

## **CHAPTER 21-03 BONDS**

### **21-03-01. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Governing body" means a board of county commissioners, city council, board of city commissioners, school board of any school district, and the similarly constituted and acting board of any other municipality enumerated in subsection 3.
2. "Initial resolution" means any resolution or ordinance adopted pursuant to section 21-03-09, by which a proceeding is instituted for the purpose of authorizing a municipality to borrow money and issue bonds.
3. "Municipality" means a county, city, township, public school district, park district, recreation service district, or rural fire protection district empowered to borrow money and issue written obligations to repay the same out of public funds or revenue.
4. "Population of a municipality" means its population according to the last officially published United States or state census, whichever was taken latest.
5. "Recorded" means copied at length in the record book required by section 21-03-17.
6. "Value of taxable property" or "the assessed valuation" of a municipality means the assessed value of all taxable property in such municipality as determined pursuant to chapter 57-02.

### **21-03-02. Provisions not applicable to certain issues.**

This chapter is not applicable:

1. To issues of bonds, warrants, or other forms of public securities issued on account of public improvements and for the payment of which special assessments are or shall be levied upon and against property benefited thereby which do not constitute, at the time of their issuance, a general obligation or fixed liability of the municipality issuing the same, nor the portion of any such issue payable by general taxation on account of assumption of a portion of the cost of such improvement under section 40-24-10 or any similar law. Nothing in this subsection may be construed to prevent the issuance of bonds by any city for the purposes specified in subdivision g of subsection 2 of section 21-03-06.
2. To drainage bonds or irrigation bonds.
3. To borrowing of money in anticipation of tax collections by means of certificates of indebtedness, as provided by chapter 21-02.
4. To revenue bonds under the provisions of chapter 40-35.
5. To bank or credit union loans authorized in title 21.

### **21-03-03. Irregularities do not vitiate bonds.**

Defects and irregularities in any proceeding had in substantial compliance with this chapter, when the issue is for a lawful purpose and is unaffected by fraud and does not exceed any constitutional or statutory limitation of amount, do not invalidate the bonds issued nor the indebtedness incurred after the bonds have been sold and the proceeds thereof received by the municipality, nor after the performance of a contract has been entered upon by a party who is to receive the said bonds or the proceeds thereof as consideration for said contract.

#### **21-03-03.1. Validation of certain school district bond issues.**

Omitted.

### **21-03-04. Grant of power to borrow - General limitations of indebtedness.**

Every municipality may borrow money and issue municipal obligations thereof for the purpose specified and by the procedure provided in this chapter, and for no other purpose and in no other manner, except as otherwise provided in section 21-03-02. No municipality may incur indebtedness in any manner or for any purpose in an amount which, with all other

outstanding indebtedness of the municipality, exceeds five percent of the assessed value of the taxable property therein, except:

1. Any incorporated city, by a two-thirds vote of the qualified voters thereof voting upon said question at a general or special election, may increase such limit of indebtedness three percent on such assessed value beyond said five percent limit, and a school district, by a majority vote of the qualified voters thereof voting upon said question at a general or special election, may increase such limitation of indebtedness five percent on such assessed value beyond the said five percent limit.
2. Any county or city, when authorized by a majority vote of the qualified voters thereof voting upon said question at a general or special election, may issue bonds upon any revenue-producing utility owned by such county or city, for the purchase or acquisition of such utility, or the building or establishment thereof, in amounts not exceeding the physical value of such utility, industry, or enterprise.
3. Any incorporated city, if authorized by a majority vote of the qualified voters thereof voting upon said question at a general or special election, may become indebted in any amount not exceeding four percent of such assessed value, without regard to the existing indebtedness of said city, for the purpose of constructing or purchasing waterworks for furnishing a supply of water to the inhabitants of such city or for the purpose of constructing sewers, and for no other purposes whatever, but the aggregate of such additional indebtedness for waterworks and sewers never may exceed such four percent over and above the limitations of indebtedness in this section heretofore prescribed.

All bonds or obligations in excess of the amount of indebtedness permitted by this chapter, given by any municipality as herein defined, are void.

#### **21-03-05. Limitation applicable to independent municipal indebtedness.**

The amount limited in section 21-03-04 includes such indebtedness only as may be incurred independently by a municipality for its own separate purposes and does not include any indebtedness, in whole or in part, that may be incurred independently by any other municipality for its own separate purposes, even though the territory and taxable property of either municipality constitutes the whole or a part of the territory and taxable property of the other.

#### **21-03-06. Purposes and specific limitations of bond issues.**

Municipalities are empowered to borrow money, subject to the general limitations of amounts prescribed by sections 21-03-04 and 21-03-05, and subject, in certain cases, to the further limitations prescribed by the section, and to issue bonds thereof for the purposes enumerated in the section. Such bonds may be issued:

1. By any county:
  - a. To provide county buildings and to acquire land for county purposes, but all outstanding unpaid bonds for this purpose may not exceed in amount at any one time five percent of the value of taxable property in such county.
  - b. To construct, enlarge, or repair, or aid in the construction, enlargement, or repair, of bridges within or without the county, but all outstanding unpaid bonds for this purpose may not exceed in amount at any one time one percent of the value of taxable property in the county.
  - c. To provide funds for the original construction and for the improvement and maintenance of highways, but all outstanding unpaid bonds for these purposes may not exceed in amount at any one time four percent of the value of taxable property in such county.
  - d. To provide funds for the construction of solid waste disposal facilities, for the acquisition of real estate for that purpose, for facilities and equipment for the collection of solid wastes, and for facilities and equipment to dispose of waste products.
  - e. To provide money for the payment of any deficiency in the fund of any special improvement district whenever the special assessment or taxes levied and

collected for the specific improvements are insufficient to pay the principal or interest of any special improvement warrants or bonds issued for the improvement and due and unpaid, but only to the extent of that deficiency.

