

CHAPTER 54-17.2
NORTH DAKOTA BUILDING AUTHORITY

54-17.2-01. Definitions.

As used in this chapter, unless the context or subject matter requires otherwise:

1. "Commission" means the industrial commission acting as the North Dakota building authority created under this chapter.
2. "Evidences of indebtedness" means bonds, notes, debentures, and other evidences of indebtedness issued by the commission on behalf of the state of North Dakota to evidence money owed or borrowed.
3. "Financing agreement" means a written agreement between the commission and the state with respect to a project, whereby the state agrees to pay to the commission, when due, the principal of, premium, if any, and interest on bonds issued by the commission with respect to that project. A financing agreement may be in the form of a lease, mortgage, direct or installment sale contract, loan agreement, or take-or-pay or similar agreement, and be secured in a manner the parties agree to or be unsecured.
4. "Project" or "projects" means any:
 - a. Legislatively authorized building or buildings primarily for the use of the state, including related structures, parking facilities, equipment, improvements, real and personal property or any interest therein, including lands under water, space rights and air rights, and other appurtenances and facilities necessary or convenient to the use or operation of the building or buildings, acquired, owned, constructed, reconstructed, extended, rehabilitated, or improved by the commission; or
 - b. Any other undertaking authorized by the legislative assembly.
5. "Project cost" means the total cost of a project or projects and all costs of issuance, financing, and interest during project construction or implementation included in the principal amount of evidences of indebtedness issued.
6. "State" means any branch of North Dakota government or any office, department, board, commission, bureau, division, public authority or corporation, agency, or instrumentality of the state.

54-17.2-02. Commission - Evidence of indebtedness issuance.

The commission is a North Dakota instrumentality empowered, subject to legislative authorization, to issue evidences of indebtedness to make funds available for a project or projects as directed by the legislative assembly.

54-17.2-02.1. Evidences of indebtedness conditions - Continued authority.

The commission may issue evidences of indebtedness subject to the condition that payments under financing agreements shall begin no earlier than the first business day of the biennium following the biennium of issuance. Although the authority to issue evidences of indebtedness for specific projects may terminate, the commission may exercise all other powers granted to the commission under this chapter and may comply with any covenants entered into before the applicable termination date.

54-17.2-02.2. Continuing appropriation.

The moneys received by the industrial commission from the sale of evidences of indebtedness and moneys received by the industrial commission or the state agencies and institutions from revenue generated by projects authorized by the legislative assembly, are hereby appropriated as a continuing appropriation for the construction or implementation of the authorized projects and payment of debt service on any evidences of indebtedness issued to finance the projects.

54-17.2-03. Powers.

Except as otherwise limited by this chapter, the commission may:

