDUSTRIAL DEVELOPMENT ACT

40-57-01. Short title. This chapter may be cited as the Municipal Industrial Development Act of 1955.

40-57-02. Definitions. As used in this chapter, unless a different meaning clearly appears from the context:

1. "Municipality" means counties as well as municipalities of the types listed in subsection 4 of section 40-01-01 and, in the case of parking projects, municipal parking authorities created pursuant to section 40-61-02 and the public finance authority or any successor in interest to the public finance authority for the purpose of issuing revenue bonds under this chapter. In acting as a municipality under this chapter, the public finance authority or its successor in interest shall follow the provisions of this chapter to the extent applicable or practicable but it need not comply with the notice and hearing provisions contained in sections 40-57-04 and 40-57-04.1 or the provisions of section 40-57-10. In the event of a conflict between the provisions of this chapter and chapter 6-09.4, the provisions of chapter 6-09.4 govern.
2. "Project" means any real property, buildings, and improvements on real property or the buildings thereon, and any equipment located on the real property or in the buildings, or elsewhere, or personal property, including working capital, which is used or useful in connection with a revenue-producing enterprise, or any combination of two or more revenue-producing enterprises, engaged or to be engaged in:
 - a. Assembling, fabricating, manufacturing, mixing, or processing of any agricultural, mineral, or manufactured products, or any combination thereof.
 - b. Storing, warehousing, distributing, or selling any products of agriculture, mining, or manufacture.
 - c. Providing child care facilities or hospital, nursing home, or other health care facilities and service.
 - d. Improvements or equipment used or to be used for the abatement or control of environmental pollution in connection with any new or existing revenue-producing enterprise.
 - e. Public career and technical education.
 - f. Any other industry or business not prohibited by the constitution or laws of the state of North Dakota.

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

3. "Revenue agreement" means a written agreement between a municipality and a contracting party with respect to a project, whereby the contracting party agrees to pay to the municipality or its order amounts sufficient at all times to pay when due the principal of, premium, if any, and interest on all bonds issued by the municipality with respect to that project. A revenue agreement may be in the form of a lease, mortgage, direct or installment sale contract, loan agreement, take-or-pay or similar agreement, and be secured in a manner the parties agree to or be unsecured.

40-57-03. Powers of municipality. Any municipality, in addition to the powers prescribed elsewhere by the laws of this state, shall have the power to:

1. Acquire whether by purchase, lease, or gift, from any source whatsoever, any real property, buildings, improvements on real property or buildings, including easements, profits, rights in land and water rights deemed necessary in connection therewith, and to construct, reconstruct, improve, better, or extend to real property, buildings, and improvements on real property and buildings of any project which shall be located within this state; provided, that the property acquired for the project shall be located wholly within the boundaries of the municipality acquiring it unless a contract or agreement between that municipality and any other municipality in which part or all of the property is located is entered into as authorized by subsection 8.
2. Issue revenue bonds, in anticipation of the collection of revenues of the project, to finance, in whole or in part, the cost of the project, whether then in existence or not.
3. Lease projects to any industrial or commercial enterprise or nonprofit corporation or to any school district for career and technical education purposes, in such manner that rents to be charged for the use of such projects shall be fixed, and revised from time to time as necessary, so as to produce income and revenue sufficient to provide for the prompt payment of interest upon all bonds issued hereunder, to create a sinking fund to pay the principal of such bonds when due, and to provide for the operation, maintenance, insurance on, and depreciation of such projects, and any taxes thereon.
4. With respect to any project, enter into revenue agreements providing for the municipality to loan the proceeds derived from the issuance of bonds pursuant to this chapter to the contracting party to be used to pay costs of the project and providing for the repayment of the loan by the contracting party, and which may provide for such loans or bonds to be secured by a mortgage on and security in the project or such other security as may be determined by the municipality, whether delivered or granted to the municipality, the holder or holders of said bonds, a trustee therefor or otherwise.
5. Pledge to the punctual payment of said bonds and the interest thereof, all or any part of the revenues of such project, including the revenues of projects which shall be acquired or constructed subsequent to the issuance of such bonds, as well as revenues of projects existing when such bonds were issued.
6. Mortgage or otherwise encumber said projects in favor of the holder, or holders, of said revenue bonds, or a trustee therefor; provided, that in creating any such mortgages or encumbrances, a municipality shall not have the power to obligate itself except with respect to the project, except as otherwise provided by section 40-57-19.
7. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of the powers herein granted, or in the performance of its covenants or duties, or in order to secure the payments of its bonds.
8. Enter into and perform such contracts and agreements with other municipalities, political subdivisions, and state agencies, authorities, and institutions as the respective governing bodies of the same may deem proper and feasible for or concerning the planning, construction, lease, or other acquisition, and the financing of such facilities, and the maintenance thereof. Any such municipalities so contracting with each other may also provide in their contract or agreement for a board, commission, or such other body as their governing bodies may deem proper for the supervision and general management of the facilities of the project.