- f. To provide funds for the acquiring, laying out, equipping, and improving parks and recreational facilities and to acquire land for these purposes.
  - g. To provide funds to purchase not to exceed two hundred forty acres [97.12 hectares] of real estate and construct buildings and improvements for the conduct of a county fair.
2. By any city:
- a. For the erection, purchase, construction, enlargement, or repair of municipal or public buildings for the following purposes: city halls, fire protection buildings, waterworks buildings, police stations, city markets, public baths, hospitals, libraries, museums, auditoriums, armories, gymnasiums, and music halls; and to purchase and acquire sites for such buildings, and for the equipment and furnishing thereof.
  - b. For the purchase of fire engines and other equipment and materials for fire protection and for the purchase, construction, and installation of pumps, watermains, reservoirs, and other necessary facilities for fire protection.
  - c. For the construction and extension of water plants or the purchase of existing plants; the construction and improvement of watermains, sewers, and drains; or for the joint construction and establishment of a water and sewer system; or for the erection, planning, construction, and establishment of a sewage disposal plant or system; or for the erection, construction, and enlargement of garbage disposal plants and to purchase sites and grounds, either within or without the limits of the city, for the disposal of sewage, garbage, and other refuse; or for the leasing or purchase of lands, either within or without the limits of the city, for the purpose of providing airports or landing fields or for the construction of buildings thereon or the procuring of equipment therefor; and other like municipal purposes.
  - d. To construct, acquire, enlarge, extend, or maintain any plant or equipment, or any part of a plant or equipment, for the production, transmission, delivery or furnishing of heat, light, or power, either directly or indirectly, to or for the public, or to enlarge and extend such plants or equipment or any part thereof. This subdivision may not be construed as an amendment to sections 40-33-01 to 40-33-09, nor to section 40-33-15.
  - e. To purchase, acquire, or establish any public utility and in cities having a population of more than five thousand to purchase or acquire a public transportation system. This subdivision may not be construed as impairing, altering, or affecting the powers of the public service commission in any such proceeding.
  - f. To provide for acquiring, laying out, and improving parks, parkways, park buildings, public drives, boulevards, highways, streets, state highways, and cemeteries, and to acquire land for these purposes.
  - g. To provide money for the payment of any deficiency in the fund of any special improvement district whenever the special assessment or taxes levied and collected for the specific improvements are then insufficient to pay the principal or interest of any special improvement warrants issued for such improvement and then due and unpaid, but only to the extent of such deficiency.
  - h. For the purchase of automobiles, trucks, tractors, flushers, sprinklers, street sweepers, graders, rollers, loaders, plows, conveyors and other machinery, equipment and materials for the cleaning, flushing, and sweeping of any street, highway, avenue, alley, or public place within the city, the removal of snow and ice therefrom, and other like municipal purposes.
  - i. For the purchase of trucks, garbage collectors, and other vehicles, equipment and materials for the collection, removal, and disposal of garbage, rubbish, ashes, refuse, and other wastes within the city.

- j. To provide for the acquiring and constructing of parking lots and facilities for motor vehicle parking.
  - k. To provide funds for the erection, purchase, construction, enlargement, or repair of bridges, and to purchase and acquire necessary real estate, sites, or easements for such bridges.
  - l. To provide funds for all works in connection with flood control and the necessary land or easements for such flood control works.
  - m. To provide required matching funds for a capital construction project at a state institution of higher education located within the city for which an appropriation has been made by the legislative assembly. Bonds issued under this subdivision are deemed to be issued for corporation purposes under subsection 5 of section 40-05-01.
3. Repealed by S.L. 1967, ch. 323, § 285.
  4. By any public school district, or the school district of the city of Fargo, to purchase, erect, enlarge, and improve school buildings and teacherages, to acquire sites therefor and for playgrounds, to furnish and equip the same with heat, light, and ventilation or other necessary apparatus, to pay advance rentals to the state school construction fund, and also to purchase schoolbus equipment which must meet the standards set up by the state superintendent of public instruction and the director of the department of transportation.
    - 4.1. By any school district having a community or junior college or off-campus educational center as provided in chapter 15-18 which has an enrollment of one thousand or more students, upon motion of the governing body, for capital construction purposes, including the construction and equipping of new buildings or repairing or renovating and equipping existing buildings. The governing body may levy a tax not exceeding two mills on the dollar of the taxable valuation of the school district for the purpose of paying the principal and interest on bonds issued pursuant to this subsection. The mill levy authorized by this subsection is in addition to any mill levy limitations provided by law. The total principal amount of bonds issued pursuant to this subsection may not exceed seven hundred thousand dollars, and any indebtedness incurred by a school district must be within debt limitations established by law. Bonds issued under this subsection must never become a general obligation of this state.
  5. By any township:
    - a. For the erection of a township hall and the purchase of a site therefor; and
    - b. For the construction of roads and bridges, but all outstanding unpaid bonds for road and bridge purposes may not exceed in amount at any one time one and one-half percent of the value of the taxable property in such township.
  6. By any park district which constitutes a distinct municipality, to provide for acquiring, laying out, and improving parks, parkways, boulevards, and pleasure drives, and to acquire land for these purposes, but such indebtedness may not at any time exceed one percent of the value of the taxable property in such park district.
  7. By any municipality as herein defined:
    - a. For the purpose of paying any final judgment obtained against the municipality within the state of North Dakota in case the governing body does not deem it advisable to pay such judgment out of current revenues. In case the bonds authorized by this subsection cannot be sold in accordance with this chapter, they may be issued to the judgment creditor in payment of such judgment.
    - b. To provide necessary funds for the payment of the principal and interest of bonds of such municipality, due or about to become due, for the payment of which the municipality has not sufficient funds, but only to the extent of such deficit; or to refund outstanding bonds of the municipality which are called for redemption and prepayment in accordance with their terms, or by the consent of the holders thereof, within six months from the date of the refunding bonds, when in the judgment of the governing body the best interests of the municipality will be served thereby, through the reduction of interest cost or the extension of maturities.