1. Enter into agreements, including financing agreements, with respect to its projects, operation, properties, and facilities, subject to agreements with holders of evidences of indebtedness.
2. Sue and be sued.
3. Make and enter into all contracts and all agreements necessary or incidental to the performance of its duties and the exercise of its powers.
4. Acquire, own, hold, assign, exchange, lease, mortgage, or pledge or grant security interests in a project or projects in the exercise of its powers and the performance of its duties.
5. Acquire, construct, reconstruct, rehabilitate, improve, alter, or repair, or provide for the acquisition, construction, reconstruction, improvement, alteration, or repair of any project and let, award, and enter into construction contracts, purchase orders, and other contracts with respect thereto in the manner determined by the commission.
6. Sell, lease, assign, transfer, convey, exchange, mortgage, or otherwise dispose of or encumber any project or other property no longer necessary to carry out the public purposes of the commission and, in the case of the sale of any project or property, to accept a purchase money mortgage in connection therewith; and to lease, repurchase, or otherwise acquire and hold any project or property which the commission has sold, let, or otherwise conveyed, transferred, or disposed of.
7. Grant options to purchase any project or to renew any financing agreement entered into by it in connection with any of its projects, on terms and conditions it deems advisable.
8. Acquire by purchase, lease, or otherwise, on terms and conditions and in a manner as it determines to be proper, or, subject to chapter 32-15, by the exercise of the power of eminent domain, except with respect to lands owned by the state or any public lands, any land and other property or equipment, which it may determine is reasonably necessary for any project.
9. Sell, lease, rent, sublease, or otherwise dispose of, to any person, firm, corporation, or limited liability company, any surplus space in any project over and above that sold, leased, rented, subleased, or otherwise disposed of to the state and establish and revise the purchase price, rents, or charges for the surplus space.
10. Manage or operate any project or real or personal property or equipment related to a project whether owned or leased by the commission or any state agency, and enter into agreements with any state agency, any political subdivision, any local governmental agency, or with any person, firm, association, partnership, corporation, or limited liability company, either public or private, for the management of a project or related property.
11. Consent to any modification, amendment, or revision of any contract, lease, or agreement to which the commission is a party, subject to the provisions of any contract with holders of evidences of indebtedness.
12. Issue its evidences of indebtedness and to secure the same and provide for the rights of the holders thereof as provided in this chapter.
13. Invest moneys of the commission not required for immediate use, including proceeds from the sale of any evidences of indebtedness in securities and other investments including evidences of indebtedness as the commission determines to be prudent, subject to any agreement with holders of evidences of indebtedness.
14. Procure insurance against any loss in connection with its property and other assets and operations in such amounts and from such insurers as it deems desirable.
15. Purchase evidences of indebtedness issued by the commission out of any funds or money not pledged to or necessary for some other purpose and hold, cancel, or resell such evidences of indebtedness, subject to any agreement with holders of evidences of indebtedness.
16. Notwithstanding any other provision of law, issue evidences of indebtedness to implement the state facility energy improvement program under section 54-44.5-08.

54-17.2-04. Purpose of commission.

The public purpose of the commission is to promote the general welfare of the citizens of this state by providing financing for projects for use primarily by the state.

54-17.2-05. Transfer of state property to commission - Services by state agencies.

The state may transfer jurisdiction of or title to any property under its control to the commission. All state agencies may render any and all services to the commission as are within the area of their respective governmental functions and as may be required by the commission, including acting as agent for the commission in furtherance of performing its duties.

54-17.2-05.1. Lease of state property to commission - Leaseback to state.

Notwithstanding any other provision in this chapter, the state may lease any project or other property to the commission, in lieu of a transfer of title, and the commission may sublease or leaseback any such project or property back to the state in connection with any financing by the commission under this chapter. Any reference in this chapter to the power or authority of the commission or the state to sell, convey, or lease any project or other property to the other must be deemed to include the power or authority to lease, sublease, or leaseback such project or property, as the case may be.

54-17.2-06. Financing agreements with state agencies authorized - Commencement of payments under financing agreements.

The commission may enter into financing agreements for any project with the state. The financing agreements may be entered into contemporaneously with any financing to be done by the commission and payments under the terms of the financing agreement shall begin at any time after execution of the financing agreement.

54-17.2-07. Terms, conditions, and payment under financing agreements - Automatic biennial extension provisions.

Financing agreements may be entered into by the commission:

1. Upon terms, conditions, and payment provisions, subject to available appropriations, as in the judgment of the commission are in the public interest; and
2. For an original term of not to exceed two years, with an automatic extension of the term of the financing agreement, unless specifically rejected by the legislative assembly, for a term of two years from the expiration of the original term of the financing agreement and for two years from the expiration of each extended term of the financing agreement, until the original term of the financing agreement has been extended for a total number of years to be agreed upon by the parties at a payment which, if paid for the original term and for each of the full number of years for which the term of the financing agreement may be extended, will amortize the total project cost of the project.

The payment must be paid at the times agreed upon by the parties to the financing agreement.

54-17.2-08. State's option to purchase - Conveyance on exercise of option.

A financing agreement must provide that the state may, at the expiration of the original or any extended term, purchase the project at a stated price, which must be the balance of the total project cost not amortized by the payments previously made by the state. The financing agreement must provide that if the option to purchase the project has been exercised or if the financing agreement has been extended for the full number of years which it may be extended, and all payments provided for in the financing agreement have been made and all project costs have been paid, the commission shall convey its interest in the project to the lessee.

54-17.2-09. Insurance and credit enhancements added to payments.

