

THE STORY OF NORTH DAKOTA SCHOOL CONSTRUCTION FINANCE

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ABSTRACT

School districts are special purpose local governmental units established to provide elementary and secondary education. The North Dakota Constitution mandates the legislature provide a uniform system of free schools throughout the state. “Free schools” does not mean free buildings and facilities. School districts must borrow money and finance buildings over a period of years. Following an introduction, Part II reviews debt limit and property valuation issues. Part III examines general obligation bonds. Part IV discusses the school building fund. Part V describes the remaining school district financing options. Part VI tells the story of a seventy-year-old state institution, the school construction fund. Finally, an Appendix lists hundreds of North Dakota school bond elections.

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I. INTRODUCTION	53
II. DEBT LIMIT	55
A. CONSTITUTIONAL AND STATUTORY LIMITATIONS	55
B. PERSONAL PROPERTY TAX REPEAL	61
C. 1981 LEGISLATIVE SESSION	64
III. GENERAL OBLIGATION BONDS.....	65
A. OVERVIEW	65
B. BASIC PROCEEDINGS	70
C. SIXTY PERCENT VOTER APPROVAL	73
D. EXCEPTIONS TO VOTER APPROVAL	77
1. <i>Junior College</i>	77
2. <i>Refunding Bonds</i>	78
3. <i>Payment of Deficit on Bonds</i>	78
4. <i>Prepayment of Special Assessments</i>	78
5. <i>Emergency Condition</i>	79
6. <i>Payment of Final Judgments</i>	80
IV. SCHOOL BUILDING FUND	81
A. BUILDING FUND LEVY	81
B. BUILDING FUND BONDS	83
V. RESIDUAL FINANCING OPTIONS	84
A. CERTIFICATES OF INDEBTEDNESS	84
B. PUBLIC CAREER AND TECHNICAL EDUCATION.....	86
C. GUARANTEED ENERGY SAVINGS CONTRACTS	87
D. BUILDING AUTHORITY – RESTRICTED	87
E. SALES TAX – PROHIBITED	91
F. LIMITED TAX BONDS – REPEALED	92
G. FEDERAL TAX CREDIT AND DIRECT PAY BONDS – REPEALED ...	93
VI. STATE SCHOOL CONSTRUCTION FUND	95
A. A GLANCE BACK.....	95
B. AN ABUNDANCE OF ATTEMPTS.....	98

C. SCHOOL CONSTRUCTION ASSISTANCE REVOLVING LOAN FUND	100
VII. CONCLUSION	102
VIII. APPENDIX.....	104

I. INTRODUCTION

The North Dakota Constitution stipulates that the legislature “shall provide for a uniform system of free public schools throughout the state.”¹ The result is local government units known as public school districts. “The words ‘school district’ constitute a generic term conveniently used to designate the territory that has been organized as a political or civil subdivision of the state for the purpose of the administration, support and maintenance of the public schools in such territory.”² Each school district is a public school district and a body corporate.³ Separate statutes govern the Board of Education of the City of Fargo.⁴ School boards may “acquire real property and construct school buildings and other facilities.”⁵ Any school building or facility⁶ construction, purchase, repair, improvement, modernization, or renovation estimated to cost in excess of \$150,000 needs prior approval by the Superintendent of Public Instruction.⁷

1. N.D. CONST. art. VIII, § 2; *see* 1889 N.D. Laws 177 (“Providing for Uniform System of Public Schools”).

2. *Baldwin v. Bd. of Educ. of Fargo*, 33 N.W.2d 473, 482 (N.D. 1948) (citations omitted).

3. N.D. CENT. CODE § 15.1-07-01(1) (2022); *see also* N.D. Att’y Gen. Op. No. 51-150 (Jan. 17, 1951) (school district is a political subdivision). *See generally* 1911 N.D. Laws 399 (“An Act to Provide a System of Free Public Schools for the State of North Dakota”) (three classes of school districts: special, common, and independent). *See* 1961 N.D. Laws 192 (“Consolidation of School District Laws”); *Hearing on H.B. 539 Before the S. Educ. Comm.*, 37th Legis. Assemb. (N.D. 1961) (testimony of Howard Snortland, North Dakota Department of Public Instruction) (“Under this bill all school districts with the exception of Fargo would be named ‘Public School Districts’ and would no longer be referred to as special, common or independent.”).

4. *See* §§ 15.1-07-01(2), 15.1-09-47 to -52; N.D. COMP. LAWS § 1321(a)-(a)(25) (1913 & Supp. 1925); *see Baldwin v. Bd. of Educ. of Fargo*, 33 N.W.2d 473 (N.D. 1948); *see also* N.D. Att’y Gen. Op. No. 47-207 (June 5, 1947) (“Fargo School District is an independent district created by special statute in territorial days under an act which took effect March 4, 1885 . . .”).

5. N.D. CENT. CODE § 15.1-09-33(4) (2022).

6. § 15.1-36-01(5) (“‘[F]acility’ includes a public school parking lot, public school athletic complex, or any other improvement to real property owned by the school district.”).

7. § 15.1-36-01(1); *see also* §§ 15.1-36-01(2)-(3) (The superintendent is required to consider factors including need for the project, educational utility, student population trends, and capacity to pay for the project. If the superintendent denies the project, the district may appeal to the State Board of Public School Education.), -05 (school board member is guilty of an infraction for violating the approval requirement); N.D. CENT. CODE § 12.1-32-01(7) (2022) (infraction).

School districts have only the powers granted by the legislature.⁸ School districts lack the general power to borrow money.⁹ School district borrowing must be specifically authorized by statute and be within the debt limit.¹⁰ Arguments are advanced from time to time that free public schools require the legislature to fund building construction.¹¹ In fact, school districts must borrow money to finance capital construction projects, often through bond referenda. While not contributing directly¹² to school construction, the state supports a school construction loan program.¹³ Today, the state loan program boasts seventy plus active loans with over \$300 million in outstanding principal.¹⁴ See the Appendix for a listing of general obligation bond elections during approximately the last quarter century together with building fund and debt limit elections whenever occurring, through 2022.¹⁵

8. See N.D. Att’y Gen. Op. No. 64-226 (May 23, 1964) (“School districts, being creatures of the Legislature, have only such powers as are expressly granted by statute or necessarily implied therefrom. Since the Legislature has specified the manner in which a school board or school district may incur a debt, we believe such specification excludes any other procedure.”).

9. See N.D. Att’y Gen. Op. No. 85-31 (Aug. 20, 1985) (“This office has traditionally taken the position that a school district has no general power to borrow.”) (citing N.D. Att’y Gen. Op. No. 56-111 (1956)); cf. N.D. CENT. CODE § 57-45-07 (2022) (unlawful for school district officer to contract any debt if the payment of such requires a tax levy at a rate higher than permitted by law).

10. See Scott D. Wegner, Public Finance in North Dakota (Sept. 2019) (unpublished manuscript) (on file with author) (discussion of political subdivision financing options). Cities, for example, have many borrowing options not available to school districts such as special assessments, revenue bonds, and sales tax. See generally H.B. 1430, S.B. 2306, 55th Legis. Assemb. (N.D. 1997) (attempts to allow school districts to impose income taxes to pay bond debt service).

11. See generally Melissa Krause, *Should the State Build D8 Its School?*, WILLISTON HERALD (Jan. 1, 2016), https://www.willistonherald.com/community/should-the-state-build-d8-its-school/article_dafl1e9a-c7ad-11e5-9073-5fe878c9ab6d.html (landowners arguing that the state constitution requires the legislature to fund education, including the construction of buildings). See also S.B. 2327, 67th Legis. Assemb. (N.D. 2021) (proposal for state to retire total outstanding school district construction-related debt).

12. See N.D. Att’y Gen. Op. No. 2014-L-09 (June 3, 2014) (land board not authorized to provide grants from common schools trust fund without legislative authority and subject to constitutional constraints); see also H. Con. Res. 3017, 66th Legis. Assemb. (N.D. 2019) (proposed constitutional amendment to allow common schools trust fund to be used for school bond debt reduction); H. Con. Res. 3008, 66th Legis. Assemb. (N.D. 2019) (same); H.B. 1525, 66th Legis. Assemb. (N.D. 2019) (same); H.B. 1350, 66th Legis. Assemb. (N.D. 2019) (common schools revolving loan fund).

13. N.D. CENT. CODE § 15.1-36-08.

14. *Legislative Directed Loan Programs School Construction*, BANK OF N.D. (2023), <https://law.und.edu/files/docs/ndlr/pdf/issues/97/3/97ndlr343.pdf> (PowerPoint used during *Hearing on H.B. 1186, 68th Legis. Assemb.* (N.D. 2023) (testimony of Kelvin Hullet, SVP Bus. Dev., Bank of N.D.)) (PPT slides 2, 14-17); Coal Trust Fund School Loans, Bank of North Dakota (on file with author); Author’s handwritten notes on information received on Gross Production Tax Coal Loans from the Bank of North Dakota on October 24, 2022 (on file with author).

15. List compiled from: *The Official Source for Municipal Securities Data and Documents*, ELEC. MUN. MKT. ACCESS <https://emma.msrb.org>; school board minutes; news reports; and North Dakota Department of Public Instruction Form SFN 9150 (School District Taxable Valuation, Tax Levies, School District Elections). Inevitably, the Appendix is an abridged list.

II. DEBT LIMIT

A. CONSTITUTIONAL AND STATUTORY LIMITATIONS

The story of school construction finance is inextricably intertwined with debt limits and property values. The 1889 North Dakota Constitution provides that “[t]he debt of any county, township, city,¹⁶ town, school district or any other political subdivision, shall never exceed five per centum upon the assessed value of the taxable property therein.”¹⁷ In 1927, the legislature established statutory debt limits largely tracking the constitutional provisions.¹⁸

Debt has a specific meaning in the context of government borrowing. A borrowing is debt for purposes of constitutional and statutory limits if it irrevocably binds future governing bodies of the borrower and is payable from a general tax. “The constitutional provision is intended as a limit on general taxation; a protection to the taxpayers.”¹⁹ Debt limitations “are mandatory restrictions, enacted for the purpose of curbing the taxing power and of restraining excessive expenditures, that entail tax burdens.”²⁰ “The obvious purpose of the constitutional debt limit provision was to prevent the municipalities therein mentioned from improvidently contracting debts for other than ordinary current expenses of administration.”²¹ The constitutional debt limit restricts the power of political subdivisions; consequently the debt limit itself does not grant political subdivisions authority to incur debts and

16. N.D. CONST. art. X, § 15 (city debt limit of 5% of assessed valuation may be increased to 8% with a 2/3 majority vote); *see also* N.D. Att’y Gen. Op. No. 76-17 (July 19, 1976) (home rule cities may establish debt limits in excess of constitutional and statutory limits). *See generally* Memorandum from Robert A. Birdzell, Att’y, Bank of N.D., on Constitutional 4% Additional Indebtedness of Cities (May 1, 1952) (Bank of North Dakota, Investment and Trust Dep’t Bond Issue Files, Series No. 31427, State Historical Society of North Dakota) (discussing additional permitted indebtedness of cities for purposes of constructing or purchasing waterworks or constructing sewers).

17. N.D. CONST. art. X, § 15 (renumbered from art. XII, § 183); *see* 1979 N.D. Laws 1223 (codified at N.D. CENT. CODE § 46-03-11.1) (directing constitution renumbering); *see also* N.D. CONST. art. X, §§ 13, 14 (state debt limit).

18. § 3 1927 N.D. Laws 330, 332 (codified at N.D. CENT. CODE § 21-03-04). The legislature imposed lower debt limits depending on the political subdivision and the purpose. *E.g.*, § 21-03-06(1)(b) (county bonds for bridges may not exceed one percent of the assessed valuation); § 21-03-06(5)(b) (township bonds for roads and bridges may not exceed one and one-half percent of assessed valuation); § 21-03-06(6) (park district indebtedness limited to one percent of assessed valuation); N.D. CENT. CODE § 18-10-08 (2022) (rural fire protection district indebtedness limited to ninety percent of twenty times the current annual maximum tax levy). *See generally* N.D. LEGIS. COUNCIL STAFF FOR THE COMM. OF FIN. AND TAX’N, CONSTITUTIONAL DEBT LIMITATIONS – CAN THE LEGISLATIVE ASSEMBLY PROVIDE FOR LOWER LIMITS? (Oct. 1978).

19. *Schieber v. City of Mohall*, 268 N.W. 445, 450 (N.D. 1936).

20. *Bartelson v. Int’l Sch. Dist. No. 5*, 174 N.W. 78, 79-80 (N.D. 1919).

21. *Anderson v. Int’l Sch. Dist. No. 5*, 156 N.W. 54, 57 (N.D. 1916).

levy taxes.²² Certain types of borrowing such as special assessment bonds²³ and revenue bonds²⁴ are not considered debt. School districts primarily use general obligation bonds for capital improvements and so struggle against the debt limit.

The Constitution does not define assessed value. However, at the time of the Constitution, assessed value was understood to be the true and full value, or market value, of all taxable property.²⁵ The legislature defined assessed value for purposes of the statutory debt limit,²⁶ but the definition changed over time and did not always track with the 1889 understanding of true and full value.²⁷ Today, the statutory debt limit is half of that provided by the Constitution as originally interpreted.

Beyond a lower statutory debt limit due to the definition of assessed value, school districts suffered from the practical effect of county assessors

22. See *Great N. Ry. Co. v. Duncan*, 176 N.W. 992, 995 (N.D. 1919).

23. *E.g.*, *Vallely v. Bd. of Park Comm'rs*, 111 N.W. 615, 616 (N.D. 1907) (“It is generally held that constitutional provisions limiting corporate indebtedness are held not to apply to assessments upon property for improvements.”).

24. *Marks v. City of Mandan*, 296 N.W. 39, 47 (N.D. 1941) (adopting the special fund doctrine in North Dakota).

25. See R.M. TUTTLE, OFFICIAL REPORT OF THE PROCEEDINGS AND DEBATES OF THE FIRST CONSTITUTIONAL CONVENTION OF NORTH DAKOTA, ASSEMBLED IN THE CITY OF BISMARCK; JULY 4TH TO AUG. 17TH, 1889 621 (Bis., N.D., Tribune, State Printers and Binders 1889) (regarding “section 180, requiring among other things all property to be taxed according to its true value in cash”); N.D. COMP. LAWS § 1585 (1887) (board of equalization, all property personal and real, board governed by value of such property); *Bartelson v. Int’l Sch. Dist. No. 5*, 174 N.W. 78, 80 (N.D. 1919) (Robinson, J., dissenting) (“The purpose of the Constitution was to fix the debt limit at 5 per cent. of the true and full value of all taxable property, because under the Constitution and the law it is provided that all property must be assessed at its true and full value.”); see also *Property Tax Measure Review Committee – Background Memorandum*, N.D. LEGIS. COUNCIL (June 2011), <https://ndlegis.gov/sites/default/files/resource/committee-memorandum/13.9018.01000.pdf> (“Prior to 1981, all real property was in one class, and the standard of value for property tax was market value”).

26. See § 1(3) 1927 N.D. Laws 330 (“[T]he value of taxable property or the assessed valuation of a municipality means that portion of the value of all taxable property in such municipality as last finally equalized, against which the mill rate of taxes for state and county purposes is computed and extended.”); see also N.D. Att’y Gen. Op. Letter to Meier (Apr. 9, 1953) (Section 21-0301 of the revised code of 1943 provides that assessed value “is determined at the taxable value as distinguished from the assessed value.”).

27. See 1935 N.D. Laws 267, 268 (definition amended to full and true one hundred per cent value of all taxable property, but only for bonds issued to cover special assessment fund deficiencies); 1951 N.D. Laws 241 (adding full and true value definition for certain school district construction bonds); 1957 N.D. Laws 341 (assessed valuation in all cases “shall mean the full and true one hundred percent value of all taxable property in such municipality as finally equalized by the state board of equalization”); 1981 N.D. Laws 695 (assessed valuation definition amended to mean “six times the net value of all taxable property in such municipality as determined pursuant to section 57-02-28, provided that these terms may never mean more than market value of the property”); 1981 N.D. Laws Reconvened Sess. 23 (assessed valuation shall mean “the assessed value of all taxable property in such municipality as determined pursuant to chapter 57-02.”); see N.D. CENT. CODE § 57-02-01(3) (2022) (“‘Assessed valuation’ means fifty percent of the true and full value of property.”).

valuing property far short of full value.²⁸ North Dakota statutes required assessment at true and full market value of all taxable property²⁹ as determined by the State Board of Equalization.³⁰ Still, values certified by counties to the State Board of Equalization were recognized to be ten percent of fair market value. “According to the statutes, all assessed values are supposed to be at ‘true and full’ value, which has been defined by the courts and state tax officials as ‘market value.’ In actual practice, however, assessed values are only small percentages of ‘true and full’ value.”³¹ Debt limits were correspondingly artificially low given the constitutional test remained at a fixed percentage. School districts relying on general obligation bonds to build schools faced diminished borrowing capacity. A 1919 North Dakota Supreme Court dissenting opinion lays bare the disastrous effect of artificially low valuations for debt limit purposes.³²

28. See Letter from John D. Olsrud, Assistant Dir., N.D. Legis. Council, to Evan E. Lips, State Senator, N.D. Legis. Assem. (Jan. 14, 1981) (“Although a literal reading of North Dakota statutes leads to the conclusion property is to be assessed at its true and full value, which is defined, basically, to mean market value, it is commonly recognized that property is assessed at a fraction of market value, and has been for many years. Those proposing this legislation are interested in establishing assessed value for bonded indebtedness at approximately 30 percent of market value, as it was a few years ago, instead of the average of 10 percent where it is today.”) (regarding draft of what became S.B. 2262, 47th Legis. Assem.); see also Brief of Williams S. Murray as Amici Curiae Supporting Plaintiff-Appellant at 4, *Soo Line R.R. v. State*, 286 N.W.2d 459 (N.D. 1979) (Civ. No. 9625) (“Sec. 57-02-27 of the North Dakota Century Code, however, does command that ‘all property subject to taxation based on the value thereof shall be assessed at its true and full value of money.’ This statute has existed since 1897, and has been uniformly and openly ignored for a similar period.”) (quoting district court’s Memorandum Opinion).

29. See N.D. CENT. CODE § 57-02-27 (1960) (“All property subject to taxation based on the value thereof shall be assessed at its true and full value in money.”).

30. *Id.* §§ 57-13-03 (annual meeting of State Board of Equalization to equalize taxable property on the second Tuesday in August), -07 (results of proceedings transmitted to each county auditor).

31. Stanley W. Voelker et al., *The Taxation and Revenue System of State & Local Governments in North Dakota*, N.D. STATE. U. AGRIC. ECON. DEP’T, 5 (Dec. 1976), <https://ageconsearch.umn.edu/record/23225/?ln=en>.

32. See *Bartelson v. Int’l Sch. Dist. No. 5*, 174 N.W. 78, 80-81 (N.D. 1919) (Robinson, J., dissenting) (“The case presents an appeal by Portal City school district from a judgment against it for \$5,000, the balance due on a just and honest contract for the erection of a schoolhouse. In 1913 the schoolhouse was erected and accepted by the district, and, though the contract price was \$24,000, it appears and is conceded that the schoolhouse is worth \$30,000. It is just the building that the city needed and demanded. The defense is on the constitutional provision which limits the debt of a school district to 5 per cent. of the assessed valuation of its taxable property. Section 183. The purpose of the Constitution was to fix the debt limit at 5 per cent. of the true and full value of all taxable property, because under the Constitution and the law it is provided that all property must be assessed at its true and full value. But in the year 1913 there was no such assessment in the city of Portal, nor in Burke county, nor in any other county of the state. All the taxable property was assessed at about 20 per cent. of its true and full value. Hence, by sticking to the letter of the Constitution and disregarding its spirit and purpose, the court does hold, in effect, that by assessing property at 20 per cent. of its true value the debt limit was reduced to 1 per cent. of the real value; that under such assessment the debt limit did not permit a contract to pay for a schoolhouse any sum in excess of \$19,000. Such was the decision of the court in a suit against the district by one Anderson 156 N. W. 54 The decision was grossly erroneous and inequitable and unjust. The cause

A constitutional amendment approved by voters on March 16, 1920, permits school districts to increase the debt limit by five percent for a total of ten percent of the assessed value of the taxable property.³³ The legislature implemented procedures to increase school district debt limits in 1923.³⁴ Prior to 1923, there was no statutory procedure for school districts to increase the debt limit as authorized by the 1920 constitutional amendment, although the legislature acted to validate prior elections.³⁵ Statutes stated that at least one-third of the school district's electors³⁶ petition the board,³⁷ upon which

of it was that both the court and counsel wholly overlooked two cardinal points: (1) That a court of equity should never exercise its equitable jurisdiction or grant an injunction for the purpose of doing wrong and iniquity. (2) That, in truth, the contract to pay \$24,000 did not exceed the debt limit. It did not exceed 2 per cent. on the real value of the taxable property of the district. In the Anderson suit both the court and counsel overlooked the patent fact that the property had been assessed at only a small part of its full and true value, and that the real purpose of the Constitution was to limit the debt of a school district to 5 per cent. of the true and full value of its taxable property. The Constitution is not a mockery, and it did not anticipate a mock assessment.

In this case, under a proper complaint, it should have been proven, if not conceded, that in 1913 the total of all debts contracted by Portal City school district did not exceed 1 or 2 per cent. of the true and full value of its taxable property, or the court should have taken notice of that fact, though it is not alleged in the complaint. Portal City is a place of no small importance. It is on the Soo Railway, and on the northern boundary line of Burke county, and on the international boundary line. In 1913 it was incorporated with a population of 568. Its assessed valuation was \$165,000. Its real valuation was over \$600,000. In 1913 the average assessed valuation of land was as follows: In Burke county, per acre, \$3.50; Cass county, \$7.50; Grand Forks county, \$6.50; Golden Valley county, \$3.25; Ransom county, \$5; Richland county, \$6. In the cities and villages all property was assessed at no more than 20 per cent. of its value. As the complaint does not show the character of the assessment and the true value of the property, it is radically defective; but under the statute a pleading may be amended at any time before the trial, or during the trial, or on an appeal. A defective pleading does not justify any court in trampling on justice or in aiding or abetting a robbery. It is the business and the duty of this court to correct its own blunders and the blunders of counsel, and to vindicate the cause of justice; and it is time for the court to cease building error upon error by following erroneous and blundering decisions. It is time to teach the city of Portal that its children should not be educated in a \$30,000 schoolhouse secured in whole or in part by legal theft. The city is old enough and rich enough to be honest and to give unto Caesar that which is Caesar's.”)

33. 1919 N.D. Laws Spec. Sess. 42, 43; 1921 N.D. Laws 258 (“[A] school district, by a majority vote may increase such indebtedness five percent on such assessed value beyond said five per centum limit . . .”).

34. 1923 N.D. Laws 399 (codified at N.D. CENT. CODE §§ 15.1-07-03 to -07) (formerly CH. 15-48).

35. *See* *Osage Nat'l Bank v. Oakes Special Sch. Dist.*, 7 N.W.2d 920, 921-22 (N.D. 1943) (discussing validation of prior school district bond increases under 1923 N.D. LAWS 397 (“Validating School District Bonds”).

36. *See* § 8 2001 N.D. Laws 513, 516 (amending requirement for increasing school district's limit of indebtedness from one-third of school district electors to one-third of electors who voted at the most recent annual school district election).

37. *See* Letter from Wm. H. Brown Co. to Charles A. Verret, Assistant Att'y Gen., North Dakota (May 29, 1934) (Department of Public Instruction, Administration, Legal Opinions, Series No. 30405, State Historical Society of North Dakota) (“Complying with your request I am forwarding herewith the original petitions that were submitted to the Board of Education of the Mott School District calling for a vote on a question of increase of the bond debt limit of the district to 10%, consisting of 324 petitioners.”).

the question was submitted to a vote.³⁸ Majority voter approval is needed to increase the debt limit.³⁹ In 1949, the debt limit increase process was amended to allow school boards the option of calling a special election on its own motion without a petition.⁴⁰ Prior to 1949, certain districts held votes to increase the debt limit without first having received petitions. Elections conducted without first having been petitioned invites uncertainty about the legitimacy of debt limit increase approvals.

It rather appears that the preparation of filing of a petition signed by at least one-third of the electors was intended to be an indispensable item to invoke the power conferred by the Legislature. It is difficult, if not impossible to find language indicating that the school boards were intended to be authorized to launch proceedings to increase debt limits on their own motion. The conclusion follows that beginning on the effective date of Chapter 279, *supra* (March 6th, 1923) a petition of electors was a necessary step to commence proceedings to increase the debt limit of a school district.⁴¹

Further, some questioned whether amendments to the statutory definition of assessed value impacted prior debt limit increases.⁴²

38. See N.D. REV. CODE § 15-4803 (1943) (the ballot form is not set forth but originally the statute required that below the ballot question voters answer either: “For Increasing the Limit of Indebtedness” or “Against Increasing the Limit of Indebtedness”); see also N.D. CENT. CODE § 15.1-07-05 (2022) (“[T]he ballots must state the question in clear and concise language.”).

39. See N.D. CENT. CODE § 21-03-04 (2022) (setting forth statutory debt limit provisions).

40. 1949 N.D. Laws 191, 191-92.

41. Memorandum from Robert A. Birdzell, Att’y, Bank of North Dakota, on \$36,000 Galesburg Sch. Dist. Improvement and Equip. Bonds (Feb. 3, 1948) (Bank of North Dakota, Investment and Trust Dep’t Bond Issue Files, Series No. 31427, State Historical Society of North Dakota) (excerpt discussing public votes to increase debt limit after 1923 by action of the school board and without petition from the voters); see also *Attorneys Require Petitions*, DICKINSON PRESS, Jan. 21, 1948, at 1 (stating that bond attorneys would not recognize Dickinson school district debt limit increase due to an absence of petitions).