- c. To refund outstanding bonds not yet due or to become due or subject to redemption and prepayment within six months, when in the judgment of the governing body the best interests of the municipality will be served thereby, through the reduction of debt service costs or the extension or adjustment of maturities in relation to the resources available for their payment. The proceeds of the refunding bonds, including any premium and accrued interest, must be deposited in escrow with a suitable bank or trust company, having its principal place of business within or without the state, and must be invested in such amount and in securities maturing on such dates and bearing interest at such rates as are required to provide funds sufficient to pay when due the interest to accrue on each bond refunded to its maturity or, if it is prepayable and called for redemption, to an earlier prior date upon which it may be called for redemption, and to pay and redeem the principal amount of each such bond at maturity or, if prepayable and called for redemption, at the earlier redemption date, and pay any premium required for redemption on such date; or in the case of a crossover refunding, must be invested in securities irrevocably appropriated to the payment of principal and interest on the refunding bonds until the date the proceeds are applied to the payment or redemption of the bonds to be refunded. The governing body's resolution authorizing the refunding bonds shall irrevocably appropriate for these purposes the escrow fund and all investments thereof, which must be held in safekeeping by the escrow agent, and all income therefrom, and may provide for the call for redemption of all prepayable bonds in accordance with their terms. The securities to be purchased with the escrow fund must be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: banks for cooperatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association. Such securities must be purchased simultaneously with the delivery of the refunding bonds. Moneys on hand in the sinking fund maintained for the payment of the outstanding bonds, and not immediately needed for the payment of interest or principal due, or other legally available funds of the municipality may likewise be deposited in the escrow fund and invested in the same manner as the proceeds of the refunding bonds, to the extent consistent with the provisions of resolutions authorizing the outstanding bonds.
8. By any recreation service district:
    - a. For the construction and extension of water plants or the purchase of existing plants; the construction and improvement of watermains, sewers, and drains; or for the joint construction and establishment of a water and sewer system; or for the erection, planning, construction, and establishment of a sewage disposal plant or system; or for the erection, construction, and enlargement of garbage disposal plants and to purchase sites and grounds, either within or without the limits of the recreation service district, for the disposal of sewage, garbage, and other refuse; and other like recreation service district purposes.
    - b. To provide for acquiring, laying out, and improving parks, parkways, park buildings, public drives, boulevards, highways, streets, state highways, and to acquire land for these purposes.
    - c. To provide money for the payment of any deficiency in the fund of any special improvement district whenever the special assessment or taxes levied and collected for the specific improvements are then insufficient to pay the principal or interest of any special improvement warrants issued for such improvement and then due and unpaid, but only to the extent of such deficiency.
    - d. For the purchase of trucks, garbage collectors, and other vehicles, equipment, and materials for the collection, removal, and disposal of garbage, rubbish, ashes, refuse, and other wastes within the recreation service district.
    - e. For the purpose of providing services described in section 11-28.2-04.

- f. For the purpose of dredging any waters or waterways within or contiguous to the recreation service district.
9. By any rural fire protection district for the purchase of such firefighting equipment, ambulances, or other emergency vehicles, or the acquisition, construction, and equipping of such real property and improvements thereto, as is necessary and proper to carry out the general fire protection program of the district.

**21-03-06.1. School district voter approval of building authority or other indirect funding methods - Building construction project approval.**

1. Notwithstanding any other provision of law, a school board may not enter an agreement pursuant to internal revenue service revenue ruling 63-20 under which payments of any kind would be required by the school district to any building authority or other entity that incurs indebtedness or other obligation in connection with acquisition, improvements, or construction of any property or structure at a total cost of four million dollars or more to be used by the school district unless the agreement has been approved by a vote of a majority of the qualified electors of the school district voting on the question at a regular or special school district election if the agreement is for acquisition, improvements, or construction of any property or structure for which an election would be required if the school district undertook the acquisition, improvements, or construction project through issuance of bonds of the school district.
2. The school board of a school district may not enter an agreement pursuant to internal revenue service revenue ruling 63-20 under which payments of any kind would be required by the school district to any building authority or other entity that incurs indebtedness or other obligation regarding construction, purchase, repair, improvement, modernization, or renovation of any building or facility to be used by the school district without approval by the superintendent of public instruction in the manner provided in section 15.1-36-01, if the approval by the superintendent of public instruction would be required for the project under section 15.1-36-01 if the school district undertook the project itself.

**21-03-07. Election required - Exceptions.**

No municipality, and no governing board thereof, may issue bonds without being first authorized to do so by a vote equal to sixty percent of all the qualified voters of such municipality voting upon the question of such issue except:

1. As otherwise provided in section 21-03-04.
2. The governing body may issue bonds of the municipality for the purpose and within the limitations specified by subdivision e of subsection 1 of section 21-03-06, subdivision g of subsection 2 of section 21-03-06, and subsections 4.1 and 7 of section 21-03-06 without an election.
3. The governing body of any municipality may issue bonds of the municipality for the purpose of providing funds to meet its share of the cost of any highway project undertaken under an agreement entered into by the governing body with the United States government, the director of the department of transportation, the board of county commissioners, or any of them, including the cost of any construction, improvement, financing, planning, and acquisition of right of way of a bridge eligible for matching funds, highway routed through the municipality and of any bridges and controlled access facilities thereon and any necessary additional width or capacity of the bridge or roadway thereof greater than that required for federal or state bridge or highway purposes, and of any necessary relaying of utility mains and conduits, curbs and gutters, and the installation of utility service connections and streetlights. The portion of the total cost of the project to be paid by the municipality under the agreement, including all items of cost incurred directly by the municipality and all amounts to be paid by it for work done or contracted for by other parties to the agreement, may not exceed a sum equal to thirty percent of the total cost, including engineering and other incidental costs, of all construction and reconstruction work to be done plus fifty percent of the total cost of all right of way to be acquired in

connection therewith. The initial resolution authorizing issuance of bonds under this subsection must be published in the official newspaper of the municipality. Within sixty days after publication, an owner of taxable property within the municipality may file with the auditor or chief fiscal officer of the municipality a written protest against adoption of the resolution. A protest must describe the property that is the subject of the protest. If the governing body finds protests have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property in the municipality, as most recently finally equalized, all further proceedings under the initial resolution are barred. Nothing herein may be deemed to prevent any municipality from appropriating funds for or financing out of taxes, special assessments, or utility revenues any work incidental to any such project, in the manner and to the extent otherwise permitted by law, and the cost of any work so financed may not be included in computing the portion of the project cost payable by the municipality, within the meaning of this subsection, unless the work is actually called for by the agreement between the municipality and the other governmental agencies involved.

