

## **CHAPTER 40-34 SEWAGE AND GARBAGE DISPOSAL**

### **40-34-01. Disposal of garbage or sewage in municipalities - Acquiring land.**

Any municipality in this state, either individually or jointly by agreement, may own, acquire, construct, equip, extend, and improve, operate, and maintain, either within or without the corporate limits of the municipality, intercepting sewers, including pumping stations, a plant or plants for the treatment, purification, and disposal in a sanitary manner of the liquid and solid wastes, sewage, and night soil of the municipality, or a plant or system for the disposal of the garbage thereof, and may issue bonds therefor as herein prescribed. Any municipality may acquire by gift, grant, purchase, or condemnation necessary lands therefor, either within or without the corporate limits of the municipality and within or without the state of North Dakota. Subject to chapter 32-15, municipalities may invoke and shall have all the rights and privileges granted to public corporations under existing laws with reference to eminent domain for the purpose of acquiring land for the uses mentioned in this section. Any municipality which has outstanding bonds issued pursuant to this chapter may issue additional bonds by the procedure herein prescribed for the purpose of refunding all or any part of such outstanding bonds, whether at or prior to maturity, or for the purpose of providing moneys to be deposited in escrow for the purchase or redemption of such bonds at or prior to maturity. Bonds issued for any of the purposes referred to herein may be combined in a single issue.

#### **40-34-01.1. Municipalities to maintain sanitary conditions on certain roads - Exception.**

It shall be the duty of any incorporated city to maintain in a sanitary condition the road or highway leading to the grounds maintained by said municipality for the disposal of garbage collected in said municipality. Such road shall be kept free from refuse or garbage resulting from the transportation of the same by the municipality maintaining said grounds. Nothing in this section shall be construed to limit the right of a municipality to provide penalties applying to any persons found guilty of depositing refuse or garbage on said road or roads leading to such grounds maintained by the municipality for the disposal of refuse and garbage.

#### **40-34-02. Methods of defraying cost of sewage or garbage disposal improvements or lease.**

The total cost of a sewage or garbage disposal system, or any portion thereof, may be defrayed by the following alternative methods:

1. Out of the general current tax revenues on hand and appropriated for that purpose.
2. Out of the proceeds of the sale of general liability bonds issued in accordance with the procedure and subject to the conditions and limitations prescribed by chapter 21-03, as far as the same are applicable.
3. Partly out of general current tax revenues on hand and appropriated for that purpose and the residue out of the proceeds of the sale of general liability bonds as provided in subsection 2, as the governing body of the municipality shall determine by a majority vote.
4. Partly from moneys secured by the issuance of mortgage bonds secured by the net revenues of the improvement or system and by a mortgage or deed of trust upon the improvement or system issued by the municipality. Bonds issued under this subsection shall not exceed sixty percent of the cost of the improvement, and the remaining forty percent of such cost shall be defrayed as provided in subsection 1, 2, or 3.
5. From moneys secured by the issuance and sale of first mortgage bonds secured by the assets and property of the improvement or system in like manner as provided in subsection 4, except that such bonds may be issued for the total cost of the improvement upon compliance with this subsection. Bonds issued under this subsection shall be secured by a pledge of the net revenues of the improvement or system to be set apart as an interest and sinking fund to pay the principal and interest of such first mortgage bonds as they mature. If the method provided in this subsection

is utilized by any municipality to defray the cost of a sewage disposal system, it, by a resolution of its governing body, shall create the district, provide for and approve the plans and specifications and estimates of the cost, and adopt and publish the resolution declaring the work necessary to be done in accordance with the requirements of chapter 40-22 as far as the same may be applicable. If the owners of property liable to be imposed with the sewage disposal service charges as provided in this subsection shall file with the city auditor, within thirty days after the first publication of the resolution, a written protest against the improvement, the governing body at its next meeting after the expiration of the time for filing protests against the improvement shall hear and determine the sufficiency of the protests. After the hearing has been had, the governing body, if it finds the protests to contain the signatures of the owners of a majority of the property liable to be charged, shall not proceed further with the improvement. If the protests are found insufficient or invalid, the governing body of the municipality may cause the improvement to be made, contract therefor, and defray the cost thereof in the manner provided in this subsection.