42. See Memorandum from Robert A. Birdzell, Att’y, Bank of N.D., on H.B. No. 694 (May 3, 1955) (Bank of North Dakota, Investment and Trust Dep’t Bond Issue Files, Series No. 31427, State Historical Society of North Dakota) (“Thus, with respect to a large number of districts, I believe the situation may be that no 5% increase on the full assessed value has ever been voted, even though debt limit increase elections may have been had and the districts may consider themselves on a 10% basis. In other words, the actual effect of a so called 5% increase voted in the fall of 1933 was to increase the debt limit of the particular district 2½% of the full taxable valuation. It rather seems to me that the sense of the constitutional restriction is that there must be a vote of local electors to raise the debt limit ceiling, whether the full 5%, or 2½%, or 1% or any fraction or amount whatever. The maximum possible constitutional increase (5% of the full valuation) is self executing as is the local vote requirement.”); see also Letter from John E. Adams, Assistant Att’y Gen., North Dakota, to Anton Schmidt, State Land Comm’r, North Dakota (Oct. 22, 1957) (Attorney General, Admin. Land Dep’t Correspondence, Series No. 30014, State Historical Society of North Dakota) (questioning validity of school debt limit increase given statutory changes, “in so far as the practical question presented to the voters was whether or not the then existent statutory debt limit was to be increased.”); see also Resolution Calling for Election on the Question of Increasing The Limit of Indebtedness (Apr. 22, 1975) (relating to United Public School District No. 7 (“WHEREAS, it has

Once properly approved, the debt limit is raised in perpetuity.⁴³ Drastic consequences await political subdivisions that borrow in excess of the debt limit. All bonds or other obligations in excess of the debt limit are void.⁴⁴ The school district business manager or other officer is required to endorse the back of each bond certifying that “the bond . . . is issued pursuant to law and is within the debt limit [of the district].”⁴⁵ A problem for too many school districts is finding evidence of a long-forgotten vote to increase the debt limit.⁴⁶

been determined that the last election in this School District for the purpose of increasing the limit of indebtedness of the district 5% beyond the limit of indebtedness fixed by the Constitution was held prior to April, 1962, and that therefore the validity of levying taxes to the extent of 10% of the full and true assessed value of all property subject to the general property tax is in doubt”); Letter from Nedrose Sch. Dist. #4 Sch. Bd. to All Nedrose Sch. Patrons (Apr. 28, 1976) (discussing recent and proposed bond and debt limit questions) (“Bonding attorneys require that this question be submitted to the voters at least once in ten years—for the purpose of bonding only.”) (quoting Elmer C. Johnson, Superintendent of Schools, Ward County)). *But cf.* N.D. Att’y Gen. Op. No. 55-100 (Mar. 23, 1955) (school district may take advantage of increased debt limit due to change in law and no additional authorization of electors is necessary); N.D. Att’y Gen. Op. Letter to Nordrum (Apr. 26, 1955) (regarding existing indebtedness for purposes of state school construction loan). *See generally* Marie Fewler, *Statutes – Interpretation and Construction – Electors’ Authorization to Increase Tax Levy Legal Limit Where Legal Limit Subsequently Changed by Legislature*, 29 N.D. L. REV. 191 (1953).

43. *See* N.D. CENT. CODE § 15.1-07-06 (2022).

44. N.D. CONST. art. X, § 15. *See* Birkholz v. Dinnie, 72 N.W. 931, 931 (N.D. 1897) (“No matter for what purpose it is created, or under what circumstances, or how pressing the emergency, or how short the indebtedness is to continue, if it will in fact increase the obligations of the municipality beyond the constitutional limit, it falls within the letter and the spirit of the constitution.”); *see also* Anderson v. Int’l Sch. Dist. No. 5, 156 N.W. 54, 60 (N.D. 1916) (holding school district warrants issued in excess of debt limit are null and void).

45. N.D. CONST. art X, § 17; N.D. CENT. CODE § 21-03-21 (2022). *See generally* *Hearing Before Comm. On Fin. And Tax’n, N.D. Constitutional Convention* (Aug. 9-10, 1971) [hereinafter *1971 Constitutional Convention*] (testimony of Art Whitney, Attorney, Dorsey, Marquart, Windhorst, West and Halladay) (Constitutional Convention, 1971-1972, Comm. Hearing Minutes Series No. 30060, State Historical Society of North Dakota) (opining that this section should be left out of the constitution, as “it would be chaotic if a bond issue turned out to be null and void, as the section clearly provides, just because someone forgot to sign the certificate properly pursuant to this section.”) (the section was left out of the proposed 1972 constitution).

46. *See* Letter from W. H. Adams, Att’y, Bottineau Spec. Sch. Dist. #1, to Chas Verret, Assistant Att’y Gen., North Dakota (June 11, 1934) (Attorney General, Admin. Sch. Dist. Bond Correspondence, Series No. 30021, State Historical Society of North Dakota) (attempting to furnish evidence of debt limit increase) (“This School District has never had a place to store records of its Clerk; they have been carted from pillar to post as Clerks changed and we have had all kinds of Clerks with the result that the record is sometimes incomplete.”). The Department of Public Instruction should maintain records on debt limit increases as well as building fund levy approvals.

B. PERSONAL PROPERTY TAX REPEAL

In 1969, after a prolonged effort,⁴⁷ personal property tax was repealed.⁴⁸ “It is the intent of the legislative assembly to remove from taxation all personal property, except as specifically provided in this Act, and to replace such taxes with a separate one percent sales tax and a broadened base on sales tax and use taxes.”⁴⁹ To offset the revenue loss to local governments, the legislators offered sales tax collections as replacement revenue.⁵⁰

Under our present laws any political subdivision has the authority to levy the needed mill levy to provide the necessary income to pay the payment on any bond issue in effect. With the loss on the average of 20% valuation with elimination of personal property tax, this will result in an increased mill levy upon real property. For example, if 10 mills would make payment with personal property it will now take 12 mills without personal property. However, the state will later return the additional two mills resulting in no additional cost to real property if the school, city or county will reduce the general fund levy accordingly.⁵¹

Political subdivisions with bonded debt were directed to decrease the general fund levy by the amount which its tax levy for the bonds was increased because of the personal property tax exemption.⁵² Replacement revenue was distributed through the counties to political subdivisions to make each government whole. Replacement money received by school districts with outstanding bonds was placed in the general fund.⁵³

47. See 1965 N.D. Laws 764 (referred and disapproved); 1967 N.D. Laws 1201; 1967 N.D. Laws 1205 (disapproving initiated measure). See generally Thomas K. Ostenson and Laurel D. Loftsgard, *An Appraisal of Personal Property in North Dakota*, N. D. STATE U. AGRIC. ECON. DEP'T, (Nov. 1966); 1969 N.D. Laws 1090 (report of the North Dakota Personal Property Tax Commission).

48. 1969 N.D. Laws 1090; see also N.D. CENT. CODE § 57-02-08(25) (2022).

49. § 22 1969 N.D. Laws 1090, 1103.

50. *Id.* at 1101 § 20 (“Distributions to Counties and Local Subdivisions”) (codified at N.D. CENT. CODE § 57-58-01 (repealed 1997 N.D. Laws 53, 55)).

51. See *H. Comm. Chairman's Explanation on Proposed Amendments for S.B. 137, Sect. 20, Payback Distribution*, 41st Legis. Assemb. (N.D. 1969).

52. See N.D. Att'y Gen. Op. No. 69-451 (Apr. 18, 1969) (“By reducing the current operating expense comparable to the replacement money the political subdivision would end up with approximately the same amount of dollars and cents as it would before the repeal of the personal property tax. At least this is the theory of section 20 of Senate Bill No. 137.”).

53. See generally N.D. Att'y Gen. Op. No. 71-428 (May 11, 1971) (“Since the levy for payment of bonded indebtedness must be made, by statute, on property, the repeal of the personal property tax automatically caused an increase in the levy on real property and any other taxable property in order to obtain the funds necessary for the sinking and interest fund for that year. Thus the sinking and interest fund had no deficit because of the personal property tax repeal. In order to alleviate the burden on real property (which carried a greater levy for the sinking fund in order to compensate for the repeal of personal property tax), the Legislature provided the replacement money

Revenue loss was addressed but it didn't help with decreased borrowing limits.⁵⁴ A constitutional amendment was deemed necessary "because approximately one-fifth of the state tax base had been eliminated due to the personal property tax repeal."⁵⁵ The proposed 1972 constitution would have allowed school districts a debt limit of as high as fifteen percent of assessed valuation.⁵⁶ "The committee felt the increase suggested was necessary in view of the fact that the bonding base of the various political subdivisions had been decreased because of the repeal of the personal property tax."⁵⁷ The 1972 constitution was rejected by voters on April 28, 1972.⁵⁸ Additional attempts to increase the debt limit were likewise turned down.⁵⁹ The 1965

should be placed in the general fund of the political subdivision and the levy for the general fund reduced accordingly.").

54. See generally N.D. Att'y Gen. Op. No. 69-373 (Aug. 7, 1969) (opining that a bond referendum held on or after January 1, 1970, debt limit is governed by reduced valuation due to removal of personal property tax).

55. See 1971 *Constitutional Convention*, supra note 45 (testimony of Howard J. Snortland, North Dakota Department of Public Instruction); cf. *Hearing on S. Con. Res. 4013 Before the J. Comm. on Const. Revision*, 45th Legis. Assemb. (N.D. 1977) (statement of Former Sen. Robert L. Stroup, Hazen) ("[W]hen the personal property tax was eliminated, 39 percent of the bonding base was destroyed in Mercer County."); *Hearing on S. Con. Res. 4016 Before the H. Pol. Subdivisions Comm.*, 42nd Legis. Assemb. (N.D. 1971) (statement of Sen. Stroup) ("When we eliminated personal property tax we removed from 16% to 28% of bonding through the loss of property tax."); *Hearing on S. Con. Res. 15 Before the S. Fin. & Tax'n Comm.*, 41st Legis. Assemb. (N.D. 1969) (statement of Rep. Dornacker, Chairman, H. Comm. on Fin. & Tax'n) ("If you repeal Personal Property tax, you have taken 20% of bonding base away.").

56. 1973 N.D. Laws 1389, 1402 (1972 Constitution, disapproved) ("Any political subdivision may incur indebtedness not to exceed eight percent of the assessed value of the taxable property therein. By a sixty percent vote of the electors voting thereon, the debt limit may be increased an additional seven percent of the assessed value."). See generally 1969 N.D. Laws 1278; 1971 N.D. Laws 1333 (calling of constitutional convention, approved by voters on September 1, 1970).

57. NORTH DAKOTA CONSTITUTIONAL CONVENTION INTERIM REPORT, 42nd Legis. Assemb., at 43 (N.D. 1972).

58. 1973 N.D. Laws 1389, 1402 (1972 Constitution, disapproved) (polling results were 64,073 for and 107,643 against the proposed constitution). See generally Carter Wood, 'Con-Con' Paved Way, BISMARCK TRIB., Feb. 16, 1992, at 2C (noting that many provisions proposed in the 1972 constitution were later adopted, but not the debt limit increase provision).

59. See 1971 N.D. Laws 1338; 1973 N.D. Laws 1387 (stating that 1971 proposed constitutional amendment setting political subdivision debt limit at eight percent of assessed valuation and allowing school districts by majority vote to increase another four percent for a total of twelve percent of assessed valuation was turned down by voters on September 5, 1972); 1977 N.D. Laws 1393; 1979 N.D. Laws 1736 (stating that constitutional amendment was disapproved of on September 5, 1978, same as 1972 proposal except that school districts would have been able to increase the debt limit another five percent for a total of thirteen percent of assessed valuation); e.g., *Hearing on Sen. Con. Res. 4013 Before the J. Comm. on Const. Revision*, 45th Legis. Assemb. (N.D. 1977) (testimony of Russell Myhre, Legislative Council) ("[P]olitical subdivisions are faced with a reduced borrowing base which was not contemplated by the drafters of the Constitution. The drafter envisioned that the assessed value would be the same as the fair market value. The assessed value represented perhaps 20 percent or less statewide of fair market value."); see also 1969 N.D. Laws 1271 (specifying that proposed constitutional amendment setting political subdivision debt limit at seven percent of assessed valuation and allowing school districts by majority vote to increase another five percent; proposed amendment will not be submitted if voters approve a calling of a constitutional convention). But see 1965 N.D. Laws 991 (proposing a constitutional amendment

Legislative Assembly, anticipating a constitutional amendment, revised the statutory debt limit provision in section 21-03-04 to seven percent with the ability to increase another six percent, which had to be amended back to the prior status in 1967.⁶⁰ The “people didn’t go for constitutional revision so had to go back to sections and amend in order to provide debt limitations.”⁶¹

As an alternative to a debt limit increase, the legislature asked voters to bless “dedicated bonds”, local government bonding from sources other than property tax,⁶² such as replacement revenue from the loss of personal property taxes.⁶³ The dedicated bonds proposition failed. Current certificate of indebtedness⁶⁴ borrowing against state distributions originated in 1971 as a borrowing against replacement revenue.⁶⁵

setting political subdivision debt limit at seven percent of assessed valuation and allowing school districts by majority vote to increase another six percent will not be submitted because it is contingent on H.B. 698 approval).

60. 1965 N.D. Laws 336; 1967 N.D. Laws 399; *see Hearing on H.B. 836 Before the H. Pol. Subdivisions Comm.*, 39th Legis. Assemb. (N.D. 1965) (testimony of Lloyd Omdahl, State Tax Dep’t) (“Unless we improve the bonding base they will have trouble eliminating the personal property tax.”). *See generally* Edwin M. Odland et al., *North Dakota Legislative Summary: 1965*, 42 N.D. L. REV. 210, 234 (1966) (“In anticipation of the repeal of all or part of the personal property tax and the problems that elimination of such tax would create in future bond financing, the Legislature amended sections 21-03-04 and 21-03-06 to increase the limitations on funded indebtedness for cities, school districts, counties, townships and park districts.”).

61. *E.g., Hearing on S.B. 59 Before the S. Pol. Subdivisions Comm.*, 40th Legis. Assemb. (N.D. 1967) (statement of Sen. Longmire).

62. *See* 1967 N.D. Laws 1229; 1969 N.D. Laws 1242 (indicating the constitutional amendment rejected on September 3, 1968, would have permitted issuance of political subdivision “dedicated bonds” being “an instrument of indebtedness, either incurred or to be incurred, for which certain taxes, moneys, income or revenue, except ad valorem taxes on either personal or real property, or special assessments on personal or real property are irrepealably pledged and dedicated for the retirement of said indebtedness.”); *Hearing on S. Con. Res. “PP” Before the S. Pol. Subdivisions Comm.*, 40th Legis. Assemb. (N.D. 1967) (“Resolution allows a Political Subdivision to use other funds available to cover costs of bonding when personal property funds don’t cover needs.”); *see also* 1969 N.D. Laws 1268 (same proposal, not submitted as voters approved to call a constitutional convention).

63. *1971 Constitutional Convention*, *supra* note 55 (testimony of Howard J. Snotland) (“At the present time school district bonds must be retired with property taxes. It was found necessary, because of this restriction, to put replacement revenue from the personal property tax repeal into the general fund of the political subdivisions. In the 1969 session of the legislature Senate Concurrent Resolution #6 was passed which would permit political subdivisions to issue bonds which would be retired with revenue from other than property tax.”).

64. *See infra* Part V.A CERTIFICATES OF INDEBTEDNESS.

65. 1971 N.D. Laws 560; *e.g., Hearing on H.B. 1549 Before the H. Fin. & Tax’n. Comm.*, 42nd Legis. Assemb. (N.D. 1971) (statement of Rep. Dornacker) (“School board could borrow on certificates of Indebtedness [sic] on real and personal property taxes levied and coming due. When we removed P.P. tax we forgot to make it possible to borrow on Personal Property payback. This bill allows the Political Subdivisions to borrow on these pay back revenues.”).

C. 1981 LEGISLATIVE SESSION

A crisis in the bonding community resulted from the 1981 Legislative Session. In response to a North Dakota Supreme Court opinion,⁶⁶ the legislature restructured the property tax system.⁶⁷ The 1981 legislation, Senate Bill No. 2323, classified taxable property into residential, commercial, agricultural, and centrally assessed property and provided each be assessed at a specified percentage. The specified percentages were applied against the true and full value with the resulting amounts defined as the assessed value.⁶⁸ The percentage formula from true and full value to assessed value was an estimate of current actual assessments.⁶⁹

In a separate act, the 1981 Legislature, in Senate Bill No. 2262, amended section 21-03-01(4) in an attempt to increase the political subdivision debt limit.⁷⁰ The definition of assessed value was changed to six times the net value of all taxable property, effectively increasing debt capacity by three times.⁷¹

The problem arose because lawmakers enacted a definition of assessed valuation for property tax purposes in section 57-02-27 (Senate Bill No. 2323) and a different definition of assessed valuation for debt limit purposes in section 21-03-01 (Senate Bill No. 2262). Bond issues were on hold given concern about the conflicting definitions of assessed valuation and which definition governed the debt limit. Considerable effort was expended attempting to find a solution.⁷² A draft attorney general's opinion was

66. *Soo Line R.R. v. State*, 286 N.W.2d 459, 465 (N.D. 1979) (“We conclude that it is time that something be done to correct this problem of classification without authorization by statute which presently exists in North Dakota. We will no longer countenance de facto classification of property in North Dakota for purposes of taxation.”), *superseded by statute*, 1981 N.D. Laws 962, *as recognized in Koch Hydrocarbon Co. v. State ex rel. State Bd. of Equalization*, 454 N.W.2d 508, 510-11 (N.D. 1990).

67. 1981 N.D. Laws 1540. *See generally Property Tax Classification and Exemption Authority Under the Constitution of North Dakota*, N.D. LEGIS. COUNCIL (Nov. 2013), <https://www.ndlegis.gov/files/resource/committee-memorandum/15.9114.01000.pdf>. Prior to 1981, statutorily all real property was in one class valued at market value. As a practical matter, county assessors and the State Board of Equalization differentiated assessments by class of property in a de facto classification system.

68. § 7 1981 N. D. Laws 1540, 1547 (valuing residential property at nine percent; agricultural, commercial, and centrally assessed property valued at ten percent).

69. *See Property Tax Restructuring in 1981 - Background Memorandum*, N.D. LEGIS. COUNCIL (Nov. 2013), <https://ndlegis.gov/files/resource/committee-memorandum/15.9096.01000.pdf>.

70. 1981 N.D. Laws 695.

71. For example, for property with a true and full value of \$400,000: under S.B. No. 2323 (57-02-08, -27), the assessed value is \$40,000 (10% of true and full value), and taxable value or net value is \$20,000 (50% of the assessed value); in comparison, under S.B. No. 2262 (21-03-01(4)), the assessed value is \$120,000 (6x net value of the property). For taxing purposes, the assessed value is \$40,000, while for bonding debt limit purposes it is \$120,000 (i.e., a 3x increase).

72. *See generally Diane Minor, N.D. Bonding Bill Change Under Study*, FORUM OF FARGO-MOORHEAD, July 16, 1981 (discussing efforts to reconcile S.B. No. 2323 and S.B. No. 2262).

circulated, but ultimately not issued.⁷³ After considering a lawsuit by the City of Bismarck,⁷⁴ a City of Williston tax increment bond issue and debt limit action was brought. District Court Judge Beede found:

That the provisions in Sections 57-02-28 and Subsection 21-03-01(4), NDCC, providing for a general obligation indebtedness of six times the net value of taxable property in the municipality is unconstitutional and contrary to the meaning of “debt” as set forth in Article X, Section 15 of the North Dakota Constitution.⁷⁵

Bond counsel drafted bills proposing solutions.⁷⁶ The legislature met in the first ever reconvened session⁷⁷ in November 1981 to adopt a redistricting plan. In the reconvened session, the assembly amended section 21-03-01 to provide that assessed valuation means fifty percent of true and full value and reconciled the definition for property tax purposes.⁷⁸

III. GENERAL OBLIGATION BONDS

A. OVERVIEW

“Has anyone tried to read through chapter 21-03?” Senator Dwight Cook, long-time Chairman of the Senate Finance and Taxation Committee, asked a rhetorical question prior to the start of a committee hearing.⁷⁹ North Dakota Century Code chapter 21-03, enacted in 1927,⁸⁰ authorizes general obligation (“GO”) bonds. While not quite the Book of Leviticus,⁸¹ as Senator Cook observed, the chapter is difficult to appreciate. GO bonds are a method

73. See Draft Letter from Kenneth M. Jakes, Assistant Att’y Gen., to Dr. Joseph C. Crawford, Superintendent of Pub. Instruction (undated) (on file with author).

74. See Mark Kinders, *Bismarck Seeks Lawsuit to Test Legality of Bonds*, BISMARCK TRIB., July 29, 1981, at 1.

75. *Williston Jobs & Indus., Inc. v. City of Williston*, Civ. No. 14,642 (N.D. Nov. 18, 1981).

76. See N.D. LEGIS. COUNCIL, A COMPARISON OF PROPOSALS BY MR. ARTHUR WHITNEY AND MR. JON ARNTSON REGARDING STATUTORY CHANGES CONCERNING POLITICAL SUBDIVISION BONDED INDEBTEDNESS LIMITATIONS (Nov. 1981).

77. See N.D. CENT. CODE § 54-03-02(3) (2022).

78. 1981 N.D. Laws Reconvened Sess. 23 (codified at N.D. CENT. CODE § 21-03-01(6) (2022)); see N.D. CENT. CODE § 57-02-01(3) (2022) (defining assessed valuation as 50% of the full and true value). The effect was to increase the debt limit some five times over what the limit was prior to 1981. Before 1981, in practice, property was being assessed at about ten percent of market value. After the 1981 reconvened session, property was required to be assessed at full market value, with assessed value as fifty percent of market value, or five times more than prior to 1981.

79. *Hearing on S.B. 2041, Before the S. Fin. & Tax’n Comm.*, 66th Legis. Assemb. (N.D. 2019) (statement by Chairman Cook made immediately prior to the start of the hearing).

80. 1927 N.D. Laws 330; see *Baldwin v. Bd. of Educ. of Fargo*, 33 N.W.2d 473, 476 (N.D. 1948) (“In 1927 the legislature adopted a comprehensive measure relating to the issuance of bonds by municipalities including common school districts, independent school districts, and special school districts. Laws 1927, Chapter 196.”).

81. See generally Rob Bell, *Blood, Guts & Fire: The Gospel According to Leviticus* (June 21, 2018) (downloaded using Gumroad).

of borrowing money for seven “municipalities:”⁸² county,⁸³ city,⁸⁴ school district,⁸⁵ township,⁸⁶ park district,⁸⁷ recreation service district,⁸⁸ and rural fire protection district,⁸⁹ with school districts as the primary user. Outside the provisions of chapter 21-03, municipalities may borrow money “for no other purpose and in no other manner”⁹⁰ except for the methods identified in section 21-03-02.⁹¹ Section 21-03-02 states chapter 21-03 is not applicable to a few enumerated types of borrowing.⁹²

School districts are authorized to issue GO bonds:

[T]o purchase, erect, enlarge, and improve school buildings and teacherages,⁹³ 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 rentals⁹⁴ to the state school

82. See N.D. CENT. CODE § 21-03-01(3) (2022) (defining municipality); cf. §§ 21-03-23, -27, -41 (using the undefined term “taxing districts” instead of municipality); N.D. CENT. CODE § 57-02-01(9) (2022) (definition of taxing district for purposes of Title 57 - Taxation).

83. § 21-03-06(1).

84. § 21-03-06(2).

85. § 21-03-06(4).

86. § 21-03-06(5).

87. § 21-03-06(6).

88. § 21-03-06(8).

89. § 21-03-06(9); see 1979 N.D. Laws 701 (adding rural fire protection districts, the most recent resident in chapter 21-03).

90. § 21-03-04.

91. *But cf.* N.D. CENT. CODE CH. 54-40.3 (2022) (political subdivisions are authorized to enter into joint powers agreements with other political subdivisions); CH. 54-40 (agreements for use of state buildings and facilities); CH. 40-55 (school districts can participate with other political subdivisions in a public recreation system); N.D. CENT. CODE § 15.1-09-54 (2022) (school district technology consortium may borrow under certain conditions).

92. See § 21-03-02 (chapter 21-03 is not applicable to special assessments, drainage bonds, irrigation bonds, certificates of indebtedness against levied taxes, revenue bonds and chapter 21-13 bank loans). Curious language in subsection 1 provides that the chapter is not applicable to financing for special assessments “which do not constitute, at the time of their issuance, a general obligation or fixed liability of the municipality issuing the same.” The language from the 1927 Act might be referring to 1927 N.D. Laws 329 (codified at N.D. CENT. CODE § 40-27-06 (2022)), regarding city refunding special improvement warrants. See *generally* Thomas v. McHugh, 256 N.W. 763, 771 (N.D. 1934) (chapter 21-03 applies to general obligation bonds only).

93. See New Town Public School District No. 1, Initial resolution Authorizing the Issuance and Sale of \$170,000 General Obligation Building Fund Levy Bonds (June 11, 2004) (for the cost of constructing a four unit apartment building for use as a teacherage).

94. See 1953 N.D. Laws 233 (adding payment of advance rentals to state school construction fund); see also Official Ballot, Question No. 1, Fairmount Public School District No. 18 (June 5, 1979) (“Shall Fairmount School District No. 18 of Richland County, State of North Dakota, issue its bonds in an amount not exceeding \$27,000 to provide funds for the purpose of paying advance rentals to the State School Construction Fund?”). The “rentals” term is obsolete as the lease rental structure disappeared decades ago. The language should be repealed as advance payments, i.e., prepaying or refunding GO bonds, is authorized elsewhere in chapter 21-03, without voter approval.

construction fund,⁹⁵ and also to purchase schoolbus equipment⁹⁶ which must meet the standards set up by the state superintendent of public instruction and the director of the department of transportation.⁹⁷

The bonds are payable from an unlimited excess mill levy spread against all taxable property⁹⁸ in the boundaries⁹⁹ of the issuing school district.¹⁰⁰ The Constitution requires that at or before the time of incurring debt, the school district provide for the collection of an annual tax sufficient to pay principal and interest when due, which shall be irrevocable until the debt is paid.¹⁰¹ Before bonds are delivered to the purchaser,¹⁰² the school board:

[S]hall 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,¹⁰³ shall be

95. The state school construction fund no longer exists under that name.

96. *See also* 1947 N.D. Laws 274 (adding school bus equipment to chapter 21-03 and also adding separate general fund financing option); E.g., N.D. CENT. CODE § 15.1-09-43 (2022) (formerly section 15-34.2-12) (school board may purchase a bus on an installment contract basis with the term not to exceed six years). *See generally*, Goodrich Public School District No. 16, Qualified Zone Academy Bond of 2004 (secured by school bus installment contracts pursuant to section 15.1-09-43).