A financing agreement may provide that the state shall provide insurance or, as additional payment under a financing agreement, pay the cost of insuring the project against loss or damage in such sum agreed to by the parties. The financing agreement may also provide for

payment of the cost of such credit enhancements as in the judgment of the commission may be required for sale of the evidences of indebtedness, including bond insurance or letters of credit.

54-17.2-10. Appropriations and funds from which payments are payable - Commission's power to use or sell facilities for other purposes on nonpayment.

A financing agreement must provide that payments due under the financing agreement are payable solely from appropriations to be made by the legislative assembly for such payment, money available to the state not requiring appropriation, money generated from charges made for use of the project, any revenues derived by the commission from the operation of the project, or any combination of such moneys. The financing agreement may provide that the commission upon nonpayment is immediately entitled to the peaceable possession, access, and occupancy of the project and all appurtenances and easements appertaining thereto, and may maintain and operate the project or execute leases for the project or sell the project to political subdivisions of the state or private persons or entities for any purpose.

54-17.2-11. Costs and reserves to be covered by rent and charges or other payments.

Payments under a financing agreement for a project must be sufficient at all times to pay any maintenance and operation costs for the project, unless the maintenance and operation costs are otherwise provided for under the financing agreement, the principal of and interest on any evidence of indebtedness, and a proportion of the administrative expenses of the commission as provided for by each financing agreement, and the reserves as may be provided in the resolutions authorizing the issuance of evidences of indebtedness.

54-17.2-12. Tax exemption of commission's property.

All property owned by the commission is exempt from taxation.

54-17.2-13. Resolutions for evidences of indebtedness authorized - Maximum amount outstanding - Legislative approval required.

The commission may at any time provide by resolution for the issuance of evidences of indebtedness for the purpose of paying all or any part of the cost of one or any combination of projects; provided, however, that no project may be leased by the commission to the state, nor any evidences of indebtedness be sold to raise the funds for payment, acquisition, or construction of a project until the legislative assembly by law authorizes the specific project or projects and declares the project or projects to be in the public interest.

54-17.2-14. Purposes for which evidences of indebtedness issue - Refunding and refinancing - Pledge of income.

To accomplish its purposes, the commission may borrow and issue and sell evidences of indebtedness in an amount or amounts as the commission may determine, but not in excess of legislative authorization, plus costs of issuance, financing, interest during construction, and any evidences of indebtedness funded reserve funds required by agreements with or for the benefit of holders of evidences of indebtedness for the purpose of acquiring, constructing, completing, or remodeling, maintaining, or equipping any project or projects. The commission may refund and refinance the evidences of indebtedness from time to time as often as it is advantageous and in the public interest to do so and may pledge any and all income of the commission, and any revenues derived by the commission or the state from a project or any combination thereof, to secure payment or redemption of the evidences of indebtedness.

54-17.2-15. Evidences of indebtedness authorized - Interest rates - Exemption from taxation - Term.

The commission, pursuant to legislative authorization, may, by resolution, authorize preparation, sale, and issuance of evidences of indebtedness of the commission in amounts and at such times, in fully registered form, with final maturity of not more than thirty years. The evidences of indebtedness may bear the fixed or variable rate or rates of interest and may be sold at the price or prices as the commission may provide at an average net interest cost not in

excess of twelve percent per annum for evidences of indebtedness sold at private sale, except that there is no interest rate ceiling on issues sold at public sale or to the state. The evidences of indebtedness are not subject to taxation by the state or by any county, municipality, or political subdivision in the state. The evidences of indebtedness are not indebtedness of the state or of any officer or agent of the state within the meaning of any statutory or constitutional provision.

54-17.2-16. Revenues, appropriations, funds, and income from which evidences of indebtedness payable.

Evidences of indebtedness are payable solely from:

1. Revenues to be derived by the commission from the operation of a project or projects;
2. Payments from the state pursuant to financing agreements, or from leases to others as provided by this chapter;
3. Funds appropriated by the legislative assembly; and
4. Any other legally available revenue, income, or funds available to the commission.

54-17.2-17. Covenants and contracts with holders of evidences of indebtedness.