4. The governing body of any city may also by resolution adopted by a two-thirds vote authorize and issue general obligation bonds of the city for the purpose of providing funds to pay the cost of any improvement of the types stated below, to the extent that the governing body determines that such cost should be paid by the city and should not be assessed upon property specially benefited thereby; provided that the initial resolution authorizing such bonds must be published in the official newspaper, and any owner of taxable property within the city may, within sixty days after such publication, file with the city auditor a protest against the adoption of the resolution. If the governing body finds such protests to have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the city, as theretofore last finally equalized, all further proceedings under such initial resolution are barred. This procedure is authorized for the financing of the following types of improvements:
  - a. Any street improvement, as defined in subsection 2 of section 40-22-01, to be made in or upon any federal or state highway or any other street designated by ordinance as an arterial street.
  - b. The construction of a bridge, culvert, overpass, or underpass at the intersection of any street with a stream, watercourse, drain, or railway, and the acquisition of any land or easement required for that purpose.
  - c. Any improvement incidental to the carrying out of an urban renewal project, the issuance of bonds for which is authorized by subsection 4 of section 40-58-13.

Nothing herein may be deemed to prevent any municipality from appropriating funds for or financing out of taxes, special assessments, or utility revenues any work incidental to any such improvement, in the manner and to the extent otherwise permitted by law.

5. The governing body of any city may also by resolution adopted by a two-thirds vote dedicate the mill levy authorized by section 57-15-42 and may authorize and issue general obligation bonds to be paid by the dedicated levy for the purpose of providing funds for the purchase, construction, reconstruction, or repair of public buildings or fire stations; provided, that the initial resolution authorizing the mill levy dedication and general obligation bonds must be published in the official newspaper, and any owner of taxable property within the city may, within sixty days after publication, file with the city auditor a protest against the adoption of the resolution. Protests must be in writing and must describe the property which is the subject of the protest. If the governing body finds such protests to have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the city, as theretofore last finally equalized, all further proceedings under the initial resolution are barred.
6. The governing body of any county may also by resolution adopted by a two-thirds vote dedicate the tax levy authorized by section 57-15-06.6 and may authorize and issue

general obligation bonds to be paid by the dedicated levy for the purpose of providing funds for the purchase, construction, reconstruction, or repair of regional or county correction centers, or parks and recreational facilities; provided, that the initial resolution authorizing the tax levy dedication and general obligation bonds must be published in the official newspaper, and any owner of taxable property within the county may, within sixty days after publication, file with the county auditor a protest against the adoption of the resolution. Protests must be in writing and must describe the property which is the subject of the protest. If the governing body finds such protests to have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the county, as theretofore last finally equalized, all further proceedings under the initial resolution are barred.

7. The governing body of any public school district may also by resolution adopted by a two-thirds vote dedicate the tax levies as authorized by section 15.1-09-47, 15.1-09-49, or 57-15-16 and may authorize and issue general obligation bonds to be paid by these dedicated levies for the purpose of providing funds for the purchase, construction, reconstruction, or repair of public school buildings or for the construction or improvement of a project under section 15.1-36-02 or 15.1-36-08. The initial resolution authorizing the tax levy dedication and general obligation bonds must be published in the official newspaper of the school district, and any owner of taxable property within the school district may, within sixty days after publication, file with the business manager of the school district a protest against the adoption of the resolution. Protests must be in writing and must describe the property that is the subject of the protest. If the governing body finds the protests to have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the school district, as theretofore last finally equalized, all further proceedings under the initial resolution are barred.
8. The governing body of any city having a population of twenty-five thousand persons or more may use the provisions of subsection 3 to provide funds to participate in the cost of any construction, improvement, financing, and planning of any bypass routes, interchanges, or other intersection improvements on a federal or state highway system which is situated in whole or in part outside of the corporate limits of the city; provided, that the governing body thereof shall determine by resolution that the undertaking of such work is in the best interest of the city for the purpose of providing access and relieving congestion or improving traffic flow on municipal streets.
9. The governing body of a municipality or other political subdivision, located at least in part within a county that is included within a disaster or emergency executive order or proclamation of the governor under chapter 37-17.1, may by resolution adopted by a two-thirds vote authorize and issue general obligation bonds of the political subdivision without an election for the purpose of providing funds to pay costs associated with the emergency condition. The political subdivision may dedicate and levy taxes for retirement of bonds under this subsection and such levies are not subject to limitations as otherwise provided by law.
10. The governing board of any county, city, public school district, park district, or township may by resolution adopted by a two-thirds vote dedicate the tax levy authorized by section 57-15-41 and authorize and issue general obligation bonds to be paid by the dedicated levy for the purpose of providing funds to prepay outstanding special assessments made in accordance with the provisions of title 40 against property owned by the county, city, public school district, park district, or township.

**21-03-08. Maximum interest rate, maturity, and denominations.**

No bonds issued under the provisions of this chapter may bear interest at a rate or rates and be sold privately at a price resulting in an average net interest cost higher than twelve percent per annum. 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 issued under this



chapter may run for a longer period than twenty years from their date. The bonds may not bear a date earlier than the date of the election authorizing their issuance, if such election is required, nor earlier than the date of the adoption of the resolution of the governing body determining to issue bonds for which no election is required.

**21-03-09. Initial resolution - Form.**

Proceedings for the issuance of bonds under the authority of this chapter must be instituted by the adoption of an initial resolution therefor. Such initial resolution must state:

1. The maximum amount of bonds proposed to be issued.
2. The purpose for which they are proposed to be issued.
3. The assessed valuation of all taxable property in the municipality as defined in section 21-03-01.
4. The total amount of bonded indebtedness of the municipality.
5. The amount of outstanding bonds of the municipality issued for a similar purpose.
6. Any other statement of fact deemed advisable by the governing body or voters proposing the same.

**21-03-10. Initial resolution - How adopted.**

The initial resolution may be:

1. Adopted by a majority vote of the governing body at any regular meeting thereof or at any special meeting of which notice has been given as required by law, without any previous action thereon or request therefor by the qualified electors or property owners.
2. Proposed by filing a copy thereof in the office of the auditor or secretary of the municipality, together with a petition signed by qualified electors of the municipality aggregating in number one-fourth of the number of qualified electors of the municipality, as shown by the pollbook for the last preceding annual or general election held therein, or if such pollbook was not kept, then as shown by a census of the qualified electors of such municipality verified by the affidavit of one of such petitioners. Such petition must ask that an election on the question of issuing such bonds be called. Upon the filing of such proposed initial resolution and petition, the governing body shall call such election in the manner specified by section 21-03-11.