9. Accept from any authorized agency of the federal government loans or grants for the planning, construction, acquisition, leasing, or other provision of any project, and to enter into agreements with such agency respecting such loans or grants.
10. Sell and convey all properties acquired in connection with such projects, including without limitation the sale and conveyance thereof subject to such mortgage as herein provided, and the sale and conveyance thereof to the lessee under an option granted in the lease of the project, for such price and at such time as the governing body of the municipality may determine; provided, however, that no sale or conveyance of such properties shall ever be made in such manner as to impair the rights or interests of the holder, or holders, of any bonds issued under the authority of this chapter.
11. Issue revenue bonds to refund, in whole or in part, bonds previously issued under this chapter.
12. If the project financed by the municipality consists of the construction, reconstruction, improvement, or betterment of real property, buildings and improvements on real property, and buildings, the provisions of chapter 48-01.2 and other applicable statutes shall apply; except that the municipality, in the revenue agreement and resolution or mortgage defining the terms and conditions upon which the project is to be constructed and financed, or in a preliminary agreement establishing the general terms of the revenue agreement and financing of the project when constructed, may permit a contracting party which is not a governmental entity or a public institution, subject to such terms and conditions as the municipality shall find necessary or desirable and proper, to provide for the construction, acquisition, and installation of the buildings, improvements, and equipment to be included in the project by any means available to the contracting party, whether or not the procedure followed by the contracting party is in conformity with said chapter 48-01.2.

No municipality may operate any project referred to in this chapter as a business or in any manner whatsoever, except as the lessor, contract vendor, secured party, or lender thereof. No debt on the general credit of the municipality may be incurred in any manner for any purpose under this chapter, except as otherwise provided by section 40-57-19. No municipality may pay out of its general fund for, or otherwise contribute to the cost of, construction of a project, except as otherwise provided by section 40-57-19.

40-57-04. Resolution authorizing project and the issuance of revenue bonds - Public notice and hearing - No election required. The acquisition, construction, reconstruction, improvement, betterment, extension, or financing of any project, and the issue of bonds in anticipation of the collection of the revenues of the project to provide funds to pay for the cost of the project, may be authorized by an ordinance or resolution of the governing body adopted at a regular or special meeting of the governing body by the affirmative vote of a majority of its members. Before the issuance of revenue bonds under this chapter, the governing body shall give notice and hold a public hearing on the proposed bond issue. Notice of the hearing must be published in the official newspaper of the municipality once a week for two successive weeks before the time set for the hearing. The notice must specify the time and place of the hearing, and the amount and purpose of the proposed bond issue. The governing body may not approve the bond issue unless it appears, after the public hearing, that approval is in the public interest of the municipality. Except as provided in section 40-57-19, no election is required to authorize the use of any of the powers conferred by this chapter. No public hearing is required before the issuance of refunding bonds issued under section 40-57-19.1.