97. N.D. CENT. CODE § 21-03-06(4) (2022).

98. *See generally* 2013 N.D. Laws 1679 (defeated initiated constitutional measure would have abolished property tax and thus ended the use of GO bonds) (Initiated Constitutional Measure No. 2, Property Taxes Eliminated). *See also* Caitlin Devitt, *North Dakota to Put GOs on Hold*, THE BOND BUYER, Dec. 6, 2011 (GO bonds in abeyance until after the June 12, 2012 vote on Measure 2 due to a retroactive effective date).

99. *See* § 21-03-05 (municipalities may incur debt independent of other municipalities regardless of overlapping territory); *see also* N.D. CENT. CODE § 15.1-12-08 (2022) (payment of school district levies after annexation or dissolution); N.D. CENT. CODE § 21-03-15 (2022) (for the purpose of paying a deficiency on GO bonds: “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.”).

100. N.D. CENT. CODE §§ 21-03-15, 57-15-14.2(6)(b), 57-15-01.1(5)(a) (2022).

101. N.D. CONST. art. X, § 16 (“Any city, county, township, town, school district or any other political subdivision incurring indebtedness shall, at or before the time of so doing, provide for the collection of an annual tax sufficient to pay the interest and also the principal thereof when due, and all laws or ordinances providing for the payment of the interest or principal of any debt shall be irrevocable until such debt be paid.”); *see also* State v. Rasmusson, 300 N.W. 25, 27 (N.D. 1941) (“All that [section 16] requires is that political subdivisions make provision to collect taxes to pay an indebtedness at or before the time the indebtedness is incurred.”).

102. *See* N.D. CENT. CODE § 21-03-15 (2022) (although not common, the school board may levy a portion of the tax after voter approval and in anticipation of the bond sale).

103. *See* 1965 N.D. Laws 336 (adding sources of revenue other than property tax or moneys provided by the legislature, anticipating the repeal of personal property tax). The 1965 amendment added the following language which has never been used, and which would likely trigger the state’s debt limit. “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.” *See also* §§ 21-03-42(2) (deposit to sinking fund includes moneys “from other sources pursuant to section 21-03-15”), -18 (form of bonds to

sufficient¹⁰⁴ 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.¹⁰⁵

The resolution levying the tax must be filed with the county auditor.¹⁰⁶ “No further annual levy for that purpose is necessary.”¹⁰⁷ The school board is without power to repeal the tax levy¹⁰⁸ while the bonds are outstanding, except if the board in any year makes an irrevocable appropriation to the sinking fund of moneys on hand, the levy can be reduced accordingly.¹⁰⁹

Statutory levy limits do not apply to GO bonds.¹¹⁰ In North Dakota, property taxes have always been expressed in mills.¹¹¹ A mill is one-thousandth of a currency unit, or one dollar for each one thousand dollars of taxable value.¹¹² Local taxing districts certify a dollar amount to the county, and the county auditor spreads the amount as a mill levy up to the applicable levy cap, if any.¹¹³ Should property valuations decline so a mill does not generate an equal dollar amount, the county auditor, on behalf of the school district, must levy a greater number of mills until sufficient dollars result.¹¹⁴

reference “any annual or periodic payments or distributions appropriated or allocated by the legislative assembly”), -23 (same).

104. It is typical to levy an additional ten percent to the annual principal and interest requirements to allow for the discount allowed taxpayers for early payment and for uncollected taxes. *But cf.* N.D. CENT. CODE § 57-15-31(2) (2022) (“Allowance may be made for a permanent delinquency or loss in tax collection not to exceed five percent of the amount of the levy.”).

105. N.D. CENT. CODE § 21-03-15 (2022); *see also* N.D. Att’y Gen. Op. No. 84-32 (Aug. 22, 1984) (school district must end the levy once sufficient funds are on deposit to pay off the bonds); N.D. Att’y Gen. Op. No. 79-93 (Jan. 11, 1979) (in levying tax for the bond sinking fund the county auditor must act only at the direction of the school board); N.D. Att’y Gen. Op. No. 46-23 (Nov. 25, 1946) (surplus after bonds are paid may be transferred to general fund).

106. N.D. CENT. CODE § 21-03-15 (2022).

107. *Id.*

108. *Id.* (“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.”).

109. *Id.*; *see also* 1935 N.D. Laws 269 (codified at N.D. CENT. CODE § 21-03-15 (2022)) (adding language “that when such bonds are further sustained by revenue of a revenue-producing utility, industry, or enterprise,” the tax levy may be reduced correspondingly). It is unknown what the legislature had in mind.

110. *See* N.D. CENT. CODE § 57-15-14.2(6)(b) (2022) (school district levies, but not limiting mills necessary to pay principal and interest on bonded debt).

111. 1862 Laws Dakota 419; 1929 N.D. Laws 320.

112. *E.g.*, § 57-15-02 (“The rate of all taxes must be calculated by the county auditor in mills, tenths, and hundredths of mills.”); *cf.* H.B. 1055, 64th Legis. Assemb. Reg. Sess. (N.D. 2015) (attempt to replace mills with cents throughout the North Dakota Century Code with respect to property tax).

113. *E.g.*, *Schedule of Levy Limitations*, STATE OF N.D. OFFICE OF STATE TAX COMM’R (July 2021), <https://www.tax.nd.gov/sites/www/files/documents/guidelines/property-tax/levy-limitations.pdf> (listing of tax levy authority by political subdivision).

114. *See Jones v. Brightwood Indep. Sch. Dist. No. 1*, 247 N.W. 884, 887 (N.D. 1933) (“That the valuation shrinks so that the valid outstanding indebtedness is now beyond the constitutional

While there is no mill levy limit, at some point, the exercise becomes counterproductive, at least in a geographically small district.¹¹⁵ GO bonds are known as full faith and credit obligations and are considered the most secure type of government borrowing.

Chapter 21-03 is titled “Bonds.” Interestingly, the term “general obligation” is not defined in chapter 21-03 or elsewhere in statutes. The phrase “general obligation” is used in a few places, but most often, chapter 21-03 employs “municipal bonds” or just “bonds.” Apart from chapter 21-03, some statutes reference “general obligation” and sometimes the meaning is clear,¹¹⁶ but often not.¹¹⁷

limitation does not invalidate any portion of such indebtedness, nor discharge the district from the payment thereof.”).

115. See Karl Oxnevad, *North Dakota Town, Bondholders Agree on Settlement to Prevent Chapter 9 Filing*, THE BOND BUYER (Aug. 9, 1991) (City of Belfield defaulted on special assessment bonds) (“There came a point when [town] council members said they wouldn’t increase the deficiency [mill] levy any higher; they would all quit before they’d do it again, and you wouldn’t have found anyone to serve on the council who would increase the levy . . . The town would have died.”) (first alteration in original) (quoting city attorney Al Hardy). The special assessment deficiency levy works similarly to the general obligation bond levy, imposed as an excess mill levy without limit.

116. See N.D. CENT. CODE § 40-57-19 (2013) (“General obligation bonds – Issuance – Levy”) (repealed 2015) (allowing a general obligation MIDA bond, i.e. property tax levy, for a portion of the cost of a private business project if approved by two-thirds vote and following procedure in chapter 21-03); e.g., Offering Prospectus, \$300,000 General Obligation Industrial Development Bonds, Barnes County, North Dakota (Sept. 1974) (to construct a grain elevator for International Multifoods, approved by voters at a special election held July 23, 1974 by a vote of 2,560 yes and 901 no; believed to be the only GO MIDA bond issued in North Dakota); see also N.D. CENT. CODE § 40-27-04 (2022) (city may issue bonds for purpose of purchasing outstanding special assessment warrants which either have or are about to default, such bonds shall be the “general obligations” of the city); § 40-33-07 (issuance of bonds approved by a majority of the electors payable from a direct, annual, and irrevocable tax).

117. See N.D. CENT. CODE § 57-15-17.1 (repealed 2013) (school board authorized to issue general obligation bonds, with no reference to chapter 21-03 and no unlimited mill levy, interpreted to mean such bonds count for debt limit purposes but are not otherwise subject to chapter 21-03); § 57-15-59 (repealed 2015) (leases for law enforcement facilities, “payments due under the lease are a general obligation of the county or city and backed by the full faith and credit of the county or city” but giving no excess levy authority); N.D. CENT. CODE § 61-16.1-36 (2022) (deficiency in a water resource district special assessment district, such deficiency is a “general obligation” of the water resource district); § 61-24.8-36 (garrison diversion conservancy district, same provision); § 61-35-86 (deficiency in a water district special assessment district, such deficiency is a “general obligation” of the water district; however, a water district has no power to levy taxes); N.D. CENT. CODE § 2-06-10(9) (2022) (deficiency in paying airport authority revenues bonds, city shall levy a general tax on all taxable property); N.D. CENT. CODE § 23-11-24(23)(b) (2022) (housing authority may pledge the “general obligation” of the city to the payment of housing revenue bonds, however no tax levy authority or sources of payment for such purpose); see also N.D. Att’y Gen. Op. No. 2011-L-12 (Dec. 21, 2011) (section 23-11-24(23)(b) creates a contingent liability not subject to debt limit which will ripen into current liability subject to debt limit in the event the housing authority has insufficient revenues to pay debt service) (the opinion is questionable since there is no authority to provide for the collection of an annual tax sufficient to pay any housing authority debt); *Hearing on S.B. 2219 Before the H. Pol. Subdivisions Comm.*, 48th Legis. Assemb. (N.D. 1983) (testimony of Maurice Cook, public finance attorney) (deleting reference to “general obligation” in chapter 21-02 “because does not know what this term means.”).

B. BASIC PROCEEDINGS

Proceedings for GO bonds are commenced by the school board with the adoption of an initial resolution.¹¹⁸ The initial resolution sets forth:

1. The maximum amount of bonds proposed to be issued.
2. The purpose for which the bonds are proposed to be issued.¹¹⁹
3. The assessed valuation of all taxable property in the municipality as defined in section 21-03-01.¹²⁰
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.¹²¹

After adopting the initial resolution, the governing body, by resolution, provides for submitting to the qualified electors¹²² the question of whether the initial resolution shall be approved.¹²³ The date of the election must be

118. See N.D. CENT. CODE §§ 21-03-09 to -10 (2022); see also § 21-03-10(2) (rare in modern times, instead of the school board initiating the process, an initial resolution can be proposed by a petition signed by one-fourth of the qualified electors in the school district in which case the school board must call such an election).

119. See also § 21-03-10.1 (allowing the initial resolution to provide for a specific school plan for use of the bond proceeds designating the general area to be serviced by expenditure of the bond proceeds); e.g., *Hearing on H.B. 788 Before the H. Educ. Comm.*, 38th Legis. Assemb. (N.D. 1963) (statement of Rep. Jacobson) (“To help McKenzie County. Would like to have the law read so that the bond issue and people voting would be in the area involved in the bond issue.”). Because approving a specific plan greatly limits the flexibility of the school board the section is seldom used. See generally *Complaint, Neiber v. Lidgerwood Pub. Sch. Dist.*, Civ. No. 39-05-C-00250 (N.D. July 5, 2005) (alleging that school district had adopted a plan under section 21-03-10.1).

120. The form of initial resolution used by most school districts states the assessed valuation is “as last finally equalized” as a point of measurement, i.e. after the State Board of Equalization has finalized the assessment process. The quoted language had been part of the definition in section 21-03-01(6) but was repealed in 1981.

121. N.D. CENT. CODE § 21-03-09 (2022).

122. Cf. § 21-03-07 (using the phrase “qualified voters”). See generally 1985 N.D. Laws 685 (defining qualified elector for petition purposes). See also N.D. Att’y Gen. Op. No. 60-190 (Sept. 15, 1960) (voting at school district bond elections is on the basis of residence rather than property ownership); cf. H.B. 1383, 64th Legis. Assemb. Reg. Sess. (N.D. 2015) (attempt to allow nonresident landowners right to vote on school district bond referenda). See generally *Mittelstadt v. Bender*, 210 N.W.2d 89 (N.D. 1973) (residency test in connection with school bond referendum).

123. § 21-03-11. See generally N.D. REV. CODE § 21-0307 (1943) (“No municipality having a board of budget review shall issue any bond or hold any election to secure authority to issue any bond, until there has been compliance with the provisions of sections 40-4106 and 40-4107.”). E.g., 1933 N.D. Laws 259 (creating the board of budget review); 1973 N.D. Laws 938 (repealing the board of budget review); see *Resolution Submitting Initial Resolution To Board of Budget Review, LaMoure Public School District No. 8* (Aug. 8, 1967); *Notice of Public Hearing on Proposed Bond Issue*, Aug. 9, 1967; *Minutes of the Meeting of the Board of Budget Review, LaMoure, North Dakota*, Aug. 28, 1967; see also *Nordby v. Dolan*, 78 N.W.2d 689 (N.D. 1956) (successful school district bond election claimed void for failure to submit proposed bond issue to board of budget

not less than twenty days after the passage of the initial resolution.¹²⁴ The election must be conducted as in the case of elections of members of the governing body.¹²⁵ The notice of election “must contain a complete copy of the initial resolution”¹²⁶ and meet certain publication timing requirements.¹²⁷

If the voters approve, the school board may proceed by resolution to issue the bonds in one or more series as needed for the construction project.¹²⁸ The bonds must be within the debt limit at the time the bonds are issued.¹²⁹ The bonds have a maturity of not more than twenty years,¹³⁰ but can otherwise contain such terms as the school board agrees to include. Bonds in excess of \$1,000,000 must be sold by advertising for bids.¹³¹ Sales to the Bank of North Dakota, the Board of University and School Lands, the North Dakota Public Finance Authority, trust funds administered by public officials, agencies of the United States, and for refunding bonds are excepted.¹³² Prior to 1993, school districts were required to provide bond sale

review, held that submission to board is directory rather than mandatory and so failure did not invalidate election). *But cf.* N.D. Att’y Gen. Op. No. 50-151 (July 15, 1950) (stating school districts are not subject to board of budget review process). *Accord* N.D. Att’y Gen. Op. No. 63-201 (July 25, 1963); *see also* Thomas v. McHugh, 256 N.W. 763, 770 (N.D. 1934) (holding the board of budget review had authority over general obligation bonds only).

124. N.D. CENT. CODE § 21-03-11 (2022). *See generally* N.D. CENT. CODE § 16.1-07-04 (2022) (in spite of the twenty-day time period, absentee ballots must be available at least forty days before election, and so it is recommended that school boards start the bond referendum process around sixty days prior to the election).

125. § 21-03-11; *see* N.D. CENT. CODE CH. 15.1-09 (2022) (School Boards); *see also* § 15.1-12-12 (allowing the question of GO bond issuance at same election as approval of reorganization plan).

126. § 21-03-12. The notice of election must state that the question to be submitted is whether the initial resolution shall be approved, but the ballot itself does not reference the initial resolution.

127. *Id.* *See generally* *Late Notice Invalidates Rolette Vote*, FORUM OF FARGO-MOORHEAD, Dec. 18, 1981, at 12 (failure to follow publication timing requisites invalidates a Rolette school district special bond election).

128. §§ 21-03-16 to -21.

129. *See* Jones v. Brightwood Indep. Sch. Dist. No. 1, 247 N.W. 884, 887 (N.D. 1933).

130. § 21-03-19.

131. §§ 21-03-25 to -30. Advertising for bids involves publication of a notice for sale once in the official newspaper not less than 10 days nor more than 30 days before the bond sale date. As a practical matter, bids for the sale of the bonds are received through posting to an internet bond sale calendar, <https://emma.msrb.org/toolsandresources/newissuecalender>, and the work of financial advisors, rather than through the newspaper notice. *See generally* 2019 N.D. Laws 715 and 1971 N.D. Laws 539 (amended 2019) (from 1971 to 2019, the threshold for requiring competitive bids was \$100,000).

132. § 21-03-30; *see also* § 21-03-25 (providing a further exception for city bonds issued to cover deficiencies in a special assessment district fund). *See generally* Thomas Baker, *Bismarck Airport July 7, 1948*, in BISMARCK HISTORY FOLLOWING WORLD WAR II (Thomas F. Baker Family, Collection No. MSS 11022, Box 2, State Historical Society of North Dakota) (regarding general obligation judgment bonds sold to acquire property for the airport: “A public sale is required unless the Bank of North Dakota purchases the bonds. The cost of as [sic] public sale is expensive so the City of Bismarck sold its bonds locally. The City then sells such bonds to the Bank of North Dakota and immediately repurchases the bonds from the Bank of North Dakota paying the Bank one dollar per bond and then gives public notice of the availability of such bonds in (generally – in

notices to numerous state agencies¹³³ for the purpose of allowing such agencies to purchase the bonds.¹³⁴ If state agencies did not submit a bid to purchase the bonds, or were not the successful bidder, the agencies were prohibited from purchasing such bonds within five years of the sale date at a price higher than that paid by the successful bidder.¹³⁵ For a time, the attorney general was required to render an opinion on the legal sufficiency of bond issues.¹³⁶ Notices to state agencies, attorney general opinions, and other formalities have been repealed.¹³⁷ A statute of repose provides that challenges to the validity of bonds issued pursuant to chapter 21-03, or taxes

\$1,000.00 amounts) also showing the rate of interest and maturities. The local market was exceptionally good and citizens were able to participate, which resulted in an [sic] good market.”).

133. See Minutes, Underwood School District #8 Board Meeting (Aug. 12, 1952) (clerk instructed to notify the Board of University and School Lands, Bank of North Dakota, State Fire & Tornado Fund, Workmen’s Compensation Bureau, State Bonding Department, and the Industrial Commission for the offer of sale of the district’s bonds).

134. See 1941 N.D. Laws 149 (codified at N.D. CENT. CODE § 21-03-31, repealed by 1993 N.D. Laws 851, 854); *Summary of S.B. 2454, Testimony on S.B. 2454 Before the S. Fin. & Tax’n Comm.*, 53rd Legis. Assemb. (N.D. 1993) (“The longstanding practice at the Bank of North Dakota has been to discard these notices.”); see also N.D. COMP. LAWS § 287 (1913) (stating the Board of University and School Lands “shall have power . . . to invest any money belonging to the permanent funds . . . in bonds of school corporations”). See generally Voelker et al., *supra* note 31, at 59 (“School district bonds are among the preferred investments of several state agencies, including the Board of University and School Lands that manage permanent funds.”); Statement and Offer of Bonds for Sale to the Board of University and School Lands, State of North Dakota (Oct. 14, 1933) (Attorney General, Administration, School District Bond Correspondence Series No. 30021, State Historical Society of North Dakota) (“We, the undersigned, duly qualified and acting officers of Dietz School District No. 16 of Grant County, North Dakota, hereby offer for sale to the Board of University and School Lands, bonds in the sum of \$8,000.00 . . .”); N.D. Att’y Gen. Op. Letter to Berg (May 12, 1913) (“[Women] have the right to vote on the question of issuing [of school] bonds. This has been the uniform holding of the attorney general and the Board of University and School Lands for many years; indeed, since the state began to purchase school bonds.”).

135. N.D. CENT. CODE § 21-03-32 (1991) (repealed by 1993 N.D. Laws 851, 854); see N.D. Att’y Gen. Op. Letter to Bowers (July 12, 1954) (the legislature “had in mind the evils at which chapter 109 of the 1941 Session Laws had been aimed, namely, the activities by intermediate bond dealers in municipal bonds of the state and by their subsequent purchase by the Bank of North Dakota.”).

136. 1971 N.D. Laws 570 (codified at N.D. CENT. CODE § 21-03-21.1, repealed by 1993 N.D. Laws 851, 854); see N.D. Att’y Gen. Op. (Feb. 23, 1972) (Attorney General, Administration, Case Files Series No. 30761, State Historical Society of North Dakota) (regarding proposed Midway Public School District, General Obligation School Building Bonds of 1972) (“From such examination it is my opinion that, when executed, such Bonds will be legal obligations enforceable in accordance with their terms and qualify as legal investments under the provisions of Chapter 21-10 of the North Dakota Century Code.”).

137. See 1993 N.D. Laws 851, 852 (no longer necessary that bonds contain the seal of the school district). See generally N.D. CENT. CODE § 9-06-11 (2022) (“All distinctions between sealed and unsealed instruments are abolished.”); Memorandum from Robert Birdzell, Att’y, Bank of N.D., on Use of Seals of Public Corps. on Bonds and Warrants (Dec. 2, 1958) (Bank of North Dakota, Investment and Trust Dep’t Bond Issue Files, Series No. 31427, State Historical Society of North Dakota).

levied for the bonds, must be commenced within thirty days of the adoption of the resolution awarding sale of the bonds.¹³⁸

School boards can elect to participate in a credit enhancement program allowing school district bonds a higher credit rating, thus lowering interest rates on the borrowing.¹³⁹ The program works by authorizing the Department of Public Instruction to withhold and transfer a school district's state aid¹⁴⁰ directly to a bond paying agent in the event the school district is unable to make a regularly scheduled bond payment. Since the program became active in 2011, state aid has not been intercepted.¹⁴¹ Pending legislation will expand the intercept program from state aid to include other sources of revenue provided to school districts in lieu of property taxes.¹⁴²

C. SIXTY PERCENT VOTER APPROVAL

A distinctive feature associated with chapter 21-03 bonds is the necessity of 60%¹⁴³ supermajority approval.¹⁴⁴ “No municipality, and no governing

138. §§ 21-03-47, -03 (defects and irregularities do not invalidate bonds excepting fraud and debt limit); *see also* N.D. CENT. CODE §§ 16.1-16-04 (action to contest election must be filed within fourteen days after final certification by canvassing board), -05 (2022) (grounds for election contest). *See generally* Elliot v. Drayton Pub. Sch. Dist. No. 19, 406 N.W.655 (N.D. 1987) (discussing sections 16.1-16-04 and 16.1-16-05); City of Fargo v. Sathre, 36 N.W.2d 39, 47-48 (N.D. 1949) (stating the general rule with respect to elections that all provisions of the election law are mandatory if enforcement is sought before election, but after election provisions are directory only).

139. N.D. CENT. CODE § 6-09.4-23 (2022); *see also* § 21-03-44 (money in a bond sinking fund may not be withdrawn for purposes other than paying debt service, except as permitted by section 6-09.4-23). *See generally* S.B. 2275, 55th Legis. Assemb. Reg. Sess. (N.D. 1997) (proposal to use coal development trust fund dollars to guaranty school district GO bonds).

140. *See* N.D. CENT. CODE CH. 15.1-27 (2022) (“State Aid”).

141. *See* 1999 N.D. Laws 270. The state aid intercept program was established in 1999 for purposes of the dormant North Dakota Municipal Bond Bank school construction financing program; *see North Dakota Municipal Bond Bank, School Construction Financing Program* (memorandum explaining the new school construction financing program) (undated) (on file with author); *see also* Dale Wetzel, *Bond Bank Helping Schools*, BISMARCK TRIB., April 20, 1998, at 8 (discussing beginnings of credit enhancement program in the Legislature’s interim Education Finance Committee).

142. H.B. 1125, 68th Legis. Assemb. (N.D. 2023).

143. *See* Lloyd Omdahl, *Unusual Majority Requirements and North Dakota School Elections*, 47 N.D. L. REV. 407, 407-08 (1970) (noting that a large percentage of failed school district GO bond referenda had majorities in excess of 50%). *See infra* Part VIII APPENDIX (between 2015 and 2017 four Maple Valley Public School District GO bond referenda failed with yes votes of 58.87% (April 25, 2017), 59.76% (September 20, 2016), 59.61% (April 14, 2015) and 58.39% (January 13, 2015)); *see also* Erin Froslic, *Kindred Bond Issue Fails by 1%*, INFORUM, Sept. 22, 2004 (59% approval of bond referendum); *Mayville School Crumbles as Bond Issues Fail*, BISMARCK TRIB., May 3, 1998, at 9A. *See generally* H.B. 1514, 68th Legis. Assemb. (N.D. 2023) (amending section 21-03-07 to change 60% approval of GO bonds to “a majority of the number equal to thirty percent of all qualified electors of the municipality”).

144. *See generally* *Debt of Political Subdivisions – Approval Requirements*, N.D. LEGIS. COUNCIL (Aug. 2012), <https://www.ndlegis.gov/assembly/62-2011/docs/pdf/13.9330.01000.pdf>. It is important to note that the 60% approval is a chapter 21-03 demand, not just a school district provision.

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”¹⁴⁵ Super or excess majority approval requirements have withstood constitutional challenge.¹⁴⁶

The three-fifths approval mark was part of the 1927 law.¹⁴⁷ In 1933, the legislature increased the vote threshold to sixty-six and two-thirds percent.¹⁴⁸ The 1947 Legislative Assembly decided that municipalities having a population of five thousand or more needed only a three-fifths majority, while municipalities under five thousand remained at two-thirds of votes cast.¹⁴⁹ Smaller school districts found it near impossible to meet the two-thirds margin¹⁵⁰ and sought legislative relief.¹⁵¹ In response, the 1969 Legislative Assembly enacted a special provision for school districts, setting

145. N.D. CENT. CODE § 21-03-07 (2022).

146. *Gordon v. Lance*, 403 U.S. 1, 6 (1971) (“Certainly any departure from strict majority rule gives disproportionate power to the minority. But there is nothing in the language of the Constitution, our history, or our cases that require that a majority always prevail on every issue.”); *see also* N.D. Att’y Gen. Op. No. 93-L-147 (Apr. 23, 1993) (different voting tests based on school district population does not violate equal protection clause); N.D. Att’y Gen. Op. No. 2004-L-28 (Apr. 19, 2004) (proposed home rule amendment requiring 60% supermajority in certain situations is valid).