**21-03-10.1. School districts - Use of bond funds.**

1. The initial resolution or petition providing for the issuance of bonds, whether adopted by a majority vote of the school board of a school district or proposed by the qualified electors of the school district as provided for in section 21-03-10, may, within the discretion of those proposing such initial resolution or petition, provide for a specific school plan for which the proceeds of the bond issue must be exclusively used except as otherwise provided in section 21-03-42. Such plan must designate the general area to be served by expenditure of bond proceeds for school purposes. The area intended to be served must be described in the plan, but need not be described in the bond election ballot.
2. A bond election ballot form in substantially the form prescribed in section 21-03-13 must be used in a school district bond election. After approval of the initial resolution by the number of qualified electors required by section 21-03-07, the proceeds of the bond issue may be used only for the purpose and in the manner designated by the school plan except as herein provided.
3. After approval of the bond issue, no change may be made in the purpose of expenditure of the bond proceeds except that, upon a favorable vote of sixty percent of the qualified electors residing in any specific area intended to be served as provided in subsection 1, material changes may be made in such plan as it affects said area to the extent such changes do not conflict with contractual obligations incurred.

**21-03-11. Elections - When and how called and held.**

Upon or after the adoption of an initial resolution by the governing body, or at the first meeting of the governing body held after the filing of a petition and proposed initial resolution by the qualified electors as specified in subsection 2 of section 21-03-10, the governing body by resolution shall provide for submitting to the qualified electors of the municipality the question whether the initial resolution shall be approved. The date of the election must be not less than twenty days after the passage of the initial resolution by the governing body or in the filing of a sufficient petition therefor by the qualified electors. The governing body shall designate the date of the election, the polling hours, and polling place, which must be the same as for municipal elections therein, and shall appoint an inspector, two judges, and two clerks of election for each polling place. In case of the absence of any election official, or the official's inability to act at the opening of the polls, the remaining election officials for the polling place shall appoint a qualified elector to fill the vacancy. The election must be conducted and the returns thereof made and canvassed as in the case of elections of members of the governing body of the municipality.

**21-03-12. Notice of election to be given.**

The auditor, secretary, or similarly acting officer, by whatever name designated, of the municipality shall give notice of election by causing a notice thereof to be published once each week for at least two weeks prior to the date thereof in the official newspaper of such municipality, if any, or if it has none, in any newspaper published therein, or if no newspaper is published therein, then by posting copies of such notice in five public places in the municipality. The date of such posting or first publication must be at least fifteen days before the date of such election, exclusive of the day of such posting or first publication. Such notice must specify the date, polling hours, and polling places of such election and must contain a complete copy of the initial resolution and a statement that the question to be submitted thereat shall be whether said initial resolution shall be approved. If said question is to be submitted at a municipal election, the notice herein prescribed may be separate from the notice of such municipal election and may refer to the notice of such municipal election for the designation of polling places.

**21-03-13. Ballot - Contents.**

The ballot for a bond election must be separate from other ballots used on the same day for other elections, and must be written or printed, and must state the question in substantially the following form:

Shall the \_\_\_\_\_ (here inserting the name of the municipality) issue its bonds in the amount of not to exceed \$\_\_\_\_\_, (here inserting the amount) maturing within a maximum of \_\_\_\_\_, (here inserting the duration) resulting in an estimated additional millage of \_\_\_\_\_ (here inserting the number of mills) mills, equal to \$\_\_\_\_\_ (here inserting the equivalent in dollars) on each \$1,000 of taxable valuation for the first taxable year, for the purpose of \_\_\_\_\_ (here inserting the purpose)?

Yes   
No

Spoiled or blank ballots cast at such election may not be counted for or against the proposed issue.

**21-03-14. Bonds issued without an election.**

Proceedings for the issuance of bonds under this chapter, if no election is required, must be instituted by a resolution of the governing body containing the facts required for an initial resolution as prescribed by section 21-03-09. At or after the adoption of the resolution, the governing body may proceed to sell, issue, and deliver the bonds as hereinafter provided for the sale, issuance, and delivery of bonds.

**21-03-15. Direct, annual, irrevocable tax.**

The governing body of every municipality issuing bonds under the authority of this chapter, before the delivery thereof, shall levy by recorded resolution or ordinance a direct, annual tax

which, together with any other moneys provided by, or sources of revenue authorized by, the legislative assembly, shall be sufficient in amount to pay, and for the express purpose of paying, the interest on such bonds as it falls due, and also to pay and discharge the principal thereof at maturity. The municipality shall be and continue without power to repeal such levy or levies or to obstruct the collection of any such tax until such payments have been made or provided for, except that if the governing body in any year makes an irrevocable appropriation to the sinking fund of moneys actually on hand, or if there is on hand in the sinking fund an amount that would be sufficient to retire the bonds, the governing body shall cause its recording officer to certify the fact and amount to the county auditor with the direction that the county auditor should reduce by the amount so certified the amount otherwise to be included in the tax rolls next thereafter prepared. A copy of such resolution or ordinance must be certified to and filed with the county auditor, and after the issuance of such bonds, any such tax on property from year to year must be carried into the tax roll of the municipality and collected as other property taxes are collected. No further annual levy for that purpose is necessary. The governing body may, in its discretion and in anticipation of the sale of bonds, at any time after the issuance of bonds has been authorized by the electors or by resolution of the governing body when no election is required, levy and certify to the county auditor for collection a portion of the tax herein required, which must be credited against the amount otherwise required to be levied after the bonds have been sold. Any other tax or source of revenue authorized by the legislative assembly for such purposes and imposed or pledged by the municipality for those purposes is likewise irrevocable and subject to the same conditions and limitations as any taxes levied on property for the same purposes. Any annual or periodic amounts provided for the municipality issuing such bonds by the legislative assembly out of state funds for paying the interest and principal of such bonds constitute an irrevocable and continuing appropriation until the liability for all interest and principal payments of the bonds have been satisfied. When insufficient funds are available to pay the matured bonds, the county auditor shall notify the governing body of such municipality of such deficiency and the governing body thereupon may levy a direct tax on the taxable property to pay said deficiency and interest thereon. If the governing body of the issuing municipality no longer exists, the county auditor shall levy a direct tax against the taxable property in the original issuing municipality to pay said deficiency and the interest thereon. The manner of levy, certification, and collection of said tax must be the same as provided by this section for the levy, certification, and collection of taxes by this section. When such bonds are further sustained by revenue of a revenue-producing utility, industry, or enterprise, said resolution or ordinance may provide that the tax to be levied and assessed may be reduced by such amount and under such conditions as must be determined in said resolution or ordinance so long as adequate provision is always made for the payment of such bonds and interest thereon.