40-57-04.1. Notice to competitors - Authority to issue bonds limited if project would compete with existing enterprises. Prior to approval of the issuance of any bonds under authority of this chapter, except refunding bonds issued pursuant to section 40-57-19.1, the governing body of the municipality shall, when a competitive project is involved, include notice of the competitive nature of the proposed project in the public notice required to be

published prior to the public hearing required under section 40-57-04. The governing body shall not approve the bond issue unless it appears that the impact and effect of the issue upon existing industry and business will not result in an unfair advantage for the proposed project to the substantial detriment of existing enterprises.

40-57-05. Approval of public officer not required. The consent of any governmental body or public officer of the state is not required to authorize the issuance or sale of bonds or the making of any mortgage in connection therewith.

40-57-06. Certificate of convenience or necessity not required. It shall not be necessary for any municipality proceeding under this chapter to obtain any certificate of convenience or necessity, franchise, license, permit, or other authorization from any bureau, board, commission, or other instrumentality of the state in order to acquire, construct, reconstruct, improve, better, or extend any project or for the issuance of bonds in connection therewith.

40-57-07. Cost of project - How determined. In determining the cost of a project, the governing body may include all costs and estimated costs of the issuance of the revenue bonds; all engineering, inspection, fiscal, and legal expenses; any bond reserves and the interest that it is estimated will accrue during the construction period and for six months thereafter on money borrowed or which it is estimated will be borrowed under this chapter; and the cost of retiring any existing indebtedness that the governing body of the municipality determines to be necessary or desirable and in furtherance of the public health or welfare, regardless of whether the existing indebtedness constitutes all or a portion of the cost being financed by the issuance of the bonds.

40-57-08. Excess revenues not to revert to general fund of municipality - Exception. Any revenues of any and all projects in excess of the amount required to pay interest upon all bonds issued hereunder, to create a sinking fund to pay the principal of such bonds, when due, to provide for the operation, maintenance, insurance, taxes, and depreciation of such project, shall not revert to the general fund of the municipality. However, at such time as there shall be outstanding no revenue bonds issued by the municipality, any excess of revenues may be transferred to the general fund of the municipality in such amounts and at such times as the governing body of the municipality may deem proper and feasible.

40-57-09. Provisions governing revenue bonds. The resolution or ordinance authorizing the issuance of revenue bonds under this chapter, or ordinance or resolution adopted subsequent to the adoption of the original resolution or ordinance, shall prescribe:

1. The rate or rates of interest which such bonds shall bear;
2. Whether the bonds shall be in one or more series;
3. The date or dates which such bonds shall bear;
4. The time or times, not exceeding forty years from their respective dates, when such bonds shall mature;
5. The medium in which such bonds shall be payable;
6. The place or places where such bonds shall be payable;
7. Whether or not such bonds shall carry registration privileges, and what such privileges, if any, shall be;
8. The terms of redemption, if any, to which such bonds shall be subject;
9. The manner in which such bonds shall be executed;
10. The terms, covenants, and conditions which such bonds shall contain; and

11. The form, either coupon or registered, in which such bonds shall be issued.

40-57-09.1. Industrial development revenue bond guarantee program - Bond issuance fee - Appropriation. Repealed by S.L. 1985, ch. 467, § 1.

40-57-10. Sale of revenue bonds. Revenue bonds shall be sold at not less than ninety-five percent of par plus any accrued interest. Such bonds may be sold at private sale, or such bonds may be sold at public sale after notice of such sale has been published once at least five days prior to such sale in a newspaper circulating in the municipality. State or national banks may purchase bonds from each issue of revenue bonds issued under the provisions of this chapter in an amount not to exceed at any time twenty-five percent of the unimpaired capital and surplus of the bank.