147. § 5, 1927 N.D. Laws 330, 335.

148. 1933 N.D. Laws 261.

149. 1947 N.D. Laws 269. *But cf.* 1947 N.D. Laws 272 (§ 21-0307 amended second time but without the population-based distinction); N.D. REV. CODE § 21-0307 at 201-03 (1943 & Supp. 1949) (published two versions of § 21-0307). *See* 1951 N.D. Laws 242 (amending § 21-0307 making clear population-based voting thresholds).

150. Between 1951 and 1969, an exception allowed municipalities, upon 60% vote to bond to replace public buildings when destroyed or, after public hearing, determined unsafe or inadequate. *E.g.*, 1951 N.D. Laws 242, 243; N.D. REV. CODE § 21-0307(3) (1943 & Supp. 1953). The provision remained until 1985, but after 1969 was no longer relevant for school districts as all school district GO bonding was set at 60% regardless of population. *But cf.* 1947 N.D. Laws 272 (allowing majority vote if building destroyed, and procedure to petition court if unsafe or inadequate, but an alternate version of section 21-0307 also adopted in 1947). It seems at least some elections were held between 1947 and 1951 under the majority vote criteria. *See Dickinson Votes for New Grade School*, DICKINSON PRESS, Aug. 6, 1947 (simple majority vote passed for new grade school to replace old grade school building “described by state officials as unfit for use as a school”). *See generally* N.D. Att’y Gen. Op. No. 60-191 (Aug. 24, 1960) (discussing applicability of section 21-0307(3)).

151. *See Hearing on H.B. 151 Before the H. Pol. Subdivisions Comm.*, 41st Legis. Assemb. (N.D. 1969) (testimony of Mr. Borchert, Superintendent of Schools, Crosby) (“In the Sept. 68 election we had 738 yes votes and 473 no votes, but still lost the election.”); *Hearing on H.B. 151 Before the H. Pol. Subdivisions Comm.*, 41st Legis. Assemb. (N.D. 1969) (testimony of Mr. Wallace, Superintendent of Schools, Fessenden) (“We had 64.2 percent vote but still lost.”). *See generally* Cecile Wehrman, *Crosby Pool Began with Controversy but Stood Test of Time*, CROSBY JOURNAL, 6, May 13, 2009 (describing a December 1957 ballot measure for a swimming pool: “The vote was nearly two-to-one in favor, but short of the two-thirds majority required.”). *But cf.* Special Meeting of the Board of Education of Ashley Special School District #9 of McIntosh County, North Dakota (Apr. 10, 1959) (indicating April 7, 1959, special election voters approved GO bonds with 84.71% in favor).

the approval at three-fifths, regardless of population.¹⁵² In 1985, the population measurement was erased for good and all municipalities were returned to the original bar of sixty percent.¹⁵³ Fruitless attempts have been made in the years since to lower the three-fifths requirement.¹⁵⁴ A mandatory recount of a bond issue question is necessary if decided by a margin not exceeding one-fourth of one percent of the total vote cast for and against the question.¹⁵⁵ The form of the ballot question is set forth by statute:¹⁵⁶

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

The ballot form was amended in 2015 to require tax impact information.¹⁵⁷ As an example, a proposed bond issue of \$5.4 million amortized over twenty years at current market interest rates demands annual bond debt service of \$331,436. For a particular school district, one mill applied to the taxable

152. 1969 N.D. Laws 471 (codified at § 21-03-07(6) (1971) (repealed 1985)); *see Hearing on H.B. 151 Before the H. Pol. Subdivisions Comm.*, 41st Legis. Assemb. (N.D. 1969) (testimony of Howard Snortland, North Dakota Department of Public Instruction) (“Compared figures in neighboring states and said Minnesota has a simple majority, South Dakota has 60 percent and North Dakota has 66 and 2/3 which means that 1/3 of the people are controlling the elections.”).

153. 1985 N.D. Laws 922 (codified at N.D. CENT. CODE § 21-03-07 (2022)); *see Hearing on H.B. 1548 Before the H. Fin. & Tax’n Comm.*, 49th Legis. Assemb. (N.D. 1985) (testimony of James Stewart, Attorney, Beauclair & Cook) (“The amendments to Section 21-03-07 would make the voter approval requirement uniform for all municipalities at 60 percent.”).

154. *See* H.B. 1350, 67th Legis. Assemb. Reg. Sess. (N.D. 2021) (60%, 57% and 55% requisites based on school district population); Janell Cole, *Lenient Bonding Refused*, BISMARCK TRIB., Mar. 14, 1997 (discussing S.B. 2061, 55th Legis. Assemb. (N.D. 1997) which would have lowered the approval margin to fifty-five percent); H.B. 1290, 55th Legis. Assemb. Reg. Sess. (N.D. 1997) (allowing GO bonds with a simple majority); S.B. 2053, 54th Legis. Assemb. Reg. Sess. (N.D. 1995) (same).

155. N.D. CENT. CODE § 16.1-16-01(1)(c) (2022); *see* Resolution Recounting Returns and Certifying Results of Special Election for Issuance of Bonds, Bismarck Public School District No. 1 (Nov. 15, 1996) (at the November 5, 1996, general election, a Bismarck School District bond question was approved by a margin of 34 votes, or 60.125% triggering a recount and upon recount the approval stood with 60.119% in favor).

156. N.D. CENT. CODE § 21-03-13 (2022).

157. 2015 N.D. Laws 781; *see Hearing on H.B. 1284 Before the H. Gov’t. & Veterans Aff. Comm.*, 64th Legis. Assemb. (N.D. 2015) (statement of Rep. Bellew) (“I believe that this will inform voters to a greater extent as to what effect the bond issue will have on their property taxes and allow them to make a more informed decision.”).

valuation raises \$16,863. Accordingly, a tax levy of 19.65 mills is required to generate the annual debt service dollar amount.¹⁵⁸ A tax levy of 19.65 mills equals \$19.65 on each \$1,000 of taxable valuation. Tax information becomes part of the ballot question. Unfortunately, the tax impact language causes confusion. Some voters assume that the \$19.65 in the example is for each \$1,000 of true and full value. If that were the case, for a \$350,000 home, the additional tax for the first year of bond debt service would be \$6,877.¹⁵⁹ The correct calculation reveals a first-year tax bill of \$309.¹⁶⁰ Many school districts want to add illuminating language to the ballot, but since the legislature prescribed the form, districts are left to other methods to educate voters. The North Dakota Century Code mandates bond election ballots be separate from other ballots used on the same day for other elections.¹⁶¹ The statute is interpreted to mean that the bond question be set forth with a distinct “yes” or “no” apart from other questions on the same ballot.¹⁶²

A special election may be called for the question of approving GO bonds.¹⁶³ Past efforts have tried to restrict bond elections to primary and general elections.¹⁶⁴ Statutes require a minimum interval between elections.¹⁶⁵ Specifically, whenever an election for a bond issue has failed to receive the required number of votes for approval, the matter may not again be submitted to a vote until a period of at least three months has expired, and there can be no more than two elections on “the same general matter” within twelve consecutive calendar months.¹⁶⁶ Further, if a school district bond issue is before the voters for a third or subsequent time, the school district must resubmit its construction proposal to the Department of Public Instruction for approval.¹⁶⁷ In response to the COVID-19 pandemic, the Governor issued an

158. $\$331,436/\$16,863 = 19.65$ mills.

159. $\$350,000/1,000 = 350 \times \19.65 .

160. $\$350,000/1,000 \times 50\% \times 9\% = 15.75 \times \19.65 .

161. § 21-03-13.

162. See generally N.D. Att’y Gen. Op. Letter to Smith (Nov. 8, 1979) (discussing *Knudson v. Norman Sch. Dist.*, 256 N.W. 224 (N.D. 1934)). See also N.D. CENT. CODE § 16.1-06-08 (2022) (separate no-party ballot at general election, but may be on the same paper or electronic ballot).

163. See N.D. CENT. CODE § 15.1-09-23 (2022) (school district special election may be held at any time for any lawful purpose).

164. See H.B. 1435, 65th Legis. Assemb. Reg. Sess. (N.D. 2017); H.B. 1474, 64th Legis. Assemb. Reg. Sess. (N.D. 2015); e.g., *Hearing on H.B. 1435 Before the Sen. Educ. Comm.*, 65th Legis. Assemb. (N.D. 2017) (testimony of L. Anita Thomas, General Counsel, North Dakota School Boards Association) (“If the local patrons disagree with the decision-making of their school board, be that the selected date of an election or even the reason for the election, the patrons have the ability to work for the defeat of a measure, to unseat incumbent board members, or even to recall board members.”). See generally Blair Emerson, *Bill Aims to Limit Elections*, BISMARCK TRIB., Feb. 9, 2017, at B2.

165. § 16.1-01-11; see also N.D. Att’y Gen. Op. No. 55-50 (May 24, 1955) (chapter 21-03 does not limit the number of elections for issuing bonds).

166. § 16.1-01-11(2)(a). See generally N.D. Att’y Gen. Op. Letter to Larson (July 19, 1982).

167. §§ 16.1-01-11(2)(b) and 15.1-36-01.

executive order suspending conditions as to precincts, polling places, and polling hours for school district special elections, instead allowing an election by absentee ballot only.¹⁶⁸ Not surprisingly, bond elections can be contentious.¹⁶⁹

D. EXCEPTIONS TO VOTER APPROVAL

Several types of school district GO bonds do not require voter approval.¹⁷⁰ If no election is required, the school board still starts the process by adopting an initial resolution.¹⁷¹

1. Junior College

In 1981, the legislature allowed school districts having a community or junior college or off-campus educational center with an enrollment of one thousand or more students to issue GO bonds for building purposes.¹⁷² The total principal amount of bonds is limited to \$700,000, and the tax levy for debt service is capped at two mills. The law was enacted specifically for

168. See N.D. Exec. Order No. 2020-19.1 (Apr. 7, 2020), <https://www.governor.nd.gov/sites/www/files/documents/executive-orders/Executive%20Order%202020-19.1.pdf>; N.D. Exec. Order No. 2021-01 (Jan. 7, 2021), <https://www.governor.nd.gov/sites/www/files/documents/Executive%20Order%202021-01%20-%20Orders%20for%20school%20elections%2C%20MV%20registrations%20eliminated.pdf> (terminating Order No. 2020-19.1). Pursuant to the executive order, Killdeer school district conducted an absentee ballot only special bond election, with ballots mailed or deposited in a secure drop box, resulting in approval of \$23 million GO bonds by a margin of 62.03%.

169. See Lauren Donovan, *Watchdog Invited to Mott Vote*, BISMARCK TRIB., May 10, 2014, at 1A (discussing the involvement of the North Dakota Watchdog Network in the Mott-Regent Public School District bond referendum) (the referendum failed with 35% voting in favor); Archi Ingersoll, *BCI Investigates Alleged Tampering in Tight Maple Valley School Vote*, INFORUM, Feb. 4, 2015 (reports that election workers and others tried to illegally sway votes inside a polling site); Ryan Bakken, *School Bond Divides Town*, DICKINSON PRESS, Oct. 1, 2011, at 1 (regarding Cavalier school district bond referendum, which failed with approximately 25% yes votes); *No Hot Dogs to be at Polling Place*, BISMARCK TRIB., Oct. 2, 2013, at 6B (Wahpeton school district drops plans to offer free hot dogs to voters during a bond referendum over concerns of improper influence); see also N.D. Att’y Gen. Op. No. 2019-O-13 (July 18, 2019) (open records request to Dickinson Public School for records regarding advertising or promoting “vote yes” on a school bond referendum, school district was not required to provide records held by a private, citizen organized “vote yes” group).

170. Cities, counties, and park districts also have exceptions to voter approval of GO bonds. See N.D. CENT. CODE § 21-03-07 (2022).

171. § 21-03-14.

172. §§ 21-03-06(4.1), -07(2).

construction of a skills center on the Bismarck Junior College¹⁷³ campus.¹⁷⁴ The section is not relevant today and should be repealed.¹⁷⁵

2. *Refunding Bonds*

A school district is authorized to refinance or refund outstanding bonds with new 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.”¹⁷⁶

3. *Payment of Deficit on Bonds*

A school district may issue GO bonds “[t]o provide necessary funds for the payment of the principal and interest” on school district bonds “due or about to become due, for the payment of which” the school district has insufficient funds, “but only to the extent of such deficit.”¹⁷⁷ While not clear, presumably, GO bonds may only be issued for deficits in other GO bond funds, not for other types of school district bonds.

4. *Prepayment of Special Assessments*

School district property is subject to special assessment for benefits received from public improvements.¹⁷⁸ Pursuant to a resolution adopted by a

173. See 1987 N.D. Laws 491 (changing name to Bismarck State College).

174. See *Hearing on H.B. 1243 Before the S. Appropriations Comm.*, 47th Legis. Assemb. (N.D. 1981) (testimony of Dr. Kermit Lidstrom, President of Bismarck Junior College) (“To provide a facility for BJC and eliminate the constant rental fees that are being paid at the present time for additional space for the basic carpentry, plumbing, electrical, etc. courses being provided by Bismarck Junior College.”); see also Lucille Hendrickson, *Two Mills for BJC Building*, BISMARCK TRIB., Apr. 4, 1981, at 1 (pursuant to the legislation, Bismarck school district issued its \$700,000 Limited Tax Obligation Bonds of 1981 (Bismarck Junior College Multipurpose Skills Center Project) dated August 1, 1981).

175. See N.D. CENT. CODE CH. 15-18 (“Junior Colleges”) (almost entirely repealed by § 15 1983 N.D. Laws 506, 513). See also §§ 15-55-18 to -19 (repealed by § 2 1999 N.D. Laws 720) (school district revenue bonds for junior colleges and off-campus education centers); N.D. Att’y Gen. Op. No. 64-203 (May 19, 1964) (explicit authority for school district to issue bonds and build a dormitory for junior college students); e.g., \$546,000 University of North Dakota, Williston Center, Student Housing Revenue Bond, Series 1979, Williston School District No. 1; \$800,000 Bismarck Junior College, Building Revenue Bonds of 1973, Bismarck Public School District No. 1; \$1,250,000 Lake Region Junior College, Revenue Bonds of 1972, Devils Lake School District. See generally N.D. Att’y Gen. Op. No. 73-372 (Jan. 30, 1973) (approving issuance of Lake Region Junior College Revenue Bonds of 1972 by Devils Lake school district). Cf. § 21-03-06(2)(m) (city GO bonds to provide matching funds for a project at a state institution of higher education).

176. §§ 21-03-06(7)(b)-(c), -07(2).

177. §§ 21-03-06(7)(b), -07(2).

178. N.D. CENT. CODE § 40-23-07 (2022); see also *United Pub. Sch. Dist. No. 7 v. City of Burlington*, 196 N.W.2d 65, 69 (N.D. 1972) (“We take judicial notice of the fact that, in a city of 247 population, with little commercial activity and no industrial activity, the school – with its 208-pupil enrollment and its many activities which include inviting the attendance of the public – would be the greatest recipient of the benefits of a sewer and water system.”). See generally Scott D.

two-thirds vote of the school board, a school district is authorized to issue GO bonds¹⁷⁹ for the purpose of prepaying outstanding special assessments levied by other political subdivisions against school district property.¹⁸⁰ School districts are permitted to levy excess mills for the purpose of paying annual special assessments.¹⁸¹ Because cities are allowed to add one and one-half percent beyond the bond interest rate to the interest rate charged to property owners, it may be advantageous for school districts to issue GO bonds at a lower interest rate, apply the proceeds to prepay the special assessments, and use the excess mill levy authority to pay debt service on the GO bonds.¹⁸²

5. *Emergency Condition*

By resolution adopted by a two-thirds vote of the school board, school districts are permitted to issue GO bonds without an election for the purpose of providing funds to pay costs associated with an emergency condition.¹⁸³ As a precondition to the issuance of bonds, the school district must be located at least in part within a county included in a disaster or emergency proclamation,¹⁸⁴ and the Governor must have issued an executive order or proclamation of a state of disaster or emergency.¹⁸⁵ The provision was added in 1989 to address flooding concerns.¹⁸⁶ Minot Public School District issued

Wegner, *Not So Special: Special Assessments and the Fading Concept of Benefit*, 97 N.D. L. REV. 67 (2022).

179. See *Official Statement for \$1,260,000 General Obligation Special Assessment Prepayment Bonds, Series 2020A, Grand Forks Public School District No. 1*, ELEC. MUN. MKT. ACCESS (June 15, 2020), <https://emma.msrb.org/RE1352032-RE1051299-RE1460018.pdf>.

180. § 21-03-07(10); 1993 N.D. Laws 856 (statutorily, special assessment prepayment bonds are payable from § 57-15-41 levy, while all other GO bonds are payable from § 21-03-15 levy).

181. N.D. CENT. CODE § 57-15-41 (2022).

182. See *Hearing on S.B. 2463 Before the H. Fin. & Tax'n Comm.*, 53rd Legis. Assemb. (N.D. 1993) (testimony of Marvin Leidal, Superintendent, West Fargo School District) (“The West Fargo School District presently has about \$1,290,000.00 in special assessments to pay at interest rates ranging from 6.5% to 11.25%. Our bond consultant has estimated that if we were able to sell bonds at a rate of approximately 5% (present market) and use the proceeds to pre-pay our special assessment obligations, we could save our taxpayers about \$213,800.00 in interest costs over the next 15 years.”).

183. § 21-03-07(9).

184. *Id.* (authorizing a “municipality or other political subdivision” to issue GO bonds for an emergency condition. Municipality is defined in section 21-03-01(3) as seven political subdivisions. It is unclear, but unlikely that the legislature meant to open up use of the emergency provision to all local governments).

185. See N.D. CENT. CODE CH. 37-17.1 (“Emergency Services”).

186. See 1989 N.D. Laws 794; *Hearing on S.B. 2542 Before the H. Pol. Subdivisions Comm.*, 51st Legis. Assemb. (N.D. 1989) (statement of Sen. Heigaard) (“[T]his is an attempt to address the flood in eastern North Dakota.”).

bonds under the emergency exception to replace schools due to flooding in June, 2011.¹⁸⁷

6. *Payment of Final Judgments*

Bonds may be issued “[f]or the purpose of paying any final judgment obtained against” a school district if the school board deems it not “advisable to pay such judgment out of current revenues.”¹⁸⁸ If for some reason the bonds cannot be sold, the bonds may be issued to the judgment creditor in payment of the judgment.¹⁸⁹ Political subdivisions, including school districts, have used the statute to acquire land, inviting attention.¹⁹⁰ In regard to Bismarck Public School District using judgment funding bonds to acquire property, South Central District judges “informed the School Board’s attorney they consider it improper and inappropriate.”¹⁹¹

A related section provides that a school district may pay the compromised amount of a final judgment by the issuance of GO bonds.¹⁹² The school board, by resolution adopted by the affirmative vote of two-thirds of its members, may enter into an agreement with the judgment creditor to issue bonds in satisfaction and discharge of the judgment.¹⁹³ The bonds may be paid over a twenty-five-year period.¹⁹⁴ However, the tax levy authority associated these bonds was repealed in 2015.¹⁹⁵ Repealing the tax levy section makes the residual bonding section extraneous.

187. See N.D. Exec. Order No. 2011-10, *Statewide Flood Disaster* (May 5, 2011); e.g., *\$7,000,000 General Obligation School Building Bonds, Series 2011 Minot Public School District No. 1 Ward County, North Dakota*, ELEC. MUN. MKT. ACCESS (Dec. 8, 2011), <https://emma.msrb.org/ER540908-ER418624-ER820558.pdf> (constructing new additions at Lewis and Clark and Longfellow elementary schools to replace flooded Lincoln elementary).

188. §§ 21-03-06(7)(a), – 07(2).

189. *Id.*

190. See N.D. Att’y Gen. Op. No. 82-4 (Jan. 29, 1982) (section 21-03-06(7)(a) may be used to pay a final judgment in a condemnation action brought by municipality to acquire property, overruling N.D. Att’y Gen. Op. No. 79-42 (Feb. 21, 1979) (stating that legislature did not intend the section to authorize payment of judgments resulting from eminent domain proceedings)); see also *Linderkamp v. Bismarck Sch. Dist. No. 1*, Civ. No. 36508, Memorandum Decision (N.D. Feb. 14, 1986) (school district “enjoined and restrained from levying taxes to pay judgments that are not result of actions commenced against district”), *aff’d* 397 N.W.2d 76 (N.D. 1986).

191. See Lucille Hendrickson, *School Board Needs Way to Pay for Property: Judges Refuse to Permit Further Use of Eminent Domain Proceedings*, BISMARCK TRIB., June 28, 1984, at 1A.

192. N.D. CENT. CODE § 32-12.1-13 (2022).

193. *Id.*

194. *Id.*

195. 2015 N.D. Laws 1554 (repealing numerous tax levies, including sections 32-12.1-12 and 32-12.1-14, and multiple political subdivisions resulting from Governor Dalrymple’s Task Force on Property Tax Reform); see also N.D. CENT. CODE § 57-15-28.1 (2022) (tax levy for payment of a judgment or settlement of a claim but excluding school districts).

IV. SCHOOL BUILDING FUND

A. BUILDING FUND LEVY

In 1929, the legislature authorized school districts to establish a one mill building fund levy to be used exclusively for erecting school buildings.¹⁹⁶ The building fund levy was enacted in response to low debt limits and the resulting restriction on borrowing capacity. “The original purpose for the building fund was to permit, and perhaps to encourage, districts to accumulate the financial capacity to avoid the need for borrowing.”¹⁹⁷ Voters must approve establishment of a building fund levy by a sixty percent supermajority.¹⁹⁸ In 1931, the legislature allowed school boards the option of establishing a building fund through appropriation of up to twenty percent of the current annual appropriations.¹⁹⁹ Over time, the maximum allowable building fund levy increased to five mills,²⁰⁰ then ten mills²⁰¹ and today rests at twenty mills.²⁰² Significantly, the Fargo Public School District is allowed an additional fifteen mills,²⁰³ without voter approval, besides the voter approved maximum of twenty mills.²⁰⁴

196. 1929 N.D. Laws 320, 324 (codified at N.D. CENT. CODE §§ 57-15-16 to -17); *see also* § 57-15-14.2(6)(a) (school district levy limits, but not preventing district from levying mills for a building fund as otherwise authorized by law).

197. Richard H. Hill, *Financing Capital Outlay in North Dakota*, 13 J. EDUC. FIN. 382, 384 (1988).

198. *See generally* N.D. Att’y Gen. Op. No. 54-101 (Sept. 7, 1954) (statute does not set forth any specific language that must be contained in the ballot question).

199. 1931 N.D. Laws 427; *see* N.D. Att’y Gen. Op. No. 45-261 (Oct. 27, 1945) (two methods of establishing building fund); N.D. Att’y Gen. Op. No. 2014-L-07 (May 13, 2014) (Grand Forks school district may contribute to both a voter-approved ten mill building fund levy and from an allocation and transfer of mills from the unlimited general fund levy). *But cf.* Linderkamp v. Bismarck Sch. Dist. No. 1, Civ. No. 36508, Memorandum Decision (N.D. Feb. 14, 1986) (if voter approved building fund levy, school board may not additionally appropriate to a building fund out of current annual appropriation), *aff’d* 397 N.W.2d 76 (N.D. 1986).

200. 1945 N.D. Laws 428.

201. 1947 N.D. Laws 568; *cf.* N.D. CENT. CODE § 15.1-12-16.1 (2022) (school district reorganization plan may propose a ten mill building fund levy subject to majority voter approval).

202. 1975 N.D. Laws 1406; *see* Minutes, Nedrose School District (Feb. 23, 1976) (“In order to borrow from the State Construction [sic] a levy of 20 mills is required. This is the result of a new law passed by the 1975 Legislature.”); *see also* N.D. CENT. CODE § 57-15-16(2) (2022) (school board must specify on ballot the number of mills to be levied). If school districts desire to increase the number of mills levied for the building fund, another vote with 60% approval is required. Given the high bar for voter approval, some school districts, such as Minot school district, do not have a building fund levy. Minot voters most recently rejected the idea at a May 2005 election with 54% supporting a twenty mill building fund levy.

203. N.D. CENT. CODE § 15.1-09-49 (2022) (allowing the additional tax “for purchasing, leasing, or improving sites and the building, purchasing, leasing, enlarging, altering, and repairing of schools”).

204. Currently, the Fargo school district building fund is authorized for 26.4 mills: 11.4 mills under section 57-15-16 approved by voters on December 3, 1991, and 15 mills under section 15.1-09-49 without voter approval. *See* N.D. Att’y Gen. Op. No. 2008-L-05 (Apr. 23, 2008) (new Fargo school district high school financing permitted from the combined building fund tax levies).

Permitted uses of the building fund expanded over time and now include a broad range of building and facility improvement and finance:²⁰⁵

- (1) The construction of school district buildings and facilities;²⁰⁶
- (2) The renovation, repair, or expansion of school district buildings and facilities;
- (3) The improvement of school district buildings, facilities, and real property;
- (4) The leasing of buildings and facilities;
- (5) The payment of rentals upon contracts²⁰⁷ with the State Board of Public School Education;²⁰⁸
- (6) The payment of rentals upon contracts with municipalities for career and technical education facilities financed pursuant to chapter 40-57;²⁰⁹ and
- (7) The payment of principal, premiums, and interest on bonds issued in accordance with subsection 7 of section 21-03-07.²¹⁰

If no bonds or loans are outstanding, the building fund levy may be discontinued by the school board. A decision by the school board not to levy for the building fund in a particular year or years may mean the levy is permanently discontinued.²¹¹ It seems there needs to be some indication of the board's intent to discontinue rather than simply deciding the levy is not needed in a particular year. “[U]pon petition of twenty percent of the

205. See also 1963 N.D. Laws 322, 323 (adding the option of voting on a specific plan for use of the building fund designating the general area to be served by the levy); cf. N.D. CENT. CODE § 21-03-10.1 (2022) (specific plan for use of general obligation bond proceeds).