In any resolution of the commission relating to the issuance of any evidence of indebtedness, the commission may provide by covenants with the holders of the evidences of indebtedness, to:

1. Secure the evidences of indebtedness.
2. Covenant against pledging all or any part of its revenues, receipts, or proceeds, or against mortgaging or leasing all or any part of its real or personal property when owned or thereafter acquired or against permitting or suffering any lien. Any pledge of revenues, receipts, moneys, funds, levies, sales agreements, service contracts, or other property or instruments made by the commission are valid and binding from the time the pledge is made. The revenues, receipts, moneys, funds, or other property pledged and thereafter received by the commission are immediately subject to the lien of the pledge without any physical delivery or further act, and the lien of any pledge is valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the commission irrespective of whether the parties have notice of the claim. Neither the resolution nor any other instrument by which a pledge under this section is created need be filed or recorded except in the records of the commission.
3. Covenant as to any evidences of indebtedness to be issued and the limitations on the evidence of indebtedness and their terms and conditions as to the custody, application, investment, and disposition of their proceeds, as to the sources and methods of the payment, and as to the rank or priority of the evidence of indebtedness.
4. Provide for the replacement of lost, stolen, destroyed, or mutilated evidences of indebtedness.
5. Provide for the rights and liabilities, power and duties arising upon the breach of any covenant, condition, or obligation; prescribe the events of default and the terms and conditions upon which any or all of the evidences of indebtedness of the commission become or may be declared due and payable before maturity; and provide the terms and conditions upon which the declaration and its consequences may be waived.
6. Vest in a trustee or trustees within or without the state such property, rights, powers, and duties in trust as the commission may determine.
7. Make covenants other than or in addition to the covenants authorized by this chapter of like or different character, and to make the covenants to do or refrain from doing acts and things as may be necessary, or convenient and desirable, to better secure evidences of indebtedness or which, in the absolute discretion of the commission will tend to make its evidences of indebtedness more marketable, notwithstanding that the covenants, acts, or things may not be enumerated in this chapter.

54-17.2-18. Validity of signature by officers.

Evidences of indebtedness must be executed by a member or members of the commission as designated by the commission, or by facsimile signature and the manual signature of a

designated authenticating agent. Any evidences of indebtedness bearing the signature of members in office at the date of signing are valid and binding for all purposes notwithstanding that before delivery any person whose signature appears on the evidences of indebtedness has ceased to be a member.

54-17.2-19. Restrictions on obligation stated on face of evidences of indebtedness.

Evidences of indebtedness must state upon their face that they are payable solely from moneys derived by the commission as provided in this chapter. Evidences of indebtedness must state upon their face that they do not constitute an obligation of the state within the meaning of any statutory or constitutional provision.

54-17.2-20. Disposition of income - Building authority fund.

The proceeds of and any revenue derived from the sale of evidences of indebtedness, charges, fees, or rentals, and all other revenue derived from any project undertaken pursuant to this chapter must be held in trust for the purposes of this chapter, in a special fund known as the building authority fund. Disbursements shall be made from the fund upon the resolution of the commission. The building authority fund established by this chapter may contain such accounts as authorized by the commission.

54-17.2-21. Allocation of sales, use, and motor vehicle excise tax revenues to capital construction fund.

Repealed by S.L. 1993, ch. 38, § 19.

54-17.2-22. Capital construction account.

Repealed by S.L. 1993, ch. 38, § 19.

54-17.2-23. State building authority lease payments - Limitation.

The general fund amount of lease payments for a biennium associated with capital construction projects financed by the industrial commission acting as the state building authority may not exceed the amount equal to a portion of sales, use, and motor vehicle excise tax collections equal to ten percent of an amount, determined by multiplying the quotient of one percent divided by the general sales tax rate that was in effect when the taxes were collected, times the net sales, use, and motor vehicle excise tax collections under chapters 57-39.2, 57-40.2, and 57-40.3. The computation for the authorized general fund lease payments for a biennium must be based on the projected sales, use, and motor vehicle excise tax collections presented to the legislative assembly at the close of the most recently adjourned regular legislative session. Lease payment amounts for any particular project must be calculated as of the date the related bonds are issued.