40-57-11. Bonds and receipts or certificates issued pending preparation of bonds - Negotiability. Pending the preparation of the definitive bonds, interim certificates or receipts, in the form and with the provisions the governing body may determine, may be issued pursuant to this chapter. The bonds and interim receipts or certificates shall be negotiable within the meaning of and for all purposes specified in title 41.

40-57-12. Validity of bonds. Revenue bonds bearing the signatures of the appropriate officers who are in office on the date of the signing thereof shall be valid and binding obligations notwithstanding that before the delivery thereof and payment therefor, any or all of the persons whose signatures appear thereon shall have ceased to be officers of the municipality issuing the same. The validity of said bonds shall not be dependent on nor be affected by the validity or regularity of any proceedings relating to the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of the project for which said bonds are issued. The ordinance or resolution authorizing said bonds may provide that the bonds shall contain a recital that they are issued pursuant to this chapter, and such recital shall be conclusive evidence of their validity and of the regularity of their issuance.

40-57-13. Bonds exempt from taxation - Exception. Bonds issued under the provisions of this chapter, and the income therefrom, shall be exempt from any taxes, except inheritance, estate, and transfer taxes.

40-57-14. Covenants that may be inserted in ordinance or resolution authorizing bonds.

1. Any ordinance or resolution authorizing the issuance of bonds under this chapter to finance, in whole or in part, the cost of any project may contain covenants, notwithstanding that the covenants may limit the exercise of powers conferred by this chapter, as to:
 - a. The rents or payments to be charged with respect to the project.
 - b. The use and disposition of the revenues of the projects.
 - c. The creation and maintenance of sinking funds and the regulation, use, and disposition thereof.
 - d. The creation and maintenance of funds to provide for maintaining the project and replacement of those properties that are subject to depreciation.
 - e. The purpose, or purposes, to which the proceeds of this sale of bonds may be applied and the use and disposition of the proceeds.
 - f. The nature of mortgages or other encumbrances on the project made in favor of the holder of the bonds, or a trustee therefor.

- g. The events of default and the rights and liabilities arising thereon and the terms and conditions upon which the holders of bonds issued under this chapter may bring any suit or action on the bonds or on any coupons thereof.
 - h. The issuance of other or additional bonds or instruments payable from or constituting a charge against the revenue of the project.
 - i. The insurance to be carried upon the project and the use and disposition of insurance moneys.
 - j. The keeping of books of account and the inspection and audit thereof.
 - k. The terms and conditions upon which the bonds become or may be declared due before maturity and the terms and conditions upon which the declaration and its consequences may be waived.
 - l. The rights, liabilities, powers, and duties arising upon the breach by the municipality of any covenants, conditions, or obligations.
 - m. The vesting in a trustee of the rights to enforce any covenants made to secure, to pay, or in relation to, the bonds and the powers and duties of the trustee and the limitation of liabilities thereof.
 - n. The terms and conditions upon which the holder of the bonds, or the holders of any proportion or percentage of them, may enforce any covenants made under this chapter or any duties imposed thereby.
 - o. A procedure by which the terms of any ordinance or resolution authorizing bonds or of any other contract with bondholders, including an indenture of trust or similar instrument, may be amended or abrogated, and the amount of bonds the holders of which must consent thereto, and the manner in which consent may be given.
 - p. The subordination of the security of any bonds issued and the payment of principal and interest thereof, to the extent deemed feasible and desirable by the governing body, to other bonds or obligations of a municipality issued to finance the project or that may be outstanding when the bonds thus subordinated are issued and delivered.
2. Nothing in this chapter, except as provided in section 40-57-19, authorizes any municipality to do anything or for any purpose that would result in the creation or incurring of a debt or indebtedness or the issuance of any instrument that would constitute a bond or debt within the meaning of any provisions, limitation, or restriction of the Constitution of North Dakota relating to the creation or incurring of a debt or indebtedness or the issuance of an instrument constituting a bond or debt.