**21-03-16. Authority to borrow and issue bonds - When complete.**

Every municipality which has first complied with all requirements prescribed for and made applicable to it by this chapter, but not otherwise, may borrow money and issue and sell its municipal bonds to the amount and for the purpose or purposes specified in the initial resolution.

**21-03-17. Record of proceedings.**

Every municipality shall provide and keep a record book in which its auditor or secretary shall record a full and correct statement of every step or proceeding had or taken in the course of authorizing and issuing municipal bonds, including a statement of the affirmative and negative votes cast by the electors.

**21-03-18. Form and contents of bonds.**

Every municipal bond must be a negotiable instrument payable to bearer, or to bearer or the registered owner, with or without interest coupons attached, interest to be payable annually or semiannually at the rate or rates specified in the accepted bid for the purchase of said bonds. Each bond must specify the time and place for payment of the principal and interest, and must be numbered consecutively with the other bonds of the same issue, which must begin with

number one and continue upward, or if so directed by the governing body, must begin with any other number and continue upward. Each bond must bear upon its face a name indicative of the purpose of the issue specified in said initial resolution and must contain a certificate or recital of any direct, annual, irrevocable tax which has been levied by the municipality upon all the taxable property therein, together with any other tax or source of revenue which the municipality may be authorized to impose or pledge and any annual or periodic payments or distributions appropriated or allocated by the legislative assembly, sufficient to pay the interest when it falls due, and also to pay and discharge the principal of such bond at maturity, and may contain any other statement of fact not in conflict with said initial resolution. The entire issue may be composed of a bond or bonds of a single denomination or of two or more denominations.

**21-03-19. Bonds - Terms.**

Bonds issued under this chapter must be authorized by resolution, bear such date or dates, be in such denomination or denominations, be in such form, be subject to redemption with or without premium, and be subject to such other terms or conditions as in the judgment of the municipality are in the public interest of the municipality, and must provide that the last installment of principal falls due not more than twenty years from the date of the bonds. The requirements of this section apply to each new issue of bonds, or if so determined by the governing body, to the bonds of a new issue combined with all of the outstanding bonds of one or more designated issues of bonds previously issued and similarly payable from taxes or other sources of revenues, or both, as the case may be.

**21-03-20. Interest - Ceases at maturity unless presented for payment.**

All bonds issued pursuant to the provisions of this chapter must contain a provision that interest thereon ceases at maturity unless the holder thereof presents the same for payment and payment is refused.

**21-03-21. Execution of bonds.**

Municipal bonds must be executed in the name of and for the municipality issuing them, by its qualified officers, who for that purpose shall sign the same by manual or facsimile signatures in their official capacities, as follows:

1. For a county, the chairman of the board of county commissioners and the county auditor.
2. For a city, the mayor or president of the board of city commissioners and the city auditor.
3. Repealed by S.L. 1967, ch. 323, § 285.
4. For any other municipality, the chairman or president of the governing board and the clerk or secretary thereof, or such other officer as the governing body thereof may determine.

The interest coupons attached to such bonds may be executed by the lithographed or engraved facsimile signature of such officers. The validity of every bond so executed remains unimpaired by the fact that any subscribing officer has ceased to be such officer before delivery to the purchaser. Bonds issued by a municipality having an official seal need not be sealed with such seal. The city auditor, county auditor, clerk, or secretary or such other officer as the governing body of the municipality may determine shall sign an endorsement on the back of each bond certifying that the bond is issued pursuant to law and is within the debt limit of the municipality issuing the bond.

**21-03-21.1. Attorney general to give opinion on legal sufficiency of investments.**

Repealed by S.L. 1993, ch. 239, § 9.

**21-03-22. Recording of bonds.**

Repealed by S.L. 1993, ch. 239, § 9.

**21-03-23. Bond record.**

The county auditor shall keep a bond record in which must be entered, as to each issue of bonds issued by a taxing district in the county, a record of the date of issuance, the aggregate amount issued, the date of maturity of each bond, the rate of interest, the amount of the levy on taxable property for each year certified by the taxing board, the amount levied on any other object of taxation by the municipality, the amount pledged or allocated from other sources of revenue of the municipality, and the amount of any annual or periodic payments or distributions appropriated or allocated by the legislative assembly.

**21-03-24. Destruction of bonds not sold within three years.**

All bonds authorized pursuant to this chapter which are not delivered to the purchaser and paid for within three years of their date must be canceled. The registering and certifying officer, in the presence of at least two electors of the municipality which authorized their issuance, shall destroy such bonds by the burning thereof, and with such witnesses shall make and file in the records of that officer's office an affidavit as to the bonds so destroyed and the time and place of such destruction. The officer also shall make a record thereof in a proper book of record in that officer's office. A copy of such affidavit must be filed with the auditor or secretary of the municipality which authorized their issuance.

**21-03-25. Bonds - Advertised for bids - Exception.**

No municipality may sell or enter into any contract for the sale of any issue of its bonds authorized by this chapter in an amount exceeding one hundred thousand dollars, for whatever purpose issued, without first advertising for bids in the manner prescribed by section 21-03-26, except as provided in section 21-03-30, and except that bonds issued under the authorization of subdivision g of subsection 2 of section 21-03-06 with the consent of the warrant holders, may be exchanged for matured warrants or matured interest coupons of warrants of the special improvement fund having the deficiency on account of which such bonds are being issued, without such advertising. The par value and accrued interest of the bonds so delivered may not exceed the par value and accrued interest of the warrants and interest coupons, and accrued interest thereon, for which they are exchanged.