206. 1993 N.D. Laws 1726 (adding facilities) (“For purposes of this paragraph, facilities may include parking lots, athletic complexes, or any other real property owned by the school district.”); see *Hearing on S.B. 2176, Before the H. Educ. Comm.*, 53rd Legis. Assemb. (N.D. 1993) (testimony of Mark Lemer, North Dakota Department of Instruction) (“Currently, only a school district ‘building’ meets the definition of a building fund expenditure. The new language would expand the definition to include parking lots, athletic complexes, or any real property owned by the school district.”); see also § 51 2013 N.D. Laws 31, 67 (deleting reference to parking lots and athletic complexes but keeping “facilities” so cleanup language not limiting the scope of what facilities encompasses); cf. § 15.1-36-01(5) (Superintendent of Public Instruction approval of building or facility construction, facility includes parking lot and athletic complex).

207. “Rentals upon contracts” is dated as payments of rentals and contracts with the state were amended out of the statutes years ago.

208. The State Board of Public School Education is no longer involved with the state loan program.

209. See *infra* Part V.B PUBLIC CAREER AND TECHNICAL EDUCATION.

210. N.D. CENT. CODE § 57-15-17(1)(b)(1) – (7) (2022).

211. See N.D. Att’y Gen. Op. No. 83-15A (Apr. 22, 1983) (“If the governing body of a school district does not levy the taxes annually as prescribed, and if there has been no vote of the electors to discontinue the levy, the governing body has, in effect, utilized its discretion to discontinue the levy.”).

qualified electors²¹² who voted in the last school election, the question of discontinuance of the levy must be submitted . . . at any regular or special election”²¹³ Upon three-fifths majority vote the levy must be discontinued.²¹⁴

B. BUILDING FUND BONDS

The 1985 Legislative Session added the option of borrowing against the building fund levy in addition to cash funding projects.²¹⁵ School districts are authorized to issue bonds payable from the building fund levy 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.”²¹⁶ The borrowing option was extended to the Fargo Public School District in 1989.²¹⁷

Building fund bonds is something of a hybrid in that approval of the electorate is not required, but issuance of bonds is subject to taxpayer protest,

212. *See* 1975 N.D. Laws 1406 (amending petition standard from one-third of electors to twenty percent of electors).

213. § 57-15-16(1); *see* 1955 N.D. Laws 527 (adding petition to discontinue). *See generally* N.D. Att’y Gen. Op. No. 54-29 (May 25, 1954) (prior to 1955, since there was no statutory provision for discontinuance of building fund levy, “it is for the school board of such district to decide whether a levy shall be made and if made when it shall be discontinued.”).

214. § 57-15-16(1). *See generally* Official Ballot Beulah Public School District No. 27 of Mercer, Oliver and Dunn Counties, State of North Dakota, (October 29, 2019) (“Shall the school building fund levy of Beulah Public School District No. 27 of Mercer, Oliver and Dunn Counties, North Dakota, be discontinued: Yes . . . No . . .”) (the petition for the election needed only thirteen signatures, i.e. 20% of the 64 electors voting at the June 11, 2019 school board election). A mere 23.28% voted to discontinue the building fund levy. *See also* N.D. Att’y Gen. Op. Letter to Rep. Oban (Jan. 8, 1988) (discussing petition to discontinue the Bismarck school district building fund levy); Minutes, Bismarck Public School District #1 Board Meeting, July 11, 1988 (votes cast at the June 14, 1988, election to discontinue the district’s ten mill building fund levy, yes, 4,384, no, 6,299).

215. 1985 N.D. Laws 922 (codified at N.D. CENT. CODE § 21-03-07(7) (2022)); *see Hearing on H.B. 1548, Before the H. Fin. & Tax’n Comm.*, 49th Legis. Assemb. (N.D. 1985) (testimony of James Stewart, Attorney, Beauclair & Cook) (the bill allows “the issuance of general obligation bonds by school districts without an election payable from the school building fund levy.”).

216. § 21-03-07(7); *cf.* § 57-15-17(1)(b) (building fund uses include facilities, while purposes of building fund bonds does not include financing of facilities other than school buildings). *See generally* Frederic Smith, *Lincoln Man Battles Bowl Funding*, BISMARCK TRIB., Oct. 9, 1995, at 1A (Bismarck school district used lease financing for its portion of the development cost of the Bismarck Community Bowl rather than building fund bonds because section 21-03-07(7) does not include financing of athletic facilities).

217. 1989 N.D. Laws 793 (codified at N.D. CENT. CODE § 21-03-07(7) (2022)); *see Hearing on H.B. 1457, Before the H. Educ. Comm.*, 51st Legis. Assemb. (N.D. 1989) (testimony of Duane Carlson, Assistant Superintendent of Business Services, Fargo Public Schools) (“House Bill 1457 would provide the Fargo Board of Education Building Construction Fund, authorized under Section 15-15-11 and 15-15-13 [sic, 15-51-11 and 15-51-13], equal dedication of levy status as other school district building construction funds that are originated under Section 57-15-16 of the North Dakota Century Code.”); *see also* N.D. Att’y Gen. Op. Letter to Koppang (Jun. 7, 1988) (prior to 1989 amendment, no authority for Fargo school district to borrow against building fund levy authorized by sections 15-51-11 and 15-51-13).

sometimes referred to as a reverse referendum.²¹⁸ Voting is not prescribed as the building fund levy itself must have been approved at some point by a sixty percent supermajority. A building fund bond issue starts with an initial resolution adopted by a two-thirds vote of the school board. The initial resolution must contain the same information as in the case of GO bonds. Thereafter, the resolution is published once followed by a sixty-day protest period.²¹⁹ During the sixty days, property owners can file written protests against the proposed bonds. The bonds may not be issued if protests are signed by the owners of taxable property having an assessed value equal to five percent or more of the assessed value of all taxable property in the school district.²²⁰

The maximum principal amount of bonds that can be issued is limited by the amount of principal and interest the building fund mill levy can support. In the event valuations decline to the point that the available mills do not generate adequate dollars for debt service, the general obligation language²²¹ and the levy requirement²²² bind the school district to levy such excess mills as are necessary to meet the debt service requirements on the bonds. The building fund levy is irrevocable so long as bonds are outstanding.²²³ The ability to issue building fund bonds is a valuable option for school districts. Of course, if the building fund is pledged to long term debt, availability for current building maintenance and repair is limited.

V. RESIDUAL FINANCING OPTIONS

A. CERTIFICATES OF INDEBTEDNESS

All political subdivisions, including school districts, are able to borrow against certain revenues through issuance of certificates of indebtedness (“certificates”).²²⁴ Certificates are issued solely by action of the school board. Sale of certificates must follow the GO bond requirements of chapter 21-03.²²⁵ Revenues are defined as:

218. *Cf.* § 21-03-07(3) to -(6), -(11) (types of city, county and park district GO bonds requiring a protest period but no vote).

219. § 21-03-07(7). Note that absentee property owners can file protests, while voting for GO bonds is limited to residents of the school district.

220. *Id.* See generally Stu Merry, *Petitions Presented to Stop Max School Building Project*, MCLEAN CNTY. INDEP., April 23, 2015, at 1 (petitions to block Max school district building fund bonds ultimately fall short with protest of 4.685% of assessed value).

221. § 21-03-07(7).

222. § 21-03-15.

223. See N.D. Att’y Gen. Op. Letter to Oban (Jan. 8, 1988) (electors cannot vote to discontinue building fund mills dedicated to the retirement of bonds until the bonds are paid in full).

224. N.D. CENT. CODE CH. 21-02 (“Certificates of Indebtedness”).

225. § 21-02-11.

- a. Uncollected taxes.²²⁶
- b. Amounts to be received from a distribution of federal moneys, including currently existing bureau of Indian affairs contracts.
- c. Amounts to be received from a distribution of moneys pursuant to a state appropriation or a state statutory or constitutional provision.²²⁷
- d. Amounts to be received from a grant or loan of state or federal funds.
- e. Amounts to be received from the issuance and sale of obligations by a political subdivision.²²⁸

Historically, certificates were short-term²²⁹ obligations issued against the receipt of levied property taxes to meet current expenses.²³⁰ A certificate issued against levied and uncollected taxes counts against the debt limit.²³¹ Certificates issued against other revenue sources do not count against the debt limit. Lawmakers expanded the use of certificates in 1997 by adding distributions of federal money to the definition of revenues and allowing political subdivisions to set the term of the certificate.²³² As a result, today,

226. §§ 21-02-01(3) (defined as levied but uncollected taxes for the current year and the preceding four years), -03 (tax is deemed to have been levied when voted by the governing body and certified to the county auditor).

227. *See Hearing on S.B. 2219 Before the H. Pol. Subdivisions Comm.*, 48th Legis. Assemb. (N.D. 1983) (testimony of Maurice Cook, public finance attorney) (Section “21-02-13 did permit school district to issue a certificate of indebtedness to take advantage of borrowing against funds under 57-58-01 – which is money received in lieu of personal property tax.”); *see also Hearing on S.B. 2121 Before the H. Pol. Subdivisions Comm.*, 55th Legis. Assemb. (N.D. 1997) (testimony of Tom Tudor, Director, North Dakota Municipal Bond Bank (“Section 21-02-13 is being repealed because the ability to issue a CI against revenue to be received from the State is covered by including amounts to be received from the State in the general definition of “revenues” provided by SB 2121 in section 21-02-01.”)).

228. § 21-02-01(2) (permitting what are in effect bond anticipation notes, allows school districts to issue certificates to provide short-term construction financing which is later rolled into long-term obligations).

229. *See Tracy v. Barnes County*, 289 N.W. 377, 380 (N.D. 1939) (“It must also be noted that certificates of indebtedness are not long term obligations. They must be made payable not more than twenty-four months in the future.”).

230. *See* 1923 N.D. Laws 491 (“Placing Taxing Districts Upon a Cash Basis”); *see also* CHARLES C. CONVERSE, AN ANALYSIS OF CHAPTER 326 [HOUSE BILL NO. 129] OF THE LAWS OF 1923 OF NORTH DAKOTA 2 (1923) (“In some taxing districts, the practice of issuing warrants in excess of taxes levied, had been pursued, with the result that a number of districts got deeply into debt before they realized it, and a few became indebted beyond the constitutional debt limit; hence, the provision of this act which prevents the incurring of indebtedness in excess of taxes already levied.”); *cf.* § 21-01-04 (if school district is unable to sell a certificate of indebtedness, it may issue warrants in payment of current expenses in excess of cash on hand, but not in excess of 85% of taxes levied but uncollected, plus 50% of the uncollected taxes of the four preceding years).

231. § 21-02-02.

232. 1997 N.D. Laws 939; *see also* 2015 N.D. Laws 786 (enhancing definition of revenues to include state or federal loans or grants and amounts to be received from the issuance and sale of obligations by a political subdivision).

most certificate borrowing is in anticipation of receiving state or federal money. For example, school districts have financed construction projects by issuing certificates against the receipt of state aid,²³³ and against U.S. Department of Education impact aid payments.²³⁴

In 2015, legislators created a new chapter relating to bank and credit union loans to political subdivisions.²³⁵ While separate from certificates, the borrowing is against revenues; the definition of which was copied in part, but not in full, from chapter 21-02. Loans under chapter 21-13 are limited to no more than \$500,000 outstanding principal and a term of five years. Given the much broader reach of chapter 21-02, the lesser included bank loan chapter is of no use and actually causes harm, with some banks assuming borrowings are limited to the restrictive terms. Truly, a statutory light of no wattage whatsoever.²³⁶

B. PUBLIC CAREER AND TECHNICAL EDUCATION

The 1975 Legislature authorized the Municipal Industrial Development Act (“MIDA”)²³⁷ bonds for financing public vocational education facilities,²³⁸ now referred to as public career and technical education.²³⁹ MIDA bonds are issued by cities and counties on behalf of revenue-producing enterprises. Cities and counties act as conduits or pass-through entities and, by statute, are not liable for the bonds.²⁴⁰ MIDA bond borrowers are largely qualified 501(c)(3) organizations and certain non-governmental entities.

The financing arrangement allows school districts to lease career and technical education facilities constructed with the MIDA bond proceeds for

233. See N.D. CENT. CODE CH. 15.1-27 (“State Aid”). See generally *\$3,500,000 South Prairie Public School District No. 70 Ward County, North Dakota, State Aid Certificates of Indebtedness, Series 2020*, ELEC. MUN. MKT. ACCESS (June 15, 2020), <https://emma.msrb.org/RE1351803-RE1051105-RE1459803.pdf>.

234. See 20 U.S.C. §§ 7701–7714. See generally *Official Statement \$1,145,000 Certificates of Indebtedness, Series 2012 Dunseith Public School District No. 1*, ELEC. MUN. MKT. ACCESS (Nov. 30, 2012), <https://emma.msrb.org/EP717670-EP557312-EP958464.pdf>.

235. N.D. CENT. CODE CH. 21-13 (“Political Subdivision Borrowing”).

236. See Tom Wolfe, *THE BONFIRE OF THE VANITIES* 360 (Picador, 1st ed. 2008) (a social light of no wattage whatsoever). Presumably, the chapter was intended to allow small borrowings against the general fund, which it does not accomplish, but which takes place anyway *sans* statutory authority. The chapter should be amended or repealed. *Contra* N.D. CENT. CODE CH. 57-47 (“County Deficiency Levy”) (county general fund borrowing for primary governmental functions) (chapter allowing general fund borrowing that does work).

237. N.D. CENT. CODE CH. 40-57 (“Municipal Industrial Development Act of 1955”).

238. 1975 N.D. Laws 1086 (codified at N.D. CENT. CODE § 40-57-02(2)(e) (2022)).

239. § 82 2003 N.D. Laws 586, 619 (changing name to career and technical education).

240. N.D. CENT. CODE § 40-57-15 (2022).

up to twenty years.²⁴¹ The lease payments equal annual debt service on the bonds, and at the conclusion, the school district has the option to purchase the facility. Extra mills are not provided for the lease payments so the school district must appropriate from existing sources such as the building fund or the general fund. At least two MIDA bonds have been issued by cities for public career and technical education centers, although none in recent years.²⁴²

C. GUARANTEED ENERGY SAVINGS CONTRACTS

Following a request for proposals process, school districts may enter into guaranteed energy savings contracts with qualified providers if the amount spent on energy conservation measures is not likely to exceed the amount saved in energy and operation costs over a period not exceeding fifteen years.²⁴³ Energy conservation measures include insulation, window or door modifications, automatic energy control systems, and lighting, heating, air-conditioning, or ventilating systems.

The contract must contain a written guarantee that the energy and operating cost savings will meet or exceed the costs of the system. The guaranteed energy savings contract may provide for payments over a period not exceeding fifteen years.²⁴⁴ Since the legislature authorized school boards to enter into contracts beyond one budgetary cycle, and thus bind future governing bodies, the contract is debt for debt limit purposes. Lease financing with a third party may be applicable if the vendor requires cash up front rather than payments over a period of years.

D. BUILDING AUTHORITY – RESTRICTED

School districts finance building projects using a device known as a building authority with the bonds styled “lease revenue bonds”.²⁴⁵ Besides

241. N.D. CENT. CODE § 15.1-09-33(7)(a) (2022) (career and technical education facility financed with MIDA bonds may be leased for up to twenty years). *See generally* § 15-20.1 (“Career and Technical Education”); § 104 2003 N.D. Laws 586, 630 (repealing section 15-20.1-10 which provided that a vocational school district is authorized to issue GO bonds under chapter 21-03).

242. *See* KENT CONRAD, MIDA BONDS: MIDAS TOUCH OR FOOL’S GOLD? A-2 (1981) (report by North Dakota Tax Commissioner) (listing a 1976 City of Jamestown MIDA bond and a 1976 City of West Fargo MIDA bond for public vocational education facilities). *See generally* *W. Fargo Board Reacts Favorably to Bond Proposal*, FORUM OF FARGO-MOORHEAD, May 21, 1975 (“The commission was told by West Fargo school district attorney Jon Arntson that the 1975 Legislature revised the Century Code to allow MIDA bonds to be used to fund public vocational education buildings.”).

243. N.D. CENT. CODE §§ 48-05-09 to -13 (2022).

244. § 48-05-11.

245. *See Official Statement: \$2,500,000 Lease Revenue Bonds, Series 2018, Midkota Public School District Building Authority*, ELEC. MUN. MKT. ACCESS (April 11, 2018), <https://emma.msrb.org/ES1141175-ES892852-ES1294128.pdf> (remodel the 1964 addition of the school building and add new construction).

school districts, cities,²⁴⁶ counties,²⁴⁷ park districts,²⁴⁸ and the state²⁴⁹ finance projects with building authorities. Building authority financing in North Dakota is not new, and dates back to at least a 1981 law enforcement center project.²⁵⁰ The North Dakota Building Authority is a state agency and is used by the legislature from time to time to finance state building improvements.²⁵¹

At the political subdivision level a building authority is a North Dakota nonprofit corporation²⁵² organized for the sole purpose of helping a school district finance capital improvement projects.²⁵³ Some thirty-one North

246. See *City of Fargo Building Authority: Fargo, North Dakota \$4,930,000 Lease Revenue Bonds, Series 2002A*, ELEC. MUN. MKT. ACCESS (Apr. 18, 2002), <https://emma.msrb.org/MS191205-MS166513-MD322317.pdf> (improvements to the City Hall/Civic Auditorium).

247. See *\$1,220,000 Morton County Building Authority Revenue Bonds 1992, Series A*, ELEC. MUN. MKT. ACCESS (Aug. 21, 1992), <https://emma.msrb.org/MS34662-MS42888-MD537822.pdf> (construct a social services building).

248. See *Final Official Statement: Bismarck Park District Building Authority*, ELEC. MUN. MKT. ACCESS (Aug. 21, 1997), <https://emma.msrb.org/MS134516-MS109824-MD212584.pdf> (\$680,000 Lease Revenue Bonds of 1997 for improvements to the Bismarck Community Bowl).

249. See 1985 N.D. Laws 1996. See generally Marcia Harris, *Building Authority Promoted*, BISMARCK TRIB., Feb. 9, 1983, at 10 (regarding a bill that would create a building authority for the state).

250. See \$3,785,000 Stark County and City of Dickinson North Dakota, Law Enforcement Center Building Authority, First Mortgage Revenue Refunding Bonds (May 12, 1983) (discussing refunding outstanding First Mortgage Revenue Bonds dated July 1, 1981); see also Letter from Blaine M. DeGolie, Anderson, DeMonbrun, Inc. to Robert Wefald, Att’y Gen., N.D. (Nov. 23, 1981) (“Our firm, Anderson, DeMonbrun Inc., did the financing of the Stark County Law Enforcement Center via a Building Authority. There seems to be some concern about the legality of a bond issue without the vote of the people not only from your office but also the county commissioners themselves.”) (providing a Colorado Supreme Court case upholding a building authority financing). See generally Letter from Gail Hagerty, State’s Att’y, Burleigh Cnty. to Robert O. Wefald, Att’y Gen., N.D. (Feb. 18, 1983) (requesting an attorney general opinion on whether Burleigh County could utilize the same building authority financing model that Stark County used); N.D. Att’y Gen. Op. Letter to Hagerty (Mar. 25, 1983) (opinion basically stating that Burleigh County lease agreements could be drafted so as to avoid debt limit issues).

251. N.D. CENT. CODE CH. 54-17.2 (2022); e.g., *North Dakota Building Authority, \$88,585,000 Facilities Improvement Bonds, 2020 Series A*, ELEC. MUN. MKT. ACCESS (Oct. 15, 2020), <https://emma.msrb.org/P11432671-P11111476-P11521308.pdf> (construct or improve several state board of higher education facilities). See generally H.B. 1485, 67th Legis. Assemb. Reg. Sess. (N.D. 2021) (unsuccessful attempt to repeal all statutory references to building authorities including chapter 54-17.2); *Hearing on H.B. 1485 Before the H. Pol. Subdivisions Comm.*, 67th Legis. Assemb. (N.D. 2021) (testimony of Karlene Fine, Executive Director, North Dakota Industrial Commission) (“The North Dakota Building Authority was created by the Legislature in 1985 to allow the State access to the capital markets for low cost, long-term financing of capital projects approved by the Legislature. The Building Authority provides the Legislature with another option as it considers how to fund the costs of projects declared by the Legislature to be in the public interest. Since the Building Authority was created over \$250,000,000 of bonds have been issued for projects across the state . . .”).

252. See generally N.D. CENT. CODE CH. 10-33 (“Nonprofit Corporation”).

253. See Articles of Incorporation of Divide County Public School District Building Authority (Aug. 17, 2017) (“The purposes for which the Corporation is organized are: to aid, assist, foster and finance the planning, development, construction, renovation and improvement of public buildings, furnishings, fixtures, equipment, other capital improvements and related facilities for Divide County Public School District No. 1, Divide, Burke and Williams Counties, North Dakota . . .”).

Dakota school districts have building authorities.²⁵⁴ Building authority financings are also referred to as 63-20 financings, after the IRS ruling recognizing the structure.²⁵⁵ The North Dakota Century Code does not contain a lease financing chapter for school districts or any other political subdivision.²⁵⁶ The authority to enter into a lease acquisition is expressed or implied in the political subdivision's general powers. School boards have the power to lease property for a one-year period.²⁵⁷

The financing process involves the building authority corporation issuing bonds²⁵⁸ by action of the board of directors. The school district bids and constructs the facility with the bond proceeds. The facility is leased to the school district pursuant to a lease/lease-back or sale/lease-back arrangement.²⁵⁹ The lease agreement is for a one-year term with automatic one-year extensions through the term of the bonds, typically twenty years. The school board, on an annual basis, may decline to appropriate money for the payment of rent.²⁶⁰ Rent is an amount equal to the annual debt service on the bonds. Since the lease payment is subject to annual appropriation, the financing is not debt for debt limit purposes, and is not subject to the requirements of chapter 21-03.²⁶¹ No additional mills are authorized for

254. N. D. SEC'Y OF STATE, <https://firststop.sos.nd.gov/search/business> (last visited Dec. 17, 2022) (search "school building authority" in the search bar). See generally *Building Authority Financing of Public Buildings for Political Subdivision Use*, N.D. LEGIS. COUNCIL (Oct. 2011), https://www.ndlegis.gov/assembly/67-2021/testimony/HPOLSUB-1303-20210128-4023-F-ERTELT_JOHN.pdf.

255. Rev. Rul. 63-20, 1963-1 C.B. 24.

256. See generally N.D. Atty Gen. Op. Letter to Wold (July 29, 1987) (quoting N.D. Atty Gen. Op. Letter to Feste (May 15, 1963)) ("It would appear, off hand, that the purchasing of an item on an installment contract by a taxing district would, in effect, be a method of financing not included within the statutory provisions governing financing in taxing districts.").

257. N.D. CENT. CODE § 15.1-09-33(7) (2022); cf. N.D. CENT. CODE § 54-01-27 (2022) (stating leases of state-owned property may not exceed a term of ninety-nine years).

258. N.D. CENT. CODE § 10-33-21(7) (2022) (as a nonprofit corporation, building authorities have the power to "make contracts and incur liabilities, borrow money, [and] issue its securities.").

259. See § 4 2015 N.D. Laws 678, 681 (codified at N.D. CENT. CODE § 26.1-22-10.2 (expired on June 30, 2017, by § 6 2015 N.D. Laws 678, 682)) (building authority transactions during November and December 2013, constructed facility treated as public facility for insurance purposes) (enacted for certain school districts using building authorities and being refused insurance coverage by the state fire and tornado fund, chapter 26.1-22).

260. A nonappropriation clause states that, notwithstanding the fact that the school district agrees to lease the building for a period of years, it nonetheless reserves the right to not appropriate for the lease payment and in effect forfeit the leased property. Put another way, the school district has the option to terminate the lease at the end of the fiscal period during the term of the lease by not appropriating the funds needed to meet the next lease payment. See *Haugland v. City of Bismarck*, 429 N.W.2d 449, 454 (N.D. 1988) ("Thus, the holding in *Lang v. City of Cavalier*, . . . makes clear that some municipal property may be placed at risk of loss in financing improvements. Questions as to the extent of property that may be placed at risk and the degree of risk of loss to which it may be subjected are matters of legislative judgment and discretion on the part of municipal authorities, subject to reasonable exercise and judicial review for reasonableness.").

261. See *Haugland*, 429 N.W.2d at 453 (the issuance of general obligation bonds "does not provide the exclusive method of borrowing money, but specifies one method of exercising the borrowing authority").

building authority financings, unlike GO bonds that come with additional mill levy authority. School districts must make the annual rental payment from the general fund, building fund, miscellaneous fund,²⁶² or other available source.²⁶³ Once the bonds are paid, the lease terminates.

A building authority structure permits school districts to utilize legislative authorized sources to make capital improvements. In an opinion involving the Fargo Public School District, the attorney general concluded a non-profit corporation building authority may issue bonds and finance a school building project.²⁶⁴ Building authority financings cause controversy.²⁶⁵ Certain legislators view building authorities as circumventing the voters. Building authorities have been employed after voters first refused GO bonds, sometimes multiple times. The 2013 Legislature restrained use of building authorities by directing majority voter approval for such arrangements if the project cost is \$4,000,000 or more.²⁶⁶ Further, school districts entering into building authority transactions must have construction approval from the Superintendent of Public Instruction.²⁶⁷ Fargo Public School District adopted a policy requiring a majority public vote for a building authority financing.²⁶⁸ Building authority financings have

262. N.D. CENT. CODE § 57-15-14.2(2) (2022) (school district may levy 12 mills for miscellaneous purposes and expenses).

263. See § 57-15-14.2 (list of school district tax levies).

264. See N.D. Att’y Gen. Op. No. 2008-L-05 (Apr. 23, 2008) (“[T]he Authority’s three-step transaction with a non-appropriation mechanism was a reasonable exercise of the general powers granted to the District, and use of the non-pledged general fund money to make lease payments is lawful.”) (citing *Haugland*, 429 N.W.2d at 454).