A municipality may pay the cost of leasing any sewage systems and all related real and personal property for the collection, treatment, purification, and disposal in a sanitary manner of sewage from the state, or any agency or institution of the state under section 40-34-19, solely from revenues to be derived by the municipality from the ownership, sale, lease, disposition, and operation of the sewage systems; the funds or any other amounts invested by the municipality pursuant to section 21-06-07, or invested on the municipality's behalf by the state, or any agency of the state, in conformity with policies of the industrial commission, including investment in a guaranteed investment contract and any earnings thereon, to the extent pledged therefor; and funds, if any, appropriated annually by the governing body of the municipality or received from federal or state sources.

**40-34-03. Mortgages and mortgage bonds - Issuance over debt limit - Not general obligations - Vote required to issue - Conditions.**

Municipalities may issue mortgage bonds beyond the general limits of the bonded indebtedness prescribed by law for the purpose of defraying the cost, or a part thereof, of a sewage disposal plant and system or of a garbage disposal plant in accordance with the provisions of section 40-34-02. The bonds shall not impose any general liability upon the issuing municipality but shall be paid only out of the revenues received from the service charges as provided in this chapter or from the sale of the property under foreclosure of the mortgage or deed of trust. The bonds shall be sold for not less than ninety-eight percent of par and shall bear interest at a rate or rates resulting in an average annual net interest cost of not more than twelve percent per annum on those issues which are sold at private sale. There is no interest rate ceiling on those issues sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. No bonds shall be issued, however, except upon the affirmative vote of three-fifths or more of the members of the governing body of the issuing municipality, and the form, recitals, maturities, rate of interest, and whether the bonds shall be payable annually or semiannually, shall be determined by the same vote. A municipality is authorized to execute and deliver any mortgage or deed of trust contemplated under this chapter.

**40-34-04. Bonds may be issued by municipality - Term of bonds - Determining conditions.**

Any municipality through its governing body, or any municipalities jointly through their governing bodies, may issue and sell the necessary bonds for the construction and installation of any improvement described in this chapter, including the disposal plant and such intercepting and other sewers as may be necessary to permit the effective operation of such system, and for the purchase of such real and personal property as may be necessary for use in connection with such system. Such bonds shall be payable in not more than thirty years from the date of issuance. The governing body or the respective governing bodies shall determine the denomination, the date, time, and manner of payment of such bonds.

**40-34-05. Supervision and control of plant - Rules and regulations governing - Charges for use of plant - Failure to pay - Collection.**

The governing body of any municipality, or the respective governing bodies of municipalities which may have agreed to own and operate intercepting sewers or sewage disposal plants or garbage disposal plants jointly, may designate certain officials of the municipality or municipalities to have the supervision and control of the sewage disposal plant or plants and of the garbage disposal plant or plants, or either of such plants. The governing body or the respective governing bodies of such municipalities may make all necessary rules and regulations governing the use, operation, and control thereof, and may establish just and equitable rates and charges to be paid for the use of such disposal plant or system and such garbage disposal plant or system, or either thereof, by a person, firm, corporation, or limited liability company whose premises are served thereby. If the established service charge is not paid when due, such sum may be recovered by the municipality or by the municipalities jointly in an action at law, or such sum may be assessed against the premises served and collected and returned in the same manner as other county and municipal taxes are assessed, certified, collected, and returned.

**40-34-06. Sinking fund for payment of interest and principal.**

If a service rate is charged to the users of an improvement made under this chapter, a sufficient portion of the moneys collected for such service shall be set aside as a sinking fund for the payment of the interest on the bonds and the principal thereof at maturity, and shall constitute a special fund which shall be used for no other purpose.

**40-34-07. First mortgage bonds are negotiable.**

All first mortgage bonds issued under the provisions of this chapter may be negotiated in the same manner and with the same legal effect as negotiable instruments under title 41.

**40-34-08. Tax levy to pay deficiency when bonds become due.**

If the last maturing bonds secured by a first mortgage or deed of trust on an improvement, as provided in this chapter, are not paid when they become due, and if a deficiency remains, the governing body of the municipality, or the respective governing bodies of the municipalities, shall levy a tax upon all of the taxable property within the limits of the municipality or municipalities for the payment of such deficiency.