**21-03-26. Bonds - Call for bids - How advertised.**

A notice calling for bids for each proposed issue of municipal bonds must be published at least once in the official newspaper of the municipality, or, if the municipality does not have an official newspaper, then in the county's official newspaper, not less than ten days nor more than thirty days before the date specified therein for the receiving of such bids. Such notice may be in any form but must specify the amount of bonds offered for sale and the date of the maturity thereof. Failure to publish such notice does not impair the validity of such bonds but renders unenforceable any executory contract entered into for the sale thereof.

**21-03-27. Bids - Where received - Record.**

The notice must specify the time and place at which bids will be received. The place where bids shall be received must be fixed by the governing board and may be within or outside the state. At the time and place specified, the governing board of the taxing district must be represented by one of its officials, or by the county auditor or some other person acting at the request of the board, who shall receive competitive bids, whether submitted orally or in writing. When the bids are received, the county auditor, auditor, secretary, or other person acting at the request of the board shall enter in a permanent record the amount and rate of interest of each bid and the name and address of the bidder.

**21-03-27.1. Sealed bids.**

The governing body of any municipality calling for bids for the purchase of municipal bonds, as provided in sections 21-03-26 and 21-03-27, may in its discretion determine, and may state in the notice calling for such bids, that only sealed bids shall be received and considered.

**21-03-28. Bids - Accompanied by draft - Sale to best bidder - Rejection of all bids.**

All bids must be accompanied by a certified check, cashier's check, surety bond, or bank draft, in the amount of not less than one percent of the bid. After all bids have been received, they must be delivered forthwith to the governing body of the municipality, which shall award the sale of such bonds to the bidder who agrees to purchase them upon the terms most favorable to the municipality, unless the governing body determines to reject all bids. The governing body has the right to reject any and all bids. If no bids are received or if all bids received are rejected, the governing body may, without readvertising the bonds for sale, negotiate the sale of all of the bonds to any person upon terms complying with those specified in the notice of sale theretofore published, and if bids were rejected, more favorable to the municipality than those specified in a rejected bid. No sale may be for less than ninety-eight percent of the par value of such bonds plus the interest accrued on the bonds to the date of the delivery thereof.

**21-03-29. Unlawful for official to accept compensation from bidder.**

No auditor, secretary, or other official of a municipality may accept, from a bidder or prospective bidder at a sale of bonds, a commission or any other compensation for the official's services rendered or to be rendered in connection with the issuance, sale, or delivery of such bonds.

**21-03-30. Municipal bonds - Private sale to United States or state agencies.**

The procedure prescribed in this chapter relative to calling for bids upon the sale of municipal bonds is not required in the case of bonds issued under the authorization of subdivision b or c of subsection 7 of section 21-03-06, or in case bonds are sold to:

1. The state board of university and school lands.
2. The Bank of North Dakota.
3. The public finance authority.
4. Trust funds administered by public officials.
5. The United States of America, or any agency or instrumentality thereof.

**21-03-31. Notice to state or state departments.**

Repealed by S.L. 1993, ch. 239, § 9.

**21-03-32. Departments prohibited from purchasing bonds at higher prices within five years.**

Repealed by S.L. 1993, ch. 239, § 9.

**21-03-33. Penalty for noncompliance.**

Repealed by S.L. 1975, ch. 106, § 673.

**21-03-34. Registration of ownership of bonds - How made.**

The holder of any bond payable to "bearer or registered owner", as authorized by section 21-03-18, issued by any municipality, may have the ownership thereof registered as to the principal thereof by the county auditor, or in the case of a municipality of over four thousand population, by the auditor or secretary of the municipality issuing the same, or such other officer as the governing body of the municipality may determine. Registration by such officers must be made in the bond register and must be noted on the bond.

**21-03-35. Effect of registration - Discharge therefrom.**

After registration of a municipal bond as provided in section 21-03-34, no transfer thereof is valid unless made on the records of the county auditor or the records of the municipality by the registered owner in person, or by the registered owner's duly authorized attorney, and similarly noted on the bond, but the same may be discharged from registration by being transferred in like manner to bearer, and thereafter transferability by delivery is restored, but such bond again from time to time may be registered or transferred to bearer as before. Such registration,

however, does not affect the negotiability of the appurtenant coupons, but every such coupon continues to be transferable by delivery only and must remain payable to bearer.

**21-03-36. Money borrowed or payable to be lawful money of United States.**

All money borrowed by municipalities and all money received in payment of any tax levied in accordance with this chapter is lawful money of the United States, and all municipal bonds must be payable in such money.

**21-03-37. Appointment of fiscal agents.**

The governing body of any municipality indebted on account of outstanding municipal bonds is authorized in its discretion to appoint a fiscal agent located in some city within or without the state, or if deemed convenient, one such agent, in each of two cities. Every such fiscal agent must be an incorporated bank or trust company authorized by the laws of the United States or of the state in which it is located to do a banking or trust company business. The custodian of the sinking funds of the municipality, when necessary, shall deposit with such fiscal agent such sums of money as are required for the payment of the principal or interest of municipal bonds.

**21-03-38. Bond proceeds - Kept in separate fund - Protection of purchaser.**

All borrowed money must be paid into the treasury of the municipality borrowing it, must be kept there until used, in a fund separate and distinct from all other funds, to be used for the purpose for which it was borrowed and for no other purpose except that such funds may be temporarily invested in securities as are approved by the governing board in accordance with the provisions of section 21-03-43 and as otherwise provided by section 21-03-42, and may be withdrawn only upon order or warrants made payable out of said fund and expressing the purpose for which they were drawn. The purchaser of any bonds issued pursuant to this chapter is not obliged to see to the application of the purchase price thereof, but is protected fully in paying for such bonds by the receipt of the county treasurer or of the officer delivering such bonds. Income from the temporary investing of receipts from bond issues must be available for use for such purpose as such bond issue was approved or, upon resolution of the governing body of the municipality, must be paid into the sinking fund for use in payment of bonds issued.