265. See Caitlin Devitt, *A Bond Brouhaha in North Dakota*, BOND BUYER, Sept. 2, 2015 at 1; *Griggs County v. Griggs Cnty. Bldg. Auth.*, 20-2015-CV-33 (N.D. S.E. Jud. Dist. 2015); e.g., *Official Statement: Building Authority of Griggs County \$2,285,000 Lease Revenue Bonds, Series 2013*, ELEC. MUN. MKT. ACCESS (Apr. 5, 2013), <https://emma.msrb.org/EP753855-EP585373-EP986922.pdf> (providing funds to construct and equip a new courthouse building); see also Mike Nowatzki, *Building Authorities: Sidestepping Voters or Saving for Taxpayers?*, INFORUM (Oct. 12, 2013), <https://www.inforum.com/newsmd/building-authorities-sidestepping-voters-or-saving-for-taxpayers>.

266. 2013 N.D. Laws 773 (codified at N.D. CENT. CODE § 21-03-06.1(1) (2022)). See generally H.B. 1295, 62nd Legis. Assemb. Reg. Sess. (N.D. 2011); H.B. 1398, 61st Legis. Assemb. Reg. Sess. (N.D. 2009) (identical attempts to restrict building authorities). See also H.B. 1459, 64th Legis. Assemb. Reg. Sess. (N.D. 2015) (attempt to expand section 21-03-06.1 to all political subdivisions). But cf. N.D. CENT. CODE § 6-03-59.2 (2022) (state-chartered bank may construct school building and lease the facility back); e.g., *Hearing on H.B. 1085 Before the H. Indus., Bus. & Lab. Comm.*, 63rd Legis. Assemb. (N.D. 2013) (testimony of Bob Entringer, Director of North Dakota Department of Financial Institutions) (“The issue was one of parity. A national bank could do this, and so we had a state-chartered bank that wanted to engage in that type of activity and had had a request to do that. So we authorized it under banking board’s parity order, and rather than just leaving it in that order, we decided we should codify that.”).

267. § 21-03-06.1(2).

268. See Fargo Public Schools Board of Education, Policy GP-13 (Oct. 26, 2010) (“The funding of any new construction project utilizing the Fargo School District Building Authority and paid out of the Fargo Public School District General Fund shall be approved by a greater than 50% majority of district voters in a regular or special election.”). See generally, Dave Roepke, *Fargo Schools to Consider Building Votes*, FORUM OF FARGO-MOORHEAD, Sept. 20, 2010, at 1A.

continued, but in amounts less than the vote requirement threshold.²⁶⁹ To date, there have not been any public votes to authorize building authority financings.

Recently, the legislature applied the vote requirement and dollar threshold from school districts to county lease financing.²⁷⁰ The urging of the bill was prompted by a financing for the Barnes County Correctional Facility.²⁷¹ Building authority financing is not well understood by policymakers leading to clumsy, ad hoc attempts to restrict a supposedly bad practice. For example, building authority financing has been confused with building fund financing, although the two are completely separate arrangements.²⁷²

E. SALES TAX – PROHIBITED

Pursuant to joint powers agreements, Jamestown, Williston, and Hillsboro school districts each issued voter approved GO bonds that were paid from city sales tax revenues rather than property tax levies.²⁷³ The

269. *E.g., Official Statement: \$3,995,000 Lease Revenue Bonds, Series 2017, Maple Valley Public School District Building Authority*, ELEC. MUN. MKT. ACCESS (Aug. 18, 2017), <https://emma.msrb.org/ER1080138-ER845168-ER1245938.pdf> (financing the renovation, remodeling, repair, and equipping of school buildings, and other site improvements).

270. 2021 N.D. Laws 365 (codified at N.D. CENT. CODE § 11-11-19.1 (2022)) (“Unless a lease purchase or building authority agreement is approved by a vote of the majority of the qualified electors of a county, the governing body of a county may not enter a lease purchase or building authority agreement for the acquisition of any property or construction of any structure having a cost of more than four million dollars.”).

271. *E.g., \$15,435,000 Certificates of Participation, Series 2020*, ELEC. MUN. MKT. ACCESS (Oct. 5, 2020), <https://emma.msrb.org/P11422020-P11104095-P11513487.pdf> (rather than a building authority, the Barnes County financing is structured as a lease/lease back with a trustee, and the trustee issuing certificates of participation in the rentals to be paid by the county, the proceeds of the sale of certificates are used to construct the facility). *See generally* David Olson, *Construction of Barnes County Jail Continues Despite Petition Against It*, INFORUM, Oct. 19, 2020 (Fargo attorney James Stewart explaining that petition mechanism under chapter 21-03 does not apply to lease financing structure).

272. *See Hearing on H.B. 1286 Before the H. Gov. & Veteran Aff. Comm.*, 63rd Legis. Assemb. (N.D. 2013) (statement of Sen. Laffen) (concerning Fargo school district’s use of the building fund to finance school construction, mistaken for building authority financing with Sen. Laffen pointing out the bill was misguided) (“I don’t think that was a big issue. I think it was the building fund. They are separate; building authority more of a leasing instrument and building fund is a savings account. That is what Fargo is using. That is our objection to this bill; it’s not solving what we think is the problem.”).

273. *E.g., Official Statement: \$12,500,000 General Obligation School Building Bonds, Series 2002, Jamestown Public School District No. 1*, ELEC. MUN. MKT. ACCESS (Jan. 1, 2002), <https://emma.msrb.org/MS188266-MS163574-MD316469.pdf>; *Official Statement \$10,000,000 General Obligation School Building Bonds of 2003, Williston Public School District*, ELEC. MUN. MKT. ACCESS (Jan. 18, 2003), <https://emma.msrb.org/MS203052-MS178360-MD345621.pdf>; *Official Statement: \$1,750,000 General Obligation School Building Bonds of 2002, Hillsboro Public School District No. 9*, ELEC. MUN. MKT. ACCESS (June 10, 2002), <https://emma.msrb.org/MS194161-MS169469-MD328200.pdf>. *See generally*, Lynne Napton, *Bond Paid, Sales Tax to Drop*, WILLISTON DAILY HERALD, Dec. 19, 2010, at 1 (GO bonds paid from sales tax paid off nearly eight years earlier than anticipated).

attorney general approved the type of arrangement,²⁷⁴ but the legislature did not. In the 2007 Session, the legislature prohibited cities and counties from transferring sales tax revenues to school districts.²⁷⁵

In my district, I can't buy a suit, or a pair of shoes, there's no clothing stores there. So here's where the inequity comes in. Jamestown now has the ability to create more taxation through sales tax, where I am forced to buy my goods. I have to go to Jamestown. We have a problem here about how to find a balance in funding and already we have small schools struggling to keep afloat. This is a problem and I think it is so unfair for people in the rural area that have no ability at all to meet that kind of dollars that you do in larger towns.²⁷⁶

Ineffective attempts were made in the 2013²⁷⁷ and 2019²⁷⁸ Legislative Sessions to restore the ability of cities and counties to transfer sales tax revenues to school districts. A plea from Williston Public School District did not sway the legislature.²⁷⁹ In the end, the assembly rejected the premise “that blending sales tax and property tax is the fairest method to raise revenue for school construction.”²⁸⁰

F. LIMITED TAX BONDS – REPEALED

For many years, school districts borrowed money and financed qualifying repairs and improvements from a special fifteen mill tax levy.²⁸¹ Originally enacted to facilitate asbestos abatement,²⁸² the categories of

274. N.D. Att’y Gen. Op. No. 2000-F-04 (Jan. 12, 2000) (home rule city may use sales tax revenue to fund construction of a school); *see also* N.D. Att’y Gen. Op. No. 2006-L-27 (Sept. 1, 2006) (city sales tax revenue to a school district for purposes of property tax relief); N.D. Att’y Gen. Op. No. 2005-L-30 (Oct. 6, 2005) (city sales tax for school funding).

275. N.D. CENT. CODE §§ 40-05.1-06.1, 11-09.1-05.1 (2022).

276. *E.g.*, *Hearing on H.B. 1029 Before the H. Fin. & Tax’n Comm.*, 60th Legis. Assemb. (N.D. 2007) (statement of Rep. Brandenburg).

277. S.B. 2137, 63rd Legis. Assemb. Reg. Sess. (N.D. 2013).

278. H.B. 1437, 66th Legis. Assemb. Reg. Sess. (N.D. 2019).

279. *See Hearing on S.B. 2137 Before the S. Educ. Comm.*, 63rd Legis. Assemb. (N.D. 2013) (testimony of Viola LaFontaine, Superintendent, Williston Public School District) (“Passing the one cent sales tax for schools would give schools a chance to meet our needs. There are many people and business needing to buy truck equipment, parts, supplies, burgers, and clothing. We could build our schools with this tax.”).

280. *See* David W. Haney & Mark Schmidt, *Support for School Construction: Blending Sales Tax with Property Tax*, 68 SCH. BUS. AFFS. 34 (2002).

281. 1987 N.D. Laws 1645 (codified at N.D. CENT. CODE § 57-15-17.1) (repealed by 2013 N.D. Laws 31, 68).

282. *See* Letter from Beauclair & Cook, bond counsel, to Plaza Public School District No. 137 and Moore, Juran and Co., Inc. (Aug. 24, 1989) (regarding \$95,000 Asbestos Abatement Tax Levy Bonds of 1989, Plaza Public School District No. 137). *See generally* Beauclair & Cook, *Financing of Asbestos Abatement in North Dakota School Districts* (undated) (unpublished pamphlet) (on file with author).

allowed improvements grew and, at the time of repeal in 2013, included: abatement or removal of mercury and other hazardous substances;²⁸³ Americans with Disabilities Act required remodeling; state fire marshal required remodeling; providing alternative education programs; and heating, ventilation, and air-conditioning system repair, replacement, or modification.²⁸⁴

The statute provided school boards may “authorize and issue general obligations bonds to be paid from the proceeds of this dedicated levy.”²⁸⁵ The bonds were not full faith and credit GO bonds, rather debt service was limited to a fixed number of mills. The phrase “general obligation” meant the bonds counted against the school district’s debt limit. The bonds were issued for the purposes stated by a two-thirds vote of the school board for a term of up to fifteen years. While enormously useful and widely used, the special levy was repealed in 2013.²⁸⁶

G. FEDERAL TAX CREDIT AND DIRECT PAY BONDS – REPEALED

In 1997, Congress authorized a special type of bond for school districts. The bonds featured a federal income tax credit to the purchaser in lieu of interest. The bonds were named qualified zone academy bonds (“QZAB”).²⁸⁷ QZABs were issued by school districts to repair or rehabilitate existing school buildings. New construction was not permitted. The U.S. Treasury set the tax credit rate and maximum maturity, and only financial institutions could purchase QZABs. The result was a zero or near-zero²⁸⁸ percent loan to the school district.²⁸⁹ Each state received an allocation of QZAB authority based upon the percentage of population under the poverty rate. North Dakota received from \$700,000 to \$2.5 million of QZAB authority per calendar year.²⁹⁰ The Department of Public Instruction allocated the authority to

283. *E.g.*, *Final Official Statement: LaMoure Public School District No. 8*, ELEC. MUN. MKT. ACCESS (Apr. 9, 2008), <https://emma.msrb.org/MS269566-MS265678-MD515566.pdf> (replacement of galvanized water pipes containing lead determined by the school board to be an emergency).

284. N.D. CENT. CODE § 57-15-17.1 (repealed by § 52 2013 N.D. Laws 31, 68).

285. *Id.*

286. § 52 2013 N.D. Laws 31, 68.

287. *See* Taxpayer Relief Act of 1997, Pub. L. No. 105-34, § 226, 111 Stat. 788, 820 (codified at 26 U.S.C. §§ 1397E, 54E) (repealed).

288. Some financial institutions requested a nominal interest rate in addition to the federal income tax credit to achieve an acceptable return. *E.g.*, Wishek Public School District No. 19, Qualified Zone Academy Bond of 2007 (principal amount of \$60,000, paying 1.25% interest).

289. *See* Steve Browne, *V.C. Schools Seek No-Interest Funds for New Elementary Roof*, VALLEY CITY TIMES-RECORD, Feb. 13, 2008.

290. *See* Rev. Proc. 2004-61, 2004-43 I.R.B. 707 (state by state allocation of QZAB amounts for calendar year 2004, North Dakota allocated \$799,000).

school districts as each applied.²⁹¹ School districts did not receive money from the state. Rather, the allocation represented authority for school districts to issue their own bonds in the amount of the allocation and in compliance with federal QZAB statutes and regulations.

The QZAB concept was to encourage school districts, or an academic program within the school district, to cooperate with business to enhance the academic curriculum, increase graduation and employment rates, and better prepare students for the rigors of college and the workforce.²⁹² The legislature denied school district requests for a dedicated source of payment for QZABs. Proposed legislation would have added a new subsection to section 57-15-17.1, allowing limited tax bonds for “a qualified enhancement under the federal Qualified Zone Academy Bond program.”²⁹³ The absence of state law authority meant that most QZAB financings utilized a lease structure.²⁹⁴ Despite the want of legislative assistance, dozens of North Dakota QZABs were issued during the life of the program generating valuable improvements to school facilities and equipment.²⁹⁵

As part of the American Recovery and Reinvestment Act of 2009, Congress added the category of qualified school construction bonds

291. See 2001 N.D. Laws 309 (codified at N.D. CENT. CODE § 6-09.4-05.1 (2022)) (enacted in response to the federal QZAB program, allowing the North Dakota Municipal Bond Bank to pool and issue bonds for the state’s QZAB allocation on behalf of qualifying school districts); e.g., *Hearing on S.B. 2085 Before the S. Gov’t & Veteran Aff. Comm.*, 57th Legis. Assemb. (N.D. 2001) (testimony of Tom Tudor, Executive Director, North Dakota Municipal Bond Bank) (“[T]he specific program prompting this bill, is set out in section 1397E of the Internal Revenue Code. Under this federal program, the State, through the Department of Public Instruction, is annually allocated an amount of ‘qualified zone academy bonds’ (‘QZABs’) which may be issued by the State or which may be allocated by the DPI to qualified zone academies within the State.”). Ultimately, the municipal bond bank did not issue bonds for the state’s QZAB allocation, instead the program proceeded by individual allocations by DPI to school districts, which then issued and sold their own QZABs.

292. 26 U.S.C. § 1397E (repealed 2017). In furtherance of these objectives school districts had to meet several federal prerequisites including: (a) at least 35% of students were eligible for free or reduced-cost lunches under the national school lunch program, (b) the district obtain a match in the amount of ten percent of the bond amount from private business, and (c) at least 95% of the bond proceeds were used for project construction costs.

293. See H.B. 1265, 61st Legis. Assemb. Reg. Sess. (N.D. 2009).

294. See \$500,000 Lease Purchase Agreement, Dacotah Bank and West River State Bank, as Lessor, and Hettinger Public School District No. 13, as Lessee (Qualified Zone Academy Bonds, Series 2000) (replace windows, carpet, remodel bathrooms, purchase school bus and computers). See generally Special Election Ballot, LaMoure Public School District #8, (Apr. 24, 2000) (“Shall the LaMoure Public School District #8 issue an interest free QZAB (Qualified Zone Academy Bond) in the amount of not to exceed \$400,000.00 for the purpose of construction of a practice facility?”) (advisory vote showing 81% approval of using a QZAB).

295. See Kathleen Leinen, *Fairmount High School Students Utilize the Newest Technology*, WAHPETON DAILY NEWS, Sept. 14, 2008, at 3 (“Superintendent Ron Stahlecker said the school is using a bond to pay for the laptops, and he considers the expense a good investment.”) (QZAB - \$50,000 at 0% for 10 years); Ken Rogers, *Wilton Folks Think out of the Box, Get Better Gym*, BISMARCK TRIB., Apr. 18, 2002 (Wilton school district renovated the high school gymnasium with an interest-free federal loan of \$500,000 (QZAB)); Mary Wisniewski, *Standing Up for QZABs*, THE BOND BUYER, May 11, 2000 (Drake school district the first in North Dakota to try a QZAB deal).

(“QSCB”).²⁹⁶ QSCBs were authorized for building and repairing public schools. School districts paid no interest with the bond purchaser receiving a federal tax credit.²⁹⁷ A more popular option featured the school district paying interest, but receiving a direct payment from the U.S. Treasury at the time of each bond interest payment. North Dakota was authorized for \$25.74 million in QSCB authority for 2009, with allocations made by the Department of Public Instruction.²⁹⁸ Another federal financing tool was qualified energy conservation bonds (“QECB”).²⁹⁹ QECBs were authorized for projects implementing energy improvements in public buildings or developing green technology. A few school districts took advantage of the QECB program.³⁰⁰ As with QZABs, the legislature offered no state law assistance to school districts for payment of QSCB or QECB obligations. Congress repealed the authority to issue tax-credit and direct-pay bonds after December 31, 2017.³⁰¹

VI. STATE SCHOOL CONSTRUCTION FUND

A. A GLANCE BACK

In 1953, the legislature established the state school construction fund “for the purpose of constructing and improving public school buildings, and furnishing and equipping the same for use as public schools, as a part of the public school system of the state of North Dakota under the jurisdiction of the department of public instruction.”³⁰² Gymnasiums and auditoriums were not funded unless the entire school was destroyed and rebuilt.³⁰³ Loans were meant for situations where the “school district has bonded to the maximum and is making the maximum levy, but still is not able to raise sufficient funds

296. American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 1521, 123 Stat. 115, 289 (codified at 26 U.S.C. § 54F) (repealed).

297. See Holly Jessen, *School Project Gets Zero Interest Bond*, SARGENT CNTY. TELLER, June 12, 2009, at 1 (QSCB approved for Sargent Central Public School District).

298. See *\$4,050,000 Taxable General Obligation School Building Bonds, Series 2010 (Qualified School Construction Bonds-Direct Payment), Ellendale Public School District No. 40*, ELEC. MUN. MKT. ACCESS (June 7, 2010), <https://emma.msrb.org/EP452372-EP354032-EP751095.pdf> (renovation of elementary school and an addition to physical fitness facility).

299. 26 U.S.C. § 54D (repealed).

300. E.g., *Official Statement: \$1,200,000 Taxable General Obligation Building Fund Bonds, Series 2011C (Qualified Energy Conservation Bonds-Direct Payment), Mandan Public School District No. 1*, ELEC. MUN. MKT. ACCESS (Apr. 4, 2011), <https://emma.msrb.org/EP526967-EP411286-EP808759.pdf> (plumbing and lighting system improvements).

301. Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, 131 Stat. 2054.

302. § 3 1953 N.D. Laws 177, 178 (codified at N.D. REV. CODE CH. 15-60) (1943 & Supp. 1953).

303. See 1955 N.D. Laws 204 (allowing gymnasiums and auditoriums in the event an entire school unit was constructed).

to complete its fiscal plant without additional assistance.”³⁰⁴ “The original idea of the school construction fund was as a loan fund as a last resort.”³⁰⁵

The program utilized a lease structure.³⁰⁶ School districts contracted with the state school construction board for advances as necessary to construct or improve buildings. School districts and the state school construction board entered into lease agreements at the time the project was complete.³⁰⁷ Lease financing avoided the debt limit. “To sidestep the constitutional debt limit issue, this is actually a ‘lend-lease’ program.”³⁰⁸ “Erosion of the property tax base by exemptions and the common practice of assessing real estate at a small percentage of its current market value have made it difficult, if not impossible, for many districts to finance needed new construction.”³⁰⁹

The state school construction board³¹⁰ was established to administer the loan fund with an initial appropriation of \$5,000,000.³¹¹ Loan amounts were limited to ten percent of the school district’s taxable valuation, and fifteen

304. See REPORT OF THE NORTH DAKOTA LEGISLATIVE RESEARCH COMMITTEE 73 (1953), <https://www.ndlegis.gov/sites/default/files/resource/32-1951/legislative-management-final-reports/1953finalreport.pdf>.

305. E.g., *Hearing on S.B. 2412, Before the S. Educ. Comm.*, 52nd Legis. Assemb. (N.D. 1991) (testimony of Joel Linnertz, North Dakota Department of Public Instruction).

306. See *Halldorson v. State Sch. Constr. Fund*, 224 N.W.2d 814, 817 (N.D. 1974) (“We mention at the outset that the language of Section 15-60 is cast in terms of ‘leases’ of newly constructed buildings to school districts by the Fund, but the parties have treated the transaction realistically as a loan from the Fund to the District. So shall we.”).

307. The state used fill-in-the-blank forms requiring school districts to sign: (a) a contract to enter into lease agreement under which the state board would advance funds out of the loan fund for project costs, and the school district agreed that, upon completion of the project, it would enter into a lease agreement with the board, and (b) a lease agreement, with the board as lessor and the school district as lessee, with the school district agreeing to pay rent each May 1 from the building fund levy. See *Contract to Enter into Lease Agreement*, Oct. 17, 1988 (Surrey Public School District); see also *Lease Between State Board of Public School Education and Surrey School District No. 41*, May 15, 1989.

308. Voelker et al., *supra* note 31, at 60. *But cf.* N.D. Att’y Gen. Op. No. 59-113 (June 4, 1959) (“There is of course some question as to whether or not the agreement entered into by this district pursuant to the project in which State School Construction funds are invested is or is not a debt within the meaning of the constitutional provision hereinbefore quoted.”) (stating the state loan should be counted for purposes of the debt limit at least until settled by the supreme court). See generally *Mandan School Bond Issue 1959-1960*, Attorney General, Administration, Case Files Series No. 30761, Box 55, State Historical Society of North Dakota, (containing the background and draft opinions of N.D. Att’y Gen. Op. No. 59-113).

309. Voelker et al., *supra* note 31, at 60.

310. The board consisted of the Superintendent of Public Instruction, the director of the state equalization fund, the manager of the Bank of North Dakota and the attorney general. See *Minutes, State School Construction Board* (June 13, 1953) (Department of Public Instruction, Administration, State School Construction Board Minutes, Series No. 31487 State Historical Society of North Dakota) (Garfield B. Nordrum, a former Superintendent of Public Instruction, was selected as the first state school construction fund director); see also § 21 1955 N.D. Laws 165, 173 (state school construction board replaced with the State Board of Public School Education).

311. See generally N.D. Att’y Gen. Op. No. 71-358 (May 19, 1971) (administration costs of state school construction fund paid from appropriations to the Department of Public Instruction).

percent if extreme emergency conditions, but not to exceed \$150,000.³¹² School districts having a taxable valuation of \$1.5 million or more were eligible for a loan amount of up to \$400,000.³¹³ Eligibility for a state school construction fund loan required school districts to levy the maximum number of mills for the building fund, which at the time was ten mills.³¹⁴ Further, school districts were required, at the time of the loan, to be bonded³¹⁵ to the full amount of the debt limit.³¹⁶ “Of course, it would be a fortuitous accident if the debt limit were precisely equaled by the actual amount of indebtedness.”³¹⁷

The school district paid annual rentals from the building fund levy over an approximate term of twenty years at an interest rate of two and one-half percent.³¹⁸ The rental payment was not a set amount. Rather, it was based on the dollar amount generated by the building fund levy which could vary depending on property valuations. Likewise, the maturity dates were not

312. 1955 N.D. Laws 204.

313. *Id.*

314. See Resolution for Building Fund Tax Levy, LaMoure Public School District No. 8, (Aug. 8, 1967) (“WHEREAS, it is not legally possible to raise sufficient money for the construction of a high school building by the issuance of general obligation bonds; and WHEREAS, it therefore becomes necessary that a contract for the payment of rentals with the State School Construction Board be made for the purpose of acquiring the additional funds necessary for the construction of such a high school building; and WHEREAS, in accordance with the statutes in such case made and provided the rental upon such a contract with the State School Construction Fund shall be paid from a tax levy for the purpose of creating a building fund in said school district”); see also Resolution for Increasing Mill Levy for School Construction Fund, Gackle Public School District No. 14, (July 28, 1976).

315. See 1979 N.D. Laws 571 (originally the language was bonded indebtedness, but amended in 1979 to “indebtedness”).

316. See N.D. Att’y Gen. Op. Letter to Nordrum (Apr. 26, 1955) (discussing 1955 amendments to section 21-0301, maximum bonded indebtedness of school districts is on basis of 100% of assessed valuation of all taxable property); see also 1981 N.D. Laws 509 (for purposes of a school construction loan, the legislature directed that the value of taxable property meant twice the net value of all taxable property in the school district, making it easier for districts to qualify); 1991 N.D. Laws 519 (existing debt test dropped to fifteen percent of the taxable valuation of the school district); 1995 N.D. Laws 631 (school districts may count, for purposes of the indebtedness test, bonds authorized under chapter 21-03 but not yet issued, allowing school districts to apply for a loan up to the amount of authorized debt and issue bonds in the market only to the extent the loan did not cover the full authorized amount).

317. *Halldorson v. State Sch. Constr. Fund*, 224 N.W.2d 814, 820 (N.D. 1974) (denying the argument that school district have maximum indebtedness exactly matching debt limit) (“Portia succeeded with such an argument (Merchant of Venice, Act IV, scene I), but we deal here with fiscal realities, not pounds of flesh. Our inquiry will be only as to whether the statute is substantially complied with.”).

