

CHAPTER 54-40.2
AGREEMENTS BETWEEN PUBLIC AGENCIES AND INDIAN TRIBES

54-40.2-01. Definitions.

In this chapter:

1. "Public agency" means any political subdivision, including municipalities, counties, school districts, and any agency or department of North Dakota.
2. "Secretary" means the secretary of interior of the United States.
3. "Tribal government" means the officially recognized government of any Indian tribe, nation, or other organized group or community located in North Dakota exercising self-government powers and recognized as eligible for services provided by the United States. The term does not include any entity owned, organized, or chartered by a tribe which exists as a separate entity authorized by a tribe to enter agreements of any kind without further approval by the government of the tribe.

54-40.2-02. Authorization to enter agreements - General contents.

1. Any one or more public agencies may enter into an agreement with any one or more tribal governments to perform any administrative service, activity, or undertaking that any of the public agencies or tribal governments are authorized to perform by law and to resolve any disputes, in accordance with this chapter or any other law that authorizes a public agency to enter an agreement. The agreement must set forth fully the powers, rights, obligations, and responsibilities of the parties to the agreement.
2. The Indian affairs commission may propose agreements entered into pursuant to this chapter and may assist, at the request of any tribe affected by such an agreement, in the negotiation and development of such agreements.
3. If the public agency contemplating entering into an agreement under this chapter is a school district, the school district shall:
 - a. Provide written notice to the superintendent of public instruction that it is contemplating entering into an agreement under this chapter; and
 - b. Consider written recommendations that the superintendent makes regarding the agreement.
4. This chapter does not apply to agreements entered into under section 24-02-02.3 and chapter 54-38 or agreements entered with one or more tribal governments pursuant to a state or federally funded program or other activity, including any publicly announced offer of a grant, loan, request for proposal, bid, or other contract originating with a public agency, for which the tribal government is otherwise eligible under federal, state, or local law.

54-40.2-03. Specifications of agreement.

Repealed by S.L. 1991, ch. 606, § 10.

54-40.2-03.1. Agreement - Notice.

1. After the parties to an agreement have agreed to its contents, the public agency involved shall publish a notice containing a summary of the agreement in the official newspaper of each county of the state reasonably expected to be affected by the agreement. The notice must also be published in any newspaper of general circulation for the benefit of the members of any tribe affected by the agreement. The notice must also be posted plainly at the tribal office of any tribe affected by the agreement and in the county courthouse of any county affected by the agreement. The notice must state that the public agency will hold a public hearing concerning the agreement upon the request of any resident of the county in which the notice is published if the request is made within thirty days of the publication of the notice.
2. If the public agency contemplating entering into an agreement under this chapter is a school district, the school district must also provide the superintendent of public instruction a copy of the notice.

54-40.2-03.2. Public hearing - Notice.

1. If the public agency receives a request pursuant to section 54-40.2-03.1, the public agency shall hold a public hearing prior to the submission of the agreement to the governor at which any persons interested in the agreement may be heard. Notice of the time, place, and purpose of the hearing must be published prior to the hearing in the official newspaper of each county of the state reasonably expected to be affected by the agreement. The notice of the public hearing must also be published in any newspaper of general circulation published for the benefit of the members of any tribe affected by the agreement. The notice must also be posted plainly at the tribal office of any tribe affected by the agreement and in the county courthouse of any county affected by the agreement. The notice must describe the nature, scope, and purpose of the agreement and must state the times and places at which the agreement will be available to the public for inspection and copying.
2. If the public agency contemplating entering into an agreement under this chapter is a school district, the school district must also provide the superintendent of public instruction a copy of the notice.

54-40.2-04. Approval of agreement by governor and tribes - Approval by legislative assembly for tax collection agreements.

As a condition precedent to an agreement made under this chapter becoming effective, it must have the approval of the governor of North Dakota and the governing bodies of the tribes involved. If the agreement is a tax collection agreement between the tax commissioner and one or more tribes, the agreement also is subject to confirmation by a majority of members elected to the house of representatives and the senate and does not become effective until its legislative confirmation date or the effective date in the agreement, whichever is later. Each tax collection agreement presented for legislative confirmation must contain an expiration date not more than sixteen years after its effective date and the expiration date must be March thirty-first of an odd-numbered year. If the agreement obtains the approvals under this section and, if required, legislative confirmation under this section, it may be submitted to the secretary for approval.

54-40.2-05. Filing of agreement.

After approval by the governor and by the tribe or tribes affected by the agreement and, if required, legislative confirmation, and prior to commencement of its performance, an agreement made pursuant to this chapter must be filed with:

1. The secretary.
2. The clerk of court of each county where the principal office of one of the parties to the agreement is located.
3. The secretary of state.
4. The affected tribal government.

54-40.2-05.1. Review of agreement - Report.

Upon the request of any political subdivision or any tribe affected by an approved agreement, the Indian affairs commission shall make findings concerning the utility and effectiveness of the agreement taking into account the original intent of the parties and may make findings as to whether the parties are in substantial compliance with all provisions of the agreement. In making its findings, the Indian affairs commission shall provide an opportunity, after public notice, for the public to submit written comments concerning the execution of the agreement. The Indian affairs commission shall prepare a written report of its findings made pursuant to this section and shall submit copies of the report to the affected political subdivision or public agency, the governor, and the affected tribes. The findings of the Indian affairs commission made under this section are for informational purposes only. In any administrative hearing or legal proceeding in which the performance of any party to the agreement is at issue, the findings may not be introduced as evidence, or relied upon, or cited as controlling by any

party, court, or reviewing agency, nor may any presumption be drawn from the findings for the benefit of any party.

54-40.2-06. Revocation of agreement.

Any agreement made pursuant to this chapter must include provisions for revocation.

54-40.2-07. Authorization to appropriate funds for purpose of agreement.

Any public agency entering into an agreement pursuant to this chapter may appropriate funds for and may sell, lease, or otherwise give or supply material to any entity created for the purpose of performance of the agreement and may provide such personnel or services therefore as is within its legal power to furnish.

54-40.2-08. Specific limitations on agreements.

Nothing in this chapter may be construed to:

1. Authorize an agreement that enlarges or diminishes the jurisdiction over civil or criminal matters that may be exercised by either North Dakota or tribal governments located in North Dakota.
2. Authorize a public agency or tribal government, either separately or pursuant to agreement, to expand or diminish the jurisdiction presently exercised by the government of the United States to make criminal laws for or enforce criminal laws in Indian country.
3. Authorize a public agency or tribal government to enter into an agreement except as authorized by their own organizational documents or enabling laws.
4. Authorize an agreement that provides for the alienation, financial encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.

54-40.2-09. Validity of existing agreements.

This chapter does not affect the validity of any agreement entered into between a tribe and a public agency before August 1, 1999.