**40-34-09. Action maintained on failure to pay principal or interest of bonds - Court receiver - Sale of property - Redemption - Sheriff's deed.**

If a default occurs in the payment of the principal or interest of any bonds secured by a mortgage or deed of trust on the improvement and such default continues for a period of not less than six months, an action may be commenced in the district court of the county in which such improvement or some part thereof is located, by the holder or holders of not less than one-half of the outstanding past-due bonds or by the legal holder of the deed of trust, when authorized by a like number of bondholders, for the purpose of foreclosing the mortgage or deed of trust securing such bonds. In such action, the court may enter a decree providing for the management and operation of such improvement by a court receiver and for the sale of the property secured by such mortgage or trust deed and for the application of the net revenues arising from the operation of such plant upon the secured debt during the period of redemption, which shall be one year from and after the date of the sale thereof. If there is no redemption from such sale within the time herein provided, a sheriff's deed shall issue to the holder of the certificate of sale. The procedure subsequent to the entry of a foreclosure decree shall be, as far as applicable, that provided in title 32 for the sale of real property under special execution.

**40-34-10. Franchise granted to holder of sheriff's deed to operate property - Contents of franchise.**

If after the issuance of a sheriff's deed as provided in section 40-34-09, it shall be made to appear to the public service commission that it is in the public interest that such utility and

improvement be continued in operation, such commission may grant a franchise to the owners of such utility and improvement to engage in such business and to operate such improvement and utility. Such franchise may:

1. Authorize such owner or owners to charge each person, firm, corporation, or limited liability company owning property from which sewage or garbage is received such fee therefor as may be determined to be reasonable by such commission upon proper application and after notice to the municipality affected and a hearing upon such application;
2. Grant to such owner or owners, under such reasonable rules, regulations, and supervision as may be established by such commission, the right and privilege to lay all intercepting and other sewers and connecting pipes in the public streets and alleys of the municipality or municipalities as may be necessary to receive and conduct the sewage to the disposal plant; and
3. Provide for an accounting from time to time of the gross revenues of the utility or improvement and the application of the net revenues as determined by such commission upon the original secured indebtedness to the end that the holder of such franchise will use the net revenues as determined by such commission to discharge the original secured debt, together with all interest, costs, and other charges which the commission shall determine shall be paid.

**40-34-11. Revesting title and ownership of improvement or utility in municipality.**

When, after notice to the interested parties and due hearing thereon, the public service commission shall determine that the owner or owners of the utility or improvement have been paid in full out of the net revenues arising from the operation thereof, the commission shall issue a certificate of ownership revesting the title and ownership of such utility and improvement in the municipality or municipalities.

**40-34-12. Appeal from decision of public service commission in revesting title - Conditions.**

Any party in interest feeling aggrieved by the determination of the public service commission revesting the title to and ownership of the utility or improvement in the municipality or municipalities may appeal, within sixty days after the date of the issuance of such certificate of ownership or other decision by such commission, to the district court of the county in which such utility or improvement, or some part thereof, is located, for a review and trial de novo of the determination of the public service commission therein. The court, in such a case, may permit the party in possession to continue the operation of such utility and improvement upon the giving of a suitable bond, with such surety and upon such conditions as the court may fix.

**40-34-13. Residue of money remaining after payment of bonds - Disposal.**

After the principal and interest on the bonds secured by a first mortgage or deed of trust on an improvement as provided in this chapter have been fully paid, the revenues of such utility and improvement set apart for the payment of such bonds may be:

1. Used for the repair, improvement, or extension of such utility or improvement;
2. Credited to the interest and sinking fund established for the retirement and payment of the general liability bonds; or
3. Transferred to the general fund,

as the governing body of the municipality or the respective governing bodies of the municipalities may direct by resolution.

**40-34-14. Payment of bonds by taxation - Limitations.**

Municipalities issuing bonds under this chapter, the principal or interest of which are not to be paid out of funds created from service charges as provided in this chapter, may raise such sum annually by taxation as the governing body or the respective governing bodies may deem necessary to pay the interest on such bonds and to create a sinking fund to pay the principal

thereof as it falls due, but the amounts so raised shall not exceed in amount the limitations provided in chapter 21-03.