318. See Letter from G. B. Nordrum, Director, State Sch. Constr. Fund, to Hazel Wopschall, Treasurer, Powers Lake Sch. Dist. (Apr. 11, 1955) (“All of the proceeds of the Ten Mill Building Fund Levy are to be withheld for the repayment of the funds advanced at the rate of 2½ per cent interest. It shall be the duty of the custodian to pay the total proceeds of this levy to the State Treasurer on or before May 1st of each year.”); see also Lease Between State Board of Public School Education and North Sargent Public School District No. 3 (Mar. 14, 1983) (“The School District agrees that the custodian of its school building fund shall pay annually on the 1st day of May of each year, to the State Treasurer, the total proceeds from the 20 mill school building fund levy to be applied to payment of principal and interest at the rate of 2½ percent per annum.”).

fixed since the building fund revenues could fluctuate. In 1977, the law was amended to provide that school districts levy sufficient mills to repay the loans, provided that school districts levy at least ten mills for the building fund, and that the loan amount not exceed thirty percent of the district's taxable valuation, and not be in excess of \$1,000,000.³¹⁹ The state school construction fund proved popular with school districts. 1981 testimony noted 180 school district borrowers from the fund.³²⁰

B. AN ABUNDANCE OF ATTEMPTS

In the decades following 1953, the legislature made an abundance of attempts to maintain an effective school construction loan program. The loan program endured numerous iterations,³²¹ including a revision of the education title which renumbered the school loan chapter.³²² A separate program established in 1979 provides loans from the coal development trust fund for coal development-impacted counties, cities, and school districts.³²³

The 1993 Legislature directed the Superintendent of Public Instruction, with the assistance of the North Dakota Industrial Commission, to sell all construction fund contracts and leases entered into before July 1, 1989, with the proceeds deposited in the state general fund.³²⁴ “[T]he general fund wants the money now and does not want to wait for the loans to be paid over a period of time.”³²⁵ The lease agreements were assigned to the North Dakota

319. 1977 N.D. Laws 393; *see also* 1979 N.D. Laws 572 (maximum loan amount increased to \$2,000,000); 1981 N.D. Laws 511 (loan amount increased to \$3,000,000); § 11 1989 N.D. Laws 9, 14 (loan amount amended to \$5,000,000). *See generally* N.D. Att’y Gen. Op. No. 81-4 (Feb. 3, 1981) (State Board of Public School Education may permit a school district to prepay its loan and immediately reborrow the sum paid).

320. *E.g.*, *State School Construction Fund Loan Limitation: Hearing on S.B. 2197 Before H. Edu. Comm.*, 47th Leg. Assemb. (N.D. 1981) (testimony of Roland Larson, North Dakota Department of Public Instruction).

321. *See School Construction Loan Interest Rate Buydown Program*, N.D. LEGIS. COUNCIL, (Sept. 2016), <https://ndlegis.gov/files/resource/committee-memorandum/17.9446.01000.pdf>; *State School Facilities Construction Approval*, N.D. LEGIS. COUNCIL (Sept. 2012), <http://library.nd.gov/statedocs/LegislativeCouncil/1393390100020120928.pdf>; *Coal Development Trust Fund – School Construction Loan Program*, N.D. LEGIS. COUNCIL (Sept. 2012), <https://ndlegis.gov/prod/assembly/62-2011/docs/pdf/13.9340.01000.pdf>.

322. *See* § 20 2001 N.D. Laws 592, 684 (education title revised resulting in a new chapter for the school construction loan program, enacting chapter 15.1-36 and repealing chapter 15-60). *See generally* N.D. CENT. CODE TITLE 15.1 (2022) (providing a table of comparable sections from former education sections to new education sections).

323. *See* N.D. CENT. CODE § 57-62-03 (2022). School districts execute warrants to evidence loans which bear interest at not to exceed six percent. Coal impact loans are not considered general obligations or debt and are payable solely from a school district's allocations from the coal development trust fund. The state treasurer withholds the debt service amounts from the school district allocations. Beulah, Hazen, Center, and Golden Valley school districts all received coal impact loans.

324. 1993 N.D. Laws 714.

325. *E.g.*, *Hearing on H.B. 1193, Before the H. Appropriations Comm.*, 53rd Legis. Assemb. (N.D. 1993) (testimony of Karlene Fine, North Dakota Industrial Commission).

Municipal Bond Bank,³²⁶ as of December 29, 1993, which subsequently sold the portfolio consisting of seventeen school district loans outstanding in the approximate amount of \$6.3 million.³²⁷ The attorney general affirmed the legality of the lease structure and the proposed sale of the loan portfolio.³²⁸

The 1993 amendments authorized the Board of University and School Lands³²⁹ to make loans in place of the State Board of Public School Education.³³⁰ Loans were approved by the Superintendent of Public Instruction and administered by the Bank of North Dakota.³³¹ The Department of Public Instruction adopted administrative rules as directed.³³² Rather than appropriating funds for the loan program, the legislature turned to the coal development trust fund.³³³ The land board was directed to make loans from the coal development trust fund up to an outstanding principal balance of \$25,000,000.³³⁴ The interest rate was changed from a fixed rate of two and one-half percent to a formula, stated as two percent below comparable tax-exempt rates.³³⁵ Individual loan amounts were limited to the lesser of thirty percent of a school district's taxable valuation or \$5,000,000.³³⁶

326. See generally 2005 N.D. Laws 313 (agency name changed to North Dakota Public Finance Authority).

327. E.g., *North Dakota Municipal Bond Bank, \$5,335,000 Capital Financing Program Bonds*, Series 1994A, ELEC. MUN. MKT. ACCESS (Feb. 15, 1994), <https://emma.msrb.org/MS102821-MS78129-MD151577.pdf>.

328. See N.D. Att'y Gen. Op. No. 93-L-369 (Dec. 23, 1993).

329. See N.D. CONST. art. IX, § 3; N.D. CENT. CODE CH. 15-01 (2022).

330. 1993 N.D. Laws 714.

331. *Id.*

332. See N.D. ADMIN. CODE ART. 67-09 (approval for school construction), 67-10 ("School Construction Loan Application and Loan Approval"); see also DEPARTMENT OF PUBLIC INSTRUCTION, REFERENCE GUIDE – NORTH DAKOTA'S SCHOOL CONSTRUCTION APPROVAL PROCESS AND SCHOOL CONSTRUCTION LOAN APPROVAL PROCESS (1994-95) (Department of Public Instruction: Series 30380, State Historical Society of North Dakota).

333. See N.D. CONST. art. X, § 21 (providing fifteen percent of coal severance tax placed into a permanent trust fund administered by Board of University and School Lands; board may loan moneys from fund to political subdivisions as provided by law); see also N.D. CENT. CODE § 57-62-02(1) (2022) (stating coal development trust fund to be used in part for loans to school districts pursuant to chapter 15.1-36). See generally N.D. Att'y Gen. Op. No. 93-L-34 (Feb. 10, 1993) (Article X, Section 21 of the constitution does not prohibit the legislature from making loans from the permanent trust fund to schools regardless of whether applicants are coal impacted).

334. See also 1999 N.D. Laws 841 (outstanding principal balance of loans increased to \$40,000,000).

335. § 5 1993 N.D. Laws 714, 716. Some school districts were able to refinance state school construction loans in the bond market as interest rates fell. E.g., *Official Statement: \$795,000 General Obligation Refunding Bonds of 2005, Larimore Public School District No. 44*, ELEC. MUN. MKT. ACCESS (Jan. 19, 2005), <https://emma.msrb.org/MS230028-MS205336-MD399013.pdf> ("The proceeds of the Bonds will be used to effect a current refunding of the District's State Construction Fund Loan of 1995.").

336. § 6 1993 N.D. Laws 714, 717.

In 1989, the lease structure that had been in place from the beginning was repealed.³³⁷ In 1993, the legislature added a new section stating that school districts may issue evidences of indebtedness under chapter 21-03, meaning GO bonds and building fund bonds, to finance the construction or improvement of a project under the loan program.³³⁸ In 2015, the loan program was amended to provide that the interest rate not exceed two percent until July 1, 2025, and thereafter would not exceed the Bank of North Dakota's base rate or may be a fixed rate.³³⁹ The variable interest rate mechanism was problematic since GO bonds are sold at fixed rates for the full term of the bonds so the tax levy can be established from the beginning.³⁴⁰ Through all the changes, the school construction loan program remains effective.³⁴¹

C. SCHOOL CONSTRUCTION ASSISTANCE REVOLVING LOAN FUND

Legislative efforts over the decades cohered into today's School Construction Assistance Revolving Loan Fund ("SCALF").³⁴² Eligibility to borrow from SCALF comprises:

- a. a new construction or remodeling project with a cost of at least one million dollars and an expected utilization of at least thirty years;
- b. construction approval from the superintendent of public instruction,

337. 1989 N.D. Laws 9.

338. N.D. CENT. CODE § 15.1-36-04 (2022) (formerly N.D. CENT. CODE § 15-60-11); *see also* § 6 1993 N.D. Laws 714, 717

339. § 2 2015 N.D. Laws 678, 679; *see also* § 11 1989 N.D. Laws 9, 14 (rate structure changed to an interest rate buydown which was the difference between the loan rate of 2.5% and BND's current loan rate).

340. School construction loans during this period were structured at five percent interest set by the Bank of North Dakota with a legislative buy down to two percent interest. *See* § 3 2017 N.D. Laws 1530, 1534 (after June 30, 2017, no new loans under section 15.1-36-06, section repealed effective July 1, 2023). By the end of 2022, all loans under the buy down interest rate formula were transferred to the current two percent fixed rate revolving loan fund. *See also* N.D. CENT. CODE § 15.1-36-06 (stating in section heading "Repealed effective July 1, 2023").

341. *See generally* Ellen Brown, *Swimming with the Sharks: Goldman Sachs, School Districts, and Capital Appreciation Bonds*, BOND CASE BRIEFS (Feb. 25, 2015), <https://bondcasebriefs.com/2015/02/25/finance-and-accounting/swimming-sharks-goldman-sachs-school-districts-capital-appreciation-bonds/?print=pdf> ("The state-owned Bank of North Dakota (BND) was making 1% loans to school districts even in December 2014, when global oil prices had dropped by half. That month, the BND granted a \$10 million construction loan to McKenzie County Public School No. 1, at an interest rate of 1% payable over 20 years. Over the life of the loan, that works out to \$.20 in simple interest or \$.22 in compound interest for every \$1 borrowed. Compare that to the \$15 owed for every dollar borrowed by Anaheim's Savanna School District [CA] or the \$10 owed for every dollar borrowed by Santa Ana Unified [CA].").

342. § 6 2015 N.D. Laws 671, 675; § 4 2017 N.D. Laws 1530, 1535 (codified at N.D. CENT. CODE § 15.1-36-08 (2022)).

- c. publication in the district's official newspaper and posting on the district's website of information regarding the proposed estimated additional millage and the dollar increase per one thousand dollars of taxable valuation,³⁴³
- d. authorization for a bond issue in accordance with chapter 21-03, and
- e. submission of a completed application to the Bank of North Dakota.³⁴⁴

The Superintendent of Public Instruction reviews and approves loans on a prioritization system of all applications received during the twelve-month period preceding the first of April, and gives consideration to:

- a. Student occupancy and academic needs in the district;
- b. The age of existing structures to be replaced or remodeled;
- c. Building design proposals that are based on safety and vulnerability assessments;
- d. Community support;
- e. Cost; and
- f. Any other criteria established by the superintendent of public instruction, after consultation with an interim committee appointed by the legislative management.³⁴⁵

The revolving loan fund is administered by the Bank of North Dakota. To date, the legislature has appropriated \$300,000,000 to SCALF.³⁴⁶ The maximum loan amount is \$10,000,000³⁴⁷ for a term of twenty years at a two percent interest rate.³⁴⁸ Originally, school districts were required to use the building fund levy to pay state school construction loans.³⁴⁹ Seemingly an unintended consequence, the loan program today is restricted to voter

343. N.D. CENT. CODE §§ 15.1-36-08(3)(c), 21-03-13 (2022) (ballot form to contain the same information). *See generally* § 2 2015 N.D. Laws 678, 679 (under prior law, the tax impact statement was provided by the tax commissioner).

344. § 15.1-36-08(3).

345. § 15.1-36-08(4).

346. *See* 2017 N.D. Laws 1530; 2019 N.D. Laws 246. *See also* 2015 N.D. Laws 1835 (proposed constitutional amendment authorizing use of Foundation Aid Stabilization Fund revenues for education purposes); 2017 N.D. LAWS 1860 (constitutional amendment approved).

347. § 4(5)(a) 2017 N.D. Laws 1530, 1536 (maximum loan amount could be less based on school district's unobligated general fund balance on the preceding June thirtieth).

348. *Id.* § 4(5)(b)-(c).

349. *See* N.D. CENT. CODE §§ 21-03-07(7) (building fund bonds may be used for a project loan under section 15.1-36-08), 57-15-16 (discussing if the building fund levy is allocated to the state school construction fund), 57-15-17 (2022) (building fund may be used for payment of rentals to state school construction fund).

approved GO bonds.³⁵⁰ A bill is pending in the 2023 Legislative Session to make clear that building fund bonds may be used to pay school construction loans.³⁵¹ Other pending bills propose to increase the maximum loan amount and reduce the loan interest rate.³⁵²

Today, there are two sources for state school construction loans. Along with SCALF, coal development trust fund loans of up to \$60,000,000 are available for unanticipated construction or replacement projects or emergency repairs.³⁵³ Coal development trust fund loans are approved by the Superintendent of Public Instruction, funded by the Board of University and School Lands, and administered by the Bank of North Dakota. Loan amounts are between \$250,000 and \$2,000,000, and the interest rate is capped at two percent over a twenty-year term.³⁵⁴ Unlike SCALF, coal development trust fund loans may be secured with building fund bonds. A 2013 provision allows districts that receive allocations of the oil and gas gross production tax (“GPT”) to secure a coal development trust fund loan with these allocations.³⁵⁵ The state treasurer withholds a portion of the district’s allocations for debt service on the loan.³⁵⁶ School districts utilizing the GPT statute issue a certificate of indebtedness to the Board of University and School Lands.³⁵⁷ Borrowings against the GPT do not count against the debt limit.³⁵⁸

VII. CONCLUSION

Distinctions are important: what is debt and what is not; a debt limit measured against true and full value and one measured against assessed value; bonds requiring voter approval and bonds that do not; financings imposing a new tax levy and financings paid from existing sources. Within

350. See N.D. CENT. CODE § 15.1-36-08(3)(c) (2022) (loan eligibility essentials include publication of tax impact information in the notice of bond election, which applies only to general obligation bonds); see also Cole Short, *Financing for Hillsboro School Addition Costlier*, HILLSBORO BANNER, Sept. 18, 2015, at 1 (“A change in state law during the most recent legislative session requires schools to hold a public vote in order to access the state’s 1 percent loan fund for construction projects.”).

351. H.B. 1161, 68th Legis. Assemb. (N.D. 2023) (amending § 15.1-36-08(3)(c) to provide for building fund bonds).

352. H.B. 1186, S.B. 2284, 68th Legis. Assemb. (N.D. 2023).

353. § 15.1-36-02. See Roosevelt Public School District No. 18, General Obligation Building Fund Bond, Series 2018 (loan for emergency replacement and repair of boilers before heating season).

354. § 15.1-36-02(4).

355. § 15.1-36-02(5); see also § 44 2013 N.D. Laws 31, 59.

356. See N.D. CENT. CODE § 57-51-15 (2022) (GPT allocation).

357. E.g., Stanley Public School District No. 2, Oil and Gas Gross Production Tax Revenue Notes, Series 2015 (loan for constructing improvements to school buildings, facilities and property).

358. § 15.1-36-02(5)(b) (“If the evidence of indebtedness is payable solely from the school district’s allocation of the oil and gas gross production tax . . . the loan does not constitute a general obligation of the school district and may not be considered a debt of the district.”).

these distinctions lie opportunities for supporting school construction and modernizing and clarifying the law. The school building fund and the state school construction fund originated in response to debt limits too low to provide sufficient borrowing capacity. The debt limit remains a problem. Substantial increases in construction costs stretch the debt capacity of many small and medium sized school districts.³⁵⁹

A few broad suggestions can be made. First, while the legislative heritage of the state school construction fund is positive, loans should be supplemented with grants. In addition, loan amounts ought to be increased, interest rates lowered, and refinancing or refunding other school district debt into the school construction fund permitted. Second, while the 60% voter approval demand for GO bonds is firmly entrenched, slightly lowering the bar to 55% permits additional scores of elections to succeed.³⁶⁰ Third, school districts should be allowed a ten mill building fund levy without a vote,³⁶¹ and twenty mills with majority voter approval.³⁶² As noted, Fargo Public School District is allowed a fifteen mill building fund levy without a vote.³⁶³ Fourth, the legislature should recognize that building authorities and lease financing are used if school districts are not otherwise provided with feasible financing options.³⁶⁴ Finally, chapter 21-03, dating from 1927, is due for revisions to simplify and to repeal obsolete language, and possibly address debt limit concerns.³⁶⁵ The story of North Dakota school construction finance continues.

359. *Hearing on H.B. 1185 Before the H. Educ. Comm.*, 68th Legis. Assemb. (N.D. 2023) (testimony of Dr. Michael McNeff, Superintendent, Rugby Public School District) (inflation dramatically increasing cost of school construction project beyond the \$7,870,000 approved by voters at the December 1, 2021, general obligation bond referendum).

360. *See* Omdahl, *supra* note 143; *infra* Part VIII APPENDIX (Maple Valley Public School District GO bond referenda; Froslic, *Kindred Bond Issue Fails by 1%*).

361. *See* H.B. 1300, 68th Legis. Assemb. (N.D. 2023) (failed effort to permit up to two mills for a building fund without a vote based on age of school buildings).

362. *See* N.D. CENT. CODE § 57-15-06.6 (2022) (county capital projects levy, ten mills authorized without a vote plus an additional ten mills with majority voter approval).

363. § 15.1-09-49.

364. *See supra* Part V.E SALES TAX – PROHIBITED, Part V.F LIMITED TAX BONDS – REPEALED.

365. *See* sources cited *supra* note 59 (numerous past attempts to increase debt limit). While a statutory debt limit increase may work, more likely a constitutional amendment is necessary.

VIII. APPENDIX

**SCHOOL DISTRICT GO BOND ELECTIONS,
1990s – 2023
DEBT LIMIT INCREASE &
BUILDING FUND ELECTIONS
GO & BUILDING FUND: 60%
DEBT LIMIT INCREASE: 50% +1**

ALEXANDER PSD

April 19, 2011
GO \$14,500,000
57%
Debt Limit Increase
failed

June 18, 2019
Building Fund 20 mills
72%

October 7, 2014
GO \$17,100,000
72 yes, 11 no – 86.75%
Debt Limit Increase
66 yes, 15 no – 81.48%

ASHLEY PSD

June 2, 1959
Building Fund 10 mills
139 yes, 45 no – 74.33%

April 7, 1959
Debt Limit Increase
543 yes, 145 no – 78.92%

BARNES COUNTY NORTH PSD

September 20, 2010
GO \$14,500,000
51%
Debt Limit Increase
failed

October 24, 2011
GO \$13,900,000
501 yes, 399 no – 55.67%
Debt Limit Increase
481 yes, 417 no – 53.56%

BEACH PSD

June 2, 1953
Building Fund 10 mills
212 yes, 123 no – 63.28%

BELFIELD PSD

Building Fund 20 mills
passed

BERTHOLD PSD

January 21, 1997
GO \$315,000
151 yes, 110 no – 57.85%

BEULAH PSD

January 7, 2020
GO \$6,900,000
524 yes, 214 no – 71.00%

October 29, 2019
 Building Fund discontinue
 253 yes, 834 no – 35.88%

December 11, 2018
 GO \$17,500,000
 390 yes, 1,085 no – 26.44%

October 4, 1994
 GO \$1,200,000
 1,021 yes, 199 no – 83.69%

December 16, 1975
 Debt Limit Increase
 538 yes, 235 no – 69.60%
 Building Fund 20 mills
 523 yes, 252 no – 67.48%

BISMARCK PSD

March 7, 2017
 GO \$57,500,000
 7,058 yes, 1,237 no – 85.09%

September 18, 2012
 GO \$86,500,000
 11,741 yes, 2,064 no – 85.05%

November 3, 1998
 GO \$14,200,000
 13,634 yes, 8,494 no – 61.61%

November 5, 1996
 GO \$8,700,000
 16,237 yes, 10,771 no – 60.12%

June 6, 1995
 GO \$10,600,000
 54%

December 7, 1993
 GO \$9,800,000
 failed

December 4, 1992
 GO \$14,500,000
 failed

December 3, 1990
 GO \$4,975,000
 2,528 yes, 1,484 no – 63.01%

November 26, 1985
 GO \$9,800,000
 4,704 yes, 2,899 no – 61.87%

June 4, 1984
 GO \$16,400,000
 failed

June 6, 1972
 Debt Limit Increase
 3,391 yes, 3,172 no – 51.67%

September 21, 1948
 Building Fund 10 mills
 961 yes, 140 no – 87.28%

BOTTINEAU PSD

December 11, 2018
 GO \$7,560,000
 816 yes, 145 no – 84.91%

August 12, 2014
 GO \$12,960,000
 374 yes, 270 no – 58.07%

November 5, 2013
 GO \$18,900,000
 483 yes, 566 no – 46.04%
 Debt Limit Increase
 458 yes, 586 no – 43.87%

October 9, 2001
 GO \$3,985,000
 27%

August 20, 1957
Debt Limit Increase
332 yes, 81 no – 80.39%

BOWBELLS PSD

May 11, 2004
GO \$305,000
235 yes, 29 no – 89.02%

CARRINGTON PSD

May 24, 2016
GO \$16,000,000
834 yes, 480 no – 63.47%
Debt Limit Increase
803 yes, 510 no – 61.16%

February 16, 2016
GO \$23,500,000
735 yes, 771 no – 48.80%
Debt Limit Increase
709 yes, 730 no – 49.27%

February 22, 2006
GO \$2,134,000
693 yes, 309 no – 69.16%

March 18, 2003
GO \$3,000,000
55%

CAVALIER PSD

September 30, 2019
GO \$10,900,000
492 yes, 367 no – 57.28%

June 11, 2019
GO \$10,900,000
358 yes, 277 no – 56.38%
Debt Limit Increase
326 yes, 305 no – 51.66%

October 4, 2011
GO \$11,500,000
25%

CENTER STANTON PSD

Building Fund 5 mills
passed

CENTRAL CASS PSD

October 5, 2021
Building Fund 20 mills
76 yes, 552 no – 12.10%

October 4, 2016
GO \$18,000,000
846 yes, 520 no – 61.93%

September 29, 2011
GO \$4,800,000
537 yes, 596 no – 47.40%

April 19, 2011
Building Fund 20 mills
56.5%

September 27, 1994
GO \$7,935,697
passed

CENTRAL VALLEY PSD

January 21, 2003
GO \$975,000
342 yes, 123 no – 73.55%

1996
GO
failed

1995
GO
failed

COOPERSTOWN PSD

April 12, 1994
GO \$150,000
passed

DAKOTA PRAIRIE PSD

June 11, 2002
GO \$1,600,000
456 yes, 741 no – 38.10%

DEVILS LAKE PSD

October 11, 2022
GO \$31,800,000
1,056 yes, 1,186 no – 47.10%
Debt Limit Increase
1,009 yes, 1,222 no – 45.23%

October 2, 2018
GO \$6,850,000
1,115 yes, 869 no – 56.20%

March 21, 2017
GO \$8,950,000
53%

September 22, 2009
GO \$2,500,000
1,153 yes, 734 no – 61.10%

March 31, 2009
GO \$3,960,000
1,085 yes, 891 no – 54.91%

March 26, 1991
GO \$1,860,000
passed

DICKINSON PSD

September 10, 2019
GO \$89,000,000
1,463 yes, 2,470 no – 37.20%

May 7, 2019
GO \$115,000,000
2,076 yes, 2,703 no – 43.44%

June 12, 2018
Building Fund 10 to 20 mills
946 yes, 1,768 no – 34.86%

October 7, 2014
GO \$65,000,000
1,716 yes, 620 no – 73.46%

March 12, 1996
GO \$2,080,000
1,975 yes, 821 no – 70.64%

August 5, 1947
Debt Limit Increase
716 yes, 105 no – 87.22%

DIVIDE COUNTY PSD

February 9, 2016
GO \$9,900,000
287 yes, 183 no – 61.06%

April 21, 2015
GO \$20,000,000
79 yes, 354 no – 18.25%
Debt Limit Increase
73 yes, 359 no – 16.90%

June 23, 2015
Building Fund 10 to 20 mills
88 yes, 79 no – 52.69%

DRAYTON PSD

October 9, 2012
 GO \$3,150,000
 114 yes, 76 no – 60.00%

DUNSEITH PSD

1995
 GO

EDGELEY PSD

June 14, 2016
 GO \$3,900,000
 218 yes, 93 no – 70.09%

September 30, 2014
 GO \$4,350,000
 213 yes, 408 no – 34.30%
 Building Fund 3 to 9 mills
 253 yes, 368 no – 40.74%

October 4, 1994
 GO \$2,200,000
 passed

EDMORE PSD

October 8, 2013
 Building Fund 10 to 20 mills

EIGHT MILE PSD

February 15, 2018
 GO \$9,000,000
 110 yes, 32 no – 77.47%
 Debt Limit Increase
 115 yes, 31 no – 78.77%

ELLENDALE PSD

April 27, 2010
 GO \$4,050,000
 576 yes, 111 no – 83.84%

April 27, 1995
 GO \$1,400,000
 passed

EMERADO PSD

September 20, 2016
 GO \$3,600,000
 failed
 Debt Limit Increase

ENDERLIN PSD

February 12, 2020
 GO \$1,515,000
 169 yes, 96 no – 63.77%

1996
 GO \$2,800,000
 passed

1994
 GO
 failed

FAIRMOUNT PSD

June 5, 1979
 Building Fund 10 to 14 mills
 341 yes, 35 no – 90.69%

FARGO PSD

December 3, 1991
 Building Fund 11.4 mills
 72%
 (plus 15 mills, for total
 of 26.4 mills)