40-57-15. Liability of municipality for bonds - Taxing power prohibited - Bond not a lien. Revenue bonds issued under this chapter shall not be payable from nor charged upon any funds other than the revenue pledged to the payment thereof, nor shall the municipality issuing the same be subject to any liability thereon. No holder or holders of any such bonds shall ever have the right to compel any exercise of the taxing power of the municipality to pay any such bonds or the interest thereon, nor to enforce payment thereon against any property of the municipality except those projects, or portions thereof, mortgaged or otherwise encumbered under the provisions and for the purpose of this chapter. Such bonds shall not constitute a charge, lien, nor encumbrance, legal or equitable, upon any property of the municipality, except those projects, or portions thereof, mortgaged or otherwise encumbered under the provisions and for the purposes of this chapter.

Each bond under this chapter shall recite in substance that the bond, including interest thereon, is payable solely from the revenue pledged to the payment thereof, except that such bond may be secured by a mortgage or other encumbrance on the project, or portion thereof, as authorized in this chapter, and that the bond does not constitute a debt of the municipality within the meaning of any constitutional or statutory limitation.

40-57-16. Remedies of bondholders in general. Subject to any contractual limitations binding upon the holders of any issue of revenue bonds, or a trustee therefor, including the restriction of the exercise of any remedy to a specified proportion or percentage of such holders, any holder of bonds, or any trustee therefor, for the equal benefit and protection of all bondholders similarly situated may:

1. By mandamus or other suit, action, or proceeding at law or in equity, enforce its rights against the municipality and its governing body and any of its officers, agents, and employees and may require and compel such municipality or such governing body or any such officers, agents, or employees to perform and carry out its and their duties and obligations under this chapter and its and their covenants and agreements with bondholders.
2. By action or suit in equity, require the municipality and the governing body thereof to account as if they were the trustees of an express trust.
3. By action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders.
4. Bring suit upon the bonds.
5. Foreclose any mortgage or lien given under the authority of this chapter, and cause the property standing as security to be sold under any proceedings permitted by law.

No right or remedy conferred by this chapter upon any bondholder, or upon any trustee therefor, is intended to be exclusive of any other right or remedy, but each such right or remedy is cumulative and in addition to every other right or remedy and may be exercised without exhausting and without regard to any other remedy conferred by this chapter, or by any other law in this state.

40-57-17. Exemptions from taxation. Repealed by S.L. 1975, ch. 387, § 6.

40-57-18. Construction. The powers conferred by this chapter shall be in addition and supplemental to and not in substitution for, and the limitations imposed by this chapter shall not affect the powers conferred by, any other law. Revenue bonds may be issued under this chapter without regard to any other provisions of the laws of this state. The project may be financed or acquired, purchased, constructed, reconstructed, improved, bettered, and extended, and bonds may be issued under this chapter for said purposes, notwithstanding that any other law may provide for the financing, acquisition, purchase, construction, reconstruction, improvement, betterment, and extension of a like project or for the issuance of bonds for like purposes, and without regard to the requirements, restrictions, debt, or other limitations or other provisions contained in any other law, including any requirement for any restriction or limitation on the incurring of indebtedness or the issuance of bonds. Insofar as the provisions of this chapter are inconsistent with any other law of this state, the provisions of this chapter shall be controlling with reference to the issuance of revenue bonds and the security therefor.

40-57-19. General obligation bonds - Issuance - Levy. Municipalities may issue general obligation bonds to aid, construct, reconstruct, improve, better, or extend any project undertaken under the provisions of this chapter for which revenue-producing bonds have been issued or to finance entirely new projects as provided in this chapter. However, before such general obligation bonds can be issued and the levy made to pay off the interest and principal of such bonds, the governing body of such municipality shall hold an election for the purpose of determining whether such bonds should be issued and the tax levies made. If at such election