**40-34-15. Agreements between municipalities within and without state - Acquiring property - Erecting dams - Use of waters - Eminent domain.**

If it is deemed expedient for the safety and health of the people, municipalities of this state may enter into agreements with each other, or jointly or severally with governmental agencies or municipalities outside the state, to erect and maintain intercepting sewers and sewage treatment plants, or may enter into contracts with governmental agencies or municipalities outside the state to furnish to such extraterritorial agencies or municipalities sewage disposal for such compensation and upon such terms and conditions as the parties under such agreement may stipulate. Whenever it shall be convenient or necessary as determined by a majority vote of the governing body or the respective governing bodies of such governmental agencies or municipalities, they may acquire, purchase, own, or maintain lands and personal property within or without this state and may improve the same and erect structures thereon, including dams and damsites. If the governing body of a municipality or the respective governing bodies of municipalities shall determine to do so by a resolution adopted by a majority vote thereof, such municipalities may erect dams upon streams, watercourses, or other bodies of water located within or without this state, or constituting in whole or in part the boundary waters of this state, and may alter or improve the bed, banks, or courses of such streams, watercourses, or bodies of water. In the enjoyment of such power, municipalities may purchase and hold property within and without this state and, subject to chapter 32-15, may exercise the right of eminent domain as provided by the laws of this state, and may enter into contracts and engagements with persons, firms, corporations, limited liability companies, or with municipalities or governmental agencies located without this state for like purposes.

**40-34-16. Contractual relationship between municipalities - Approval - Operating as an independent enterprise.**

Whenever governmental agencies or municipalities desire to act under the provisions of this chapter, the relationship established between them shall be fixed by contract. Such contracts may be made by governmental agencies and municipalities under the provisions of this chapter in the manner and to the extent that natural persons may make contracts for like purposes, subject only to the limitations provided by this chapter. Such contracts, before becoming operative, shall be approved by a vote of the majority of the members of each of the respective governing bodies of the municipalities or governmental agencies operating under the provisions of this chapter. If any municipality desires to act under the provisions of this chapter without establishing a relationship with another municipality or agency, it may proceed as a separate and independent enterprise.

**40-34-17. Municipality which authorized bond issue prior to March 3, 1933, may finance under this chapter.**

Any municipality, which has obtained authority prior to March 3, 1933, to issue and sell bonds for the construction and installation of any of the improvements mentioned in this chapter may defray the cost of such improvements entirely out of the proceeds of the sale of such bonds, or it may defray the cost of such improvement in part out of the proceeds of the sale of such general liability bonds and in part out of the proceeds of the sale of mortgage bonds as provided in this chapter, except that the mortgage indebtedness upon such improvement, when the same is created originally, shall not exceed three-fifths of the total cost of such improvement. Bonds issued under this section which are a general liability of the municipality shall not be issued except upon a vote of the people as provided in chapter 21-03.

**40-34-18. Power granted by chapter considered an addition.**

The power given to municipalities in this chapter shall be in addition to and not in derogation of any power existing in any municipality under any provision of the laws of this state.

**40-34-19. Agreements between municipalities and with the state or private parties -  
Leasing property.**

Notwithstanding any other law, any municipality of the state, either individually or jointly by agreement, may enter agreements to lease to the state, or any agency or institution of the state, or to any person for such compensation and upon such terms and conditions as the parties under such agreement may stipulate, all or part of, or an undivided or other interest in, its sewage system and all related real and personal property for the collection, treatment, purification, and disposal in a sanitary manner of sewage. In addition, any municipality of the state, either individually or jointly by agreement, may enter agreements to lease from the state, or any agency or institution of the state, or from any person all or part of, or an undivided or other interest in, its sewage system and all related real and personal property for the collection, treatment, purification, and disposal in a sanitary manner of sewage for such compensation and upon such terms and conditions as the parties under such agreement may stipulate. Such agreements must be authorized by resolution of the governing body of a municipality upon a majority vote of the members of the governing body. For the purposes of this section, such agreements include any lease, sublease, purchase agreement, lease-purchase agreement, installment purchase agreement, leaseback agreement, or other contract, agreement, instrument, or arrangement pursuant to which any rights, interests, or other property are transferred to, by, or from any party to, by, or from one or more parties, and any related documents entered or to be entered, including any operating agreement, service agreement, indemnity agreement, participation agreement, loan agreement, or payment undertaking agreement. A lease obligation under this section may not exceed a term of ninety-nine years. A lease obligation under this section does not constitute an indebtedness of the municipality or a pledge of the full faith and credit or unlimited taxing resources of the municipality. Notwithstanding any other law, a municipality may solicit and accept one or more proposals for a lease transaction, including the arrangement thereof, under this section. The municipality may, by resolution of the governing body upon a majority vote of the members of the governing body, accept a proposal that it determines to be in the public interest.