Debt Limit Increase
passed

June 26, 2018
GO \$11,125,000
409 yes, 373 no – 52.30%

FESSENDEN-BOWDON PSD

February 5, 2002
Building Fund 8 mills
224 yes, 90 no – 71.34%

February 5, 2015
GO \$5,900,000
308 yes, 515 no – 37.42%

FINLEY-SHARON PSD

May 28, 1981
Building Fund 10 mills
37 yes, 197 no – 15.81%

November 4, 2014
GO \$5,900,000
59.05%

October 8, 2013
GO \$5,000,000
250 yes, 247 no – 50.30%

February 24, 1981
Building Fund 10 mills
Debt Limit Increase

November 13, 2012
GO \$6,000,000
35%

FLASHER PSD

August 18, 2015
GO \$6,000,000
239 yes, 156 no – 60.51%
Debt Limit Increase
230 yes, 165 no – 58.23%

Debt Limit Increase
failed

GLENBURN PSD

GACKLE PSD

August 31, 1976
Debt Limit Increase
446 yes, 102 no – 81.39%
Building Fund 3 to 20 mills
436 yes, 105 no – 80.59%

January 31, 2017
GO \$3,700,000
failed

October 4, 2016
GO \$3,700,000
failed

GARRISON PSD

November 6, 2018
Building Fund 10 to 20 mills
425 yes, 371 no – 53.39%

December 2, 1980
Debt Limit Increase
297 yes, 163 no – 64.57%
Building Fund 20 mills
281 yes, 176 no – 61.49%

GLEN ULLIN PSD

April 5, 2016
GO \$1,927,000
30%

GRAFTON PSD

October 3, 2013
GO \$14,000,000
688 yes, 177 no – 79.54%
Debt Limit Increase
632 yes, 229 no – 69.92%

June 3, 1997
GO \$4,700,000
602 yes, 191 no – 75.91%

GRAND FORKS PSD

September 28, 2021
Building Fund 10 to 20 mills
2,762 yes, 1,430 no – 65.89%

June 22, 2021
GO \$86,000,000
30%
Building Fund 10 to 20 mills
54%

September 29, 1992
GO \$6,500,000
5,140 yes, 2,535 no – 66.97%

March 5, 1985
GO \$8,500,000
passed

1948
Building Fund 10 mills
passed

Debt Limit Increase
passed

GRENORA PSD

July 15, 2014
GO \$9,950,000
182 yes, 99 no – 64.77%

April 15, 2014
GO \$9,950,000
108 yes, 87 no – 55.38%
Debt Limit Increase
100 yes, 94 no – 51.55%

GRIGGS COUNTY CENTRAL PSD

October 8, 2002
GO \$2,800,000
872 yes, 435 no – 66.72%

HANKINSON PSD

October 6, 2005
GO \$2,660,000
581 yes, 123 no – 82.53%

HATTON EIELSON PSD

December 12, 2017
GO \$6,300,000
350 yes, 37 no – 90.44%
Debt Limit Increase
338 yes, 49 no – 87.34%

October 4, 1994
GO \$650,000
passed

HAZELTON-MOFFIT PSD

April 22, 1997
GO \$1,300,000
72%

HAZEN PSD

November 25, 1975
Building Fund 20 mills
954 yes, 105 no – 90.08%
Debt Limit Increase
946 yes, 108 no – 89.75%

HEBRON PSD

Building Fund 10 mills
passed

HETTINGER PSD

February 16, 2021
GO \$3,300,000
250 yes, 52 no – 82.78%

HILLSBORO PSD

April 21, 2015
GO \$1,500,000
401 yes, 254 no – 61.22%

May 21, 2002
GO \$1,750,000
831 yes, 144 no – 85.23%

September 30, 1997
GO \$3,400,000

June 3, 1947
Building Fund 10 mills
136 yes, 32 no – 80.95%

HOPE PSD

June 13, 2001
GO \$160,743
74 yes, 52 no – 58.73%

JAMESTOWN PSD

September 24, 2019
Building Fund 10 to 20 mills
764 yes, 1,174 no – 39.42%

September 25, 2018
GO \$34,445,000
1,140 yes, 2,774 no – 29.13%

September 29, 2015
GO \$19,000,000
1,140 yes, 813 no – 58.37%

November 15, 2001
GO \$25,000,000
3,190 yes, 1,729 no – 64.85%

1965
Debt Limit Increase
passed

KENMARE PSD

March 17, 2020
GO \$11,950,000
427 yes, 391 no – 52.20%

January 22, 2019
GO \$14,200,000
failed

June 10, 2014
Building Fund 10 to 20 mills
124 yes, 69 no – 64.25%

April 8, 2014
 GO \$7,500,000
 243 yes, 186 no – 56.64%
 Debt Limit Increase
 231 yes, 199 no – 53.72%

November 19, 2013
 GO \$13,000,000
 209 yes, 216 no – 49.18%
 Debt Limit Increase
 failed

KIDDER COUNTY PSD

1994
 GO \$1,900,000
 passed

KILLDEER PSD

May 19, 2020
 GO \$23,000,000
 366 yes, 224 no – 62.03%

November 6, 2001
 GO \$395,000
 247 yes, 232 no – 51.56%

February 8, 2000
 GO \$240,000
 138 yes, 191 no – 41.95%

June 7, 1994
 GO \$195,000
 167 yes, 69 no – 70.76%

February 23, 1982
 Debt Limit Increase
 336 yes, 125 no – 72.86%

June 7, 1966
 Building Fund 10 mills
 101 yes, 16 no – 86.33%

KINDRED PSD

October 14, 2021
 GO \$26,400,000
 539 yes, 310 no – 63.49%

May 20, 2010
 GO \$14,700,000
 1,057 yes, 471 no – 69.18%
 Debt limit Increase
 1,053 yes, 473 no – 69.00%

January 5, 2005
 GO \$2,975,000
 failed

September 21, 2004
 GO \$3,000,000
 405 yes, 282 no – 58.95%

May 11, 1999
 GO \$6,000,000
 267 yes, 684 no – 28.08%
 Debt Limit Increase
 273 yes, 777 no – 26.00%

June 9, 1992
 GO \$2,500,000
 passed

KULM PSD

March 25, 2014
 GO \$5,500,000
 353 yes, 81 no – 81.34%
 Debt Limit Increase
 347 yes, 85 no – 80.32%

June 3, 1975
 Building Fund 10 mills
 131 yes, 49 no – 72.78%

LAKOTA PSD

1986
 GO
 passed

LAMOURE PSD

September 27, 2007
 Building Fund 10 to 20 mills
 201 yes, 201 no – 50.00%

June 5, 2007
 Building Fund 10 to 20 mills
 54%

July 9, 1998
 GO \$450,000
 234 yes, 463 no – 33.57%

September 12, 1967
 Debt Limit Increase
 482 yes, 60 no – 88.93%
 Building Fund 10 mills
 500 yes, 41 no – 92.42%

LANGDON AREA PSD

January 6, 2021
 Building Fund 3 to 10 mills
 276 yes, 378 no – 42.20%

October 1, 2019
 Building Fund 15 mills
 311 yes, 235 no – 56.96%

LARIMORE PSD

November 16, 2021
 GO \$3,000,000
 219 yes, 120 no – 64.60%

June 10, 2014
 Building Fund 5 to 10 mills
 197 yes, 100 no – 66.33%

June 3, 2008
 Building Fund 5 mills
 128 yes, 64 no – 66.67%

September 22, 1994
 GO \$1,975,000
 passed

LEWIS & CLARK PSD

April 8, 2014
 GO \$15,000,000
 524 yes, 238 no – 68.77%
 Debt Limit Increase
 504 yes, 258 no – 66.14%

January 9, 2012
 GO \$12,000,000
 48%
 Debt Limit Increase
 46%

June 12, 1994
 GO \$16,000

LIDGERWOOD PSD

February 6, 2004
 GO \$650,000
 213 yes, 86 no – 71.24%

LISBON PSD

November 3, 1998
GO \$250,000
passed

May 11, 1992
GO \$600,000
926 yes, 368 no – 71.56%

Building Fund 20 mills
passed

LITCHVILLE-MARION PSD

February 8, 2022
GO \$13,000,000
265 yes, 161 no – 62.21%
Debt Limit Increase
249 yes, 177 no – 58.45%

MANDAN PSD

April 13, 2021
GO \$84,000,000
2,551 yes, 726 no – 77.85%

September 25, 2012
GO \$12,500,000
2,027 yes, 560 no – 78.35%

April 26, 2005
GO \$17,600,000
3,199 yes, 1,833 no – 63.57%

March 26, 2002
GO \$13,000,000
1,261 yes, 2,528 no – 33.28%

March 5, 1996
GO \$3,300,000
1,257 yes, 597 no – 67.80%

April 21, 1992
GO \$2,000,000
1,481 yes, 297 no – 83.30%
Building Fund 10 to 18 mills
1,431 yes, 349 no – 80.39%

November 26, 1985
GO \$9,800,000
4,704 yes, 2,899 no – 61.87%

December 18, 1973
Building Fund 10 mills
813, yes, 443 no – 64.73%

December 15, 1953
Debt Limit Increase
939 yes, 329 no – 74.05%

MAPLETON PSD

June 14, 2022
GO \$5,300,000
183 yes, 126 no – 59.22%

January 4, 2022
GO \$5,300,000
158 yes, 144 no – 52.32%

March 29, 2016
GO \$7,200,000
247 yes, 123 no – 66.76%
Debt Limit Increase
239 yes, 131 no – 64.59%

October 7, 2015
GO \$7,200,000
160 yes, 157 no – 50.47%
Debt Limit Increase
failed

MAPLE VALLEY PSD

June 11, 2019
Building Fund 5 mills

June 18, 2018
Building Fund 20 mills
failed

April 25, 2017
GO \$14,300,000
551 yes, 385 no – 58.87%

September 20, 2016
GO \$14,300,000
493 yes, 332 no – 59.76%

April 14, 2015
GO \$10,300,000
453 yes, 307 no – 59.61%

January 13, 2015
GO \$10,300,000
334 yes, 238 no – 58.39%

June 1, 1999
GO \$3,990,000
failed
Debt Limit Increase
failed

MAYVILLE-PORTLAND PSD

June 12, 2001
Building Fund 20 mills
passed

February 27, 2001
Building Fund 20 mills
372 yes, 276 no – 57.41%

June 13, 2000
GO \$3,250,000
402 yes, 761 no – 34.57%

September 28, 1999
GO \$7,500,000
failed
Debt Limit Increase

October 7, 1997
GO \$2,500,000
57%

March 17, 1997
GO #1 \$3,000,000
GO #2 \$2,500,000
376 yes, 590 no – 38.92%

MAX PSD

June 9, 2015
Building Fund 10 to 20 mills
147 yes, 151 no – 49.33%

February 20, 2015
GO \$7,975,000
146 yes, 272 no – 34.93%

November 19, 2014
GO \$7,975,000
53.6%
Debt Limit Increase
50.3%

August 18, 1958
Building Fund 10 mills
134 yes, 34 no – 79.76%

MCCLUSKLY PSD

July 17, 1964
Debt Limit Increase
342 yes, 97 no – 77.90%

1949
Building Fund 10 mills
passed

MCKENZIE COUNTY PSD

January 8, 2019
GO \$35,000,000
684 yes, 168 no – 80.28%
Building Fund 10 to 20 mills
608 yes, 237 no – 71.95%

March 11, 2014
GO \$27,000,000
748 yes, 83 no – 90.01%

June 1, 1976
Building Fund 10 to 20 mills
254 yes, 344 no – 42.47%

April 9, 1974
Debt Limit Increase
1,106 yes, 489 no – 69.34%
Building Fund 10 mills
1,209 yes, 393 no – 75.47%

MENOKEN PSD

April 8, 2014
GO \$1,095,000
88 yes, 26 no – 77.19%

MIDKOTA PSD

March 14, 2017
GO \$6,400,000
247 yes, 361 no – 40.63%

MILNOR PSD

April 11, 2002
GO \$750,000
passed

MINOT PSD

December 7, 2021
GO #1 \$84,800,000
3,656 yes, 710 no – 83.74%
GO #2 \$24,200,000
3,382 yes, 973 no – 77.66%
Debt Limit Increase
3,331 yes, 1,026 no – 76.45%

April 8, 2014
GO \$39,500,000
3,978 yes, 1,962 no – 66.97%

December 10, 2013
GO \$125,000,000
4,340 yes, 4,349 no – 49.95%
Debt Limit Increase
3,894 yes, 4,786 no – 44.86%

May 12, 2005
Building Fund 20 mills
2,640 yes, 2,240 no – 54.10%

October 1, 2002
GO \$26,000,000
2,796 yes, 3,675 no – 43.21%

MINTO PSD

September 23, 2014
GO \$5,800,000
253 yes, 139 no – 64.54%
Debt Limit Increase
242 yes, 150 no – 61.74%

MOTT-REGENT PSD

June 14, 2016
GO \$8,696,000
390 yes, 249 no – 61.03%

May 20, 2014
GO \$14,500,000
289 yes, 537 no – 34.99%
Debt Limit Increase
37%

1933
Debt Limit Increase
passed

MOUNT PLEASANT PSD

November 9, 1993
GO \$3,200,000
passed

NAPOLEON PSD

April 16, 1996
GO \$920,000
failed

December 7, 1993
GO \$350,000
failed

NEDROSE PSD

February 20, 2014
GO \$18,000,000
398 yes, 201 no – 66.44%
Debt Limit Increase
386 yes, 207 no – 65.10%

May 18, 1995
Building Fund 20 mills

May 4, 1976
Debt Limit Increase
66 yes, 77 no – 46.15%
Building Fund 20 mills
75 yes, 69 no – 52.08%

February 26, 1963
Debt Limit Increase
58 yes, 26 no – 69.05%

NESSON PSD

May 14, 2019
GO \$10,000,000
124 yes, 11 no – 91.85%

August 2, 2011
GO \$5,000,000
197 yes, 21 no – 90.37%
Debt Limit Increase
189 yes, 30 no – 86.30%

NEW ENGLAND PSD

November 6, 2018
GO \$5,600,000
224 yes, 128 no – 63.64%

June 12, 2018
GO \$5,600,000
failed

June 12, 2012
Building Fund 5 to 15 mills
120 yes, 79 no – 60.31%

June 14, 2005
Building Fund 5 mills
137 yes, 88 no – 60.89%

**NEW ROCKFORD
-SHEYENNE PSD**

October 17, 2017
GO \$3,255,000
357 yes, 183 no – 66.11%

NEW SALEM- ALMONT PSD

October 1, 2019
GO \$7,650,000
193 yes, 536 no – 26.47%
Debt Limit Increase
failed

November 17, 2008
Reorganization Plan
Building Fund 10 mills
passed

April 8, 2002
GO \$570,000
248 yes, 161 no – 60.64%

NEW TOWN PSD

June 10, 1997
Building Fund 10 to 20 mills
passed

June 1, 1976
Building Fund 10 mills
136 yes, 42 no – 76.40%

NORTH BORDER PSD

October 6, 2015
GO \$10,590,000
failed

NORTHERN CASS PSD

June 23, 2020
Building Fund 10 to 15 mills
182 yes, 252 no – 41.94%

June 11, 2019
GO \$9,000,000
77 yes, 282 no – 21.45%

June 13, 2017
Building Fund 10 mills
124 yes, 7 no – 94.66%

April 9, 2013
GO \$2,500,000
338 yes, 74 no – 82.04%

September 9, 1997
GO \$8,030,000
748 yes, 154 no – 82.93%
Debt Limit Increase
665 yes, 232 no – 74.14%

NORTHWOOD PSD

September 25, 2018
GO \$5,850,000
317 yes, 113 no – 73.72%
Debt Limit Increase
281 yes, 149 no – 65.35%

February 19, 2004
GO \$1,800,000
passed

OAKES PSD

November 5, 1974
Building Fund 10 mills
1,077 yes, 261 no – 80.49%
Debt Limit Increase
1,035 yes, 291 no – 78.05%

PARK RIVER AREA PSD

November 18, 2014
GO \$8,978,620
440 yes, 154 no – 74.07%
Debt Limit Increase
417 yes, 175 no – 70.44%

September 9, 1997
GO \$2,600,000
557 yes, 234 no – 70.42%

PARSHALL PSD

May 15, 2018
GO \$5,400,000
256 yes, 98 no – 72.32%

August 15, 2017
GO \$5,400,000
failed

August 10, 1999
GO \$390,000
87 yes, 26 no – 76.99%

June 2, 1959
Building Fund 10 mills
94 yes, 8 no – 92.16%

PEMBINA PSD

September 29, 1997
GO \$2,400,000
317 yes, 51 no – 86.14%

PINGREE-BUCHANAN PSD

November 21, 2022
GO \$4,500,000
75 yes, 81 no – 48.08%

POWERS LAKE PSD

October 8, 2013
GO \$2,945,000
173 yes, 23 no – 88.27%
Debt Limit Increase
167 yes, 28 no – 85.64%

June 7, 1994
GO \$150,000
96 yes, 36 no – 72.73%

June 1, 1954
Building Fund 10 mills
85 yes, 11 no – 88.54%

RICHARDTON-TAYLOR PSD

June 28, 2016
GO \$12,000,000
317 yes, 166 no – 65.63%
Debt Limit Increase
295 yes, 187 no – 61.20%

RICHLAND PSD

June 11, 2013
GO \$5,900,000
267 yes, 66 no – 80.18%

November 2, 2010
GO \$1,100,000
501 yes, 80 no – 86.23%

December 7, 1999
GO \$2,300,000
469 yes, 131 no – 78.17%

ROLETTE PSD

January 12, 1982
GO \$438,055
430 yes, 279 no – 60.65%

RUGBY PSD

December 1, 2021
GO \$7,870,000
627 yes, 162 no – 79.47%

June 8, 2010
GO \$6,000,000
537 yes, 318 no – 62.81%

ST. JOHN PSD

June 3, 1975
Building Fund 20 mills
111 yes, 7 no – 94.10%

SARGENT CENTRAL PSD

April 14, 2009
GO \$3,800,000
512 yes, 269 no – 64.89%

October 4, 1994
GO \$590,000
passed

SCRANTON PSD

June 3, 1952
Building Fund 10 mills
passed

SOUTH HEART PSD

March 22, 2016
GO \$11,000,000
173 yes, 79 no – 68.65%

SOUTH PRAIRIE PSD

December 3, 2013
GO \$12,000,000
281 yes, 68 no – 80.52%

September 18, 2007
GO \$3,750,000
105 yes, 67 no – 61.05%
Debt Limit Increase
94 yes, 82 no – 53.41%

1996
GO \$200,000
85 yes, 75 no – 53.13%

1995
GO \$360,000
failed

STANLEY PSD

March 7, 2017
GO \$19,500,000
180 yes, 568 no – 24.10%

January 10, 1984
Building Fund 10 to 20 mills
471 yes, 249 no – 65.42%

June 5, 1962
Building Fund 10 mills
253 yes, 14 no – 94.76%

STERLING PSD

May 3, 2016
GO \$1,645,000
29%

STRASBURG PSD

October 6, 2015
GO \$3,900,000
287 yes, 156 no – 64.79%

June 10, 2014
Building Fund 5 to 20 mills
184 yes, 130 no – 58.60%

February 25, 2014
GO \$2,900,000
245 yes, 205 no – 54.44%

September 10, 2013
 GO \$2,900,000
 222 yes, 178 no – 55.50%
 Debt Limit Increase
 202 yes, 192 no – 51.27%

June 7, 2011
 Building Fund 5 mills
 85 yes, 28 no – 75.22%

SURREY PSD

June 12, 2012
 GO \$6,000,000
 221 yes, 101 no – 68.63%
 Debt Limit Increase
 131 yes, 189 no – 40.94%

April 19, 1988
 GO \$275,000
 188 yes, 125 no – 60.06%

April 13, 1976
 Building Fund 20 mills
 216 yes, 58 no – 78.83%

TGU PSD

December 12, 2018
 GO \$8,900,000
 442 yes, 705 no – 38.54%

May 11, 2004
 Building Fund 20 mills
 169 yes, 85 no – 66.54%

THOMPSON PSD

August 23, 2016
 GO \$10,000,000
 failed

May 3, 2016
 GO \$11,000,000
 failed
 Debt Limit Increase
 passed

November 26, 2013
 GO \$4,500,000
 failed

November, 2012
 GO \$3,400,000
 248 yes, 247 no – 50.10%

December 17, 2007
 GO \$900,000
 64%

1993
 GO \$580,000
 passed

TIOGA PSD

January 16, 2014
 GO \$9,925,186
 219 yes, 81 no – 73.00%

TURTLE LAKE MERCER PSD

March 13, 2013
 GO \$3,060,000
 230 yes, 116 no – 66.47%

June 12, 2012
 GO \$3,400,000
 52.52%

June 13, 2006
 Building Fund 10 mills
 passed

January 13, 1997
GO \$25,000
228 yes, 176 no – 56.44%

UNDERWOOD PSD

December 9, 1997
GO \$1,150,000
158 yes, 410 no – 27.82%

June 2, 1953
Building Fund 10 mills
passed

August 8, 1952
Debt Limit Increase
265 yes, 48 no – 84.66%

UNITED PSD

November 14, 2017
GO \$11,900,000
517 yes, 313 no – 62.29%

April 25, 2017
GO \$15,100,000
388 yes, 310 no – 55.59%

September 9, 1997
GO \$3,250,000
664 yes, 339 no – 66.20%

June, 1997
GO \$3,200,000
376 yes, 278 no – 57.49%

September 30, 1975
Debt Limit Increase
188 yes, 149 no – 55.79%
Building Fund 20 mills
185 yes, 157 no – 54.10%

UNITY PSD

June 2, 1987
GO \$92,000
157 yes, 65 no – 70.72%

VALLEY CITY PSD

March 25, 2003
GO \$3,700,000
79%

March 23, 1999
GO \$2,160,000
1,061 yes, 675 no – 61.12%

April 2, 1992
GO \$650,000
passed

1984
GO \$560,000
passed

1958
Debt Limit Increase
passed

Building Fund
passed

VELVA PSD

June 8, 2021
GO \$10,000,000
102 yes, 286 no – 26.29%
Debt Limit Increase
failed

September 14, 2010
GO \$4,400,000
277 yes, 163 no – 62.95%

1994
GO \$465,000
passed

May 24, 2011
GO \$82,500,000
5,194 yes, 2,226 no – 70.00%

WAHPETON PSD

October 1, 2013
GO \$30,000,000
1,201 yes, 162 no – 88.11%
Debt Limit Increase
1,140 yes, 221 no – 83.76%

March 23, 2010
GO \$40,000,000
3,066 yes, 2,275 no – 57.40%

June 9, 2009
GO \$65,000,000
failed

November 30, 2004
GO \$1,900,000
732 yes, 90 no – 89.05%

February 15, 2005
GO \$27,000,000
2,000 yes, 407 no – 83.09%

February 13, 1996
GO \$2,498,000
passed

March 26, 2002
GO \$31,000,000
3,302 yes, 379 no – 89.70%

WASHBURN PSD

December 13, 2022
GO \$7,900,000
219 yes, 104 no – 67.80%

2001
GO \$31,000,000

April 9, 1992
GO \$8,430,000
passed

WESTHOPE PSD

December 9, 2013
GO \$4,500,000
158 yes, 71 no – 69.00%
Debt Limit Increase
152 yes, 77 no – 66.38%

1986
GO \$6,270,000
passed

1985
GO
passed

WEST FARGO PSD

September 25, 2018
GO \$106,900,000
4,229 yes, 1,752 no – 70.71%

1984
GO
failed

November 17, 2015
GO \$98,100,000
4,831 yes, 1,233 no – 79.67%

May 20, 1965
Debt Limit Increase
passed

Building Fund 10 mills
passed

February 9, 2016
GO \$38,915,000
153 yes, 259 no – 37.14%

WILLISTON BASIN PSD

WILLISTON PSD

WILLIAMS COUNTY PSD

NEW PSD

September 6, 2015
GO \$48,498,240
57 yes, 200 no – 22.18%

June 9, 2020
GO \$10,000,000
1,405 yes, 1,633 no – 46.25%
Building Fund 10 to 20 mills
1,292 yes, 1,746 no – 42.53%

June 10, 2014
GO \$34,000,000
2,838 yes, 919 no – 75.54%

February 25, 2020
GO \$28,000,000
failed

December 11, 2012
GO \$55,000,000
551 yes, 1,415 no – 28.03%
Building Fund 20 mills
578 yes, 1,380 no – 29.52%

May 14, 2019
GO \$89,028,200
259 yes, 303 no – 46.10%
Debt Limit Increase
246 yes, 318 no – 43.62%

December 17, 2002
GO \$13,800,000
2,877 yes, 831 no – 77.59%

April 9, 2019
GO \$60,000,000
2,052 yes, 1,398 no – 59.48%
Building Fund 10 to 20 mills
58.2%

May 21, 1996
GO \$9,750,000
failed

November 7, 1955
Debt Limit Increase
699 yes, 333 no – 67.73%

January 8, 2019
GO \$60,000,000
1,382 yes, 979 no – 58.53%
Building Fund 10 to 20 mills
1,361 yes, 996 no – 57.74%

April, 1952
Building Fund 10 mills
passed

WILTON PSD

March 20, 2018
GO \$77,205,000
918 yes, 1,299 no – 41.41%

November 15, 2022
GO \$8,970,000
274 yes, 173 no – 61.30%

June 7, 2016
Building Fund 20 mills
42 yes, 169 no – 19.91%

March 23, 2021

GO #1 \$8,180,000

206 yes, 329 no – 38.51%

GO #2 \$3,810,000

195 yes, 330 no – 36.52%

Debt Limit Increase

197 yes, 337 no – 36.89%

July 11, 2000

GO

173 yes, 371 no – 31.80%

July 12, 1994

GO \$1,100,000

1966

Debt Limit Increase

passed

WISHEK PSD

Building Fund 4.5 mills

passed

WYNDMERE PSD

Build Fund 10 mills

passed

YELLOWSTONE PSD

June 14, 2022

GO \$3,000,000

84 yes, 17 no – 83.17%

April 20, 1982

GO \$300,000

176 yes, 111 no – 61.32%

April 12, 1927

Debt Limit Increase

31 yes, 3 no – 91.18%