**21-03-38.1. Disposal of bond proceeds.**

The proceeds of any municipal bond sale, which have not been used for the purpose issued within three years after date of issue, may be disposed of by the governing body of the municipality as follows:

1. Sufficient funds must be transferred to the sinking fund of the issue in an amount equal to the principal of bonds outstanding and the interest requirements.
2. The governing body may, by a two-thirds vote of all its members, transfer the funds to any or all other debt sinking funds of the municipality.
3. The governing body, upon approval by a majority vote of the qualified electors, voting on the question at an election called therefor, may use the funds for some other purpose authorized by law.

If any funds remain, they must be transferred to the general fund of the municipality.

**21-03-39. Ancillary contract authorized.**

After any municipality has provided, as required by section 21-03-16, for an issue of bonds for a lawful purpose which can be accomplished only through performance of an executory contract by some other contracting party, such contract may be entered into before the actual execution or sale of the bonds with like effect as if the necessary cash for payments on the contract already were in the treasury.

**21-03-40. Sinking funds - Custodian.**

The city auditor, park district treasurer, or business manager of the school district or similarly acting officer of the respective municipality is custodian of each of its sinking funds, unless the governing body by resolution appoints the county treasurer.

#### **21-03-41. Sinking funds - Duty of county treasurer.**

When the county treasurer is custodian of any sinking fund, the county treasurer may not remit to the treasurer of the taxing district any taxes levied or any other moneys received for the purpose of paying the interest on or retiring the principal of bonds issued, but the county treasurer shall retain the same in a separate special fund maintained as a sinking and interest fund for the bonds of such taxing district. The county treasurer shall make quarterly reports to the treasurer of the taxing district whose sinking fund the county treasurer possesses, showing all collections and amounts added to each such fund, all payments made from such fund, and the net balance in each such fund from time to time. The county treasurer shall keep the sinking funds of each taxing district on deposit in such public depository as may have furnished proper bond therefor and as may have been designated by the governing board of the taxing district. When a sinking fund is so deposited, the county treasurer is relieved of personal responsibility for its safekeeping.

#### **21-03-42. Sinking fund - Sources and uses.**

The sinking fund must be disbursed by the county treasurer or treasurer of the municipality, as the case may be, upon the directions therefor by resolution of the governing body of the municipality issuing such bonds. As such bonds mature, the county treasurer, upon warrant drawn upon the county treasurer by the county auditor, shall apply such sinking fund in retirement thereof, and also in payment of the interest thereon as it becomes payable. The county auditor shall draw such warrants so as to pay the interest and retire the bonds at as early a date as possible. If the bonds are retired or if the balance in the sinking fund is sufficient to retire the bonds, the county auditor shall notify the governing body of the municipality of its obligation under section 21-03-15 to terminate the levy for payment of principal and interest on the bonds. The county treasurer or treasurer of the municipality may not disburse any of such fund contrary to the provisions of this chapter, even though so directed by such governing body. The county treasurer or treasurer of the municipality may disburse such fund for the purpose of paying the principal and interest, or either, of the bonds for which such fund was created without any authorization therefor by the governing body. The sinking fund of each bond issue must be kept separate and must be designated by a name indicative of the issue of bonds on account of which it was created. The sources of such fund must be:

1. All moneys accruing to the borrowed money fund prescribed by section 21-03-38 which at any stage are not needed for the purpose for which the money was borrowed, and any moneys becoming applicable to the sinking fund must be transmitted by the treasurer of the municipality to the county treasurer, in case such municipality has a population of four thousand or less, upon direction therefor by the governing body of the municipality.
2. All moneys raised by taxation and received from other sources pursuant to section 21-03-15 for the purpose of paying said bond.
3. Moneys derived from licenses or other sources, the expenditure of which is not otherwise provided for by law, as the governing body may elect to place in the sinking fund, and which must be paid over to the county treasurer for deposit in such sinking fund by the treasurer of the municipality, in case such municipality has a population of four thousand or less, upon a resolution directing such payment by the governing body.
4. The premium, if any, for which the bonds have been sold over and above the par value and accrued interest.

#### **21-03-43. Investment of sinking funds.**

Taking care that enough cash is retained always in the sinking fund to provide for annual payments of principal and interest, the surplus, if any, may be loaned or invested under the direction of the proper governing body as follows:

1. In the outstanding bonds for the payment of which the sinking fund is required, at any price not exceeding the principal, accrued interest, and a premium of not to exceed two years' interest on such bonds.



2. In interest-bearing bonds of the United States, or of the state of North Dakota, or of any municipality as defined in section 21-03-01.
3. In conformity with the provisions of chapter 21-04.

Investments of the class specified in subsection 2 continue a part of the sinking fund and must be held in custody of the treasurer of the municipality. Bonds representing such investments may be sold by the governing body at any time, but the money received remains, until used, a part of the sinking fund.

**21-03-44. Sinking fund - Use for unauthorized purpose.**

Money may not be withdrawn from a sinking fund and appropriated to any purpose other than the purpose for which the fund was instituted until that purpose has been accomplished, except as authorized by section 6-09.4-23 and sections 21-03-42 through 21-03-45.

**21-03-45. Sinking fund - Surplus placed in general fund.**

Any surplus in a sinking fund after all of the bonds for the payment of which the fund was created have been paid and canceled and after all investments of the second and third class finally have been disposed of or realized upon, must, within two years, be placed in the general fund of the municipal treasury.

**21-03-46. Municipalities in more than one county.**

When in this chapter a county officer is required to take any action with reference to the bond issues or sinking funds of any municipality of such county, if such municipality is situated partly within one county and partly within another or others, the governing body of such municipality by ordinance or recorded resolution shall designate the county whose official shall act in such capacity. In such case, collection of taxes levied in accordance with this chapter in any county wherein a portion of such municipality is situated must be transmitted and delivered to the custodian of the sinking fund of the municipality so specified by the governing body.

**21-03-47. Limitation of action.**

No action may be brought or maintained in any court in this state questioning the validity of any bonds issued pursuant to this chapter, or of any tax levied pursuant hereto, unless such action has been commenced within thirty days after the adoption of the resolution of the governing body awarding the sale of such bonds.

**21-03-48. Penalty for diversion of sinking and interest funds.**

Repealed by S.L. 1975, ch. 106, § 673.

**21-03-49. Penalty for diversion of borrowed money fund.**

Repealed by S.L. 1975, ch. 106, § 673.