two-thirds of the electors in the municipality vote in favor of issuing general obligation bonds, the governing body of the municipality may issue such bonds and make a levy sufficient to pay the interest and principal when due; provided, the issuance of such bonds does not exceed, together with other outstanding indebtedness of the municipality, five percent of the assessed valuation of the taxable property therein. If at an election called for that purpose the governing body of the municipality determines that an increase in such indebtedness of three percent over and above such five percent limit is necessary and the proposed issue of general obligation bonds, together with other outstanding indebtedness of the municipality, does not exceed eight percent of the assessed valuation of the taxable property within the municipality, it may issue such bonds and make the tax levies to pay the interest and principal thereof, if two-thirds or more of the electors within the municipality vote in favor of such increase. The provisions of this section shall only be used when the real property, buildings, and improvements thereon of the project for which the general obligation bonds are to be issued represent an investment to the city of fifty thousand dollars or more and when the net worth of the industrial or commercial enterprise desiring to lease such project is at least five times the amount that the municipality will invest in the real property, buildings, and improvements thereon of the project. All general obligation bonds issued under the provisions of this section shall be in accordance and comply with the provisions of chapter 21-03 and those portions of title 21 that provide for the issuance of general obligation bonds. Bonds issued under the provisions of this section shall not in any manner alter or affect revenue-producing bonds issued under the provisions of this chapter.

40-57-19.1. Refunding bonds.

1. Any municipality is authorized to provide for the issuance of refunding bonds to refund, in whole or in part, bonds previously issued under this chapter for any of the following purposes:
 - a. To extend the maturities of the outstanding bonds.
 - b. To consolidate or restructure or reduce the debt service of the outstanding bonds.
 - c. To remove covenants made with respect to the issuance of the outstanding bonds.
2. The principal amount of the refunding bonds may include:
 - a. The principal amount of the outstanding bonds to be refunded.
 - b. Any interest accrued or to accrue to the earliest or subsequent date of redemption, or maturity of the outstanding bonds to be refunded.
 - c. Any redemption premium required to be paid on the outstanding bonds to be refunded.
 - d. Any expenses related to the issuance of the refunding bonds.
 - e. Any interest on the refunding bonds to be paid with the proceeds of the refunding bonds.
3. When the refunding bonds are issued and sold more than six months in advance of the date or dates determined by the issuer for the redemption or retirement of all of the outstanding bonds to be refunded, the proceeds of the refunding bonds, including any premium or accrued interest thereon, shall be deposited in escrow with a suitable bank or trust company, having its principal place of business within or without the state. Such escrowed proceeds shall be invested and reinvested in direct obligations of the United States or any agency or instrumentality of the United States, in any obligations of which the principal and interest are unconditionally guaranteed by the United States, in certificates of deposit or time deposits secured

by direct obligations of the United States, or by obligations of which the principal and interest are unconditionally guaranteed by the United States. Funds other than proceeds of the refunding bonds, including moneys on hand in a bond fund or sinking fund maintained for the payment of the outstanding bonds to be refunded and not immediately needed for the payment of interest or principal due thereon, may likewise be deposited in the escrow fund and invested in the same manner as the proceeds of the refunding bonds. The principal of and earnings on the obligations or securities in the escrow fund may be used to retire or redeem the outstanding bonds, pay any principal of or interest on the refunding bonds, or pay any expenses relating to the retirement or redemption of the outstanding bonds or the issuance of the refunding bonds. Any proceeds of the refunding bonds or moneys in the escrow fund not expended as set forth in this section may be returned to the industrial or commercial enterprise as an overpayment of rentals or purchase price installments.

40-57-20. Declaration and finding of public purpose. The legislative assembly declares and finds that it is and has been the purpose of this chapter to sanction, authorize, and encourage activities in the public interest and for the welfare of the state, its municipal subdivisions, and people by assisting establishment of additional industrial plants and activities within the state and increasing production of wealth and adding to the volume of employment, particularly during those seasons when employment in farming and ranching is slack, thus alleviating unemployment among the people of the state.