

Introduced by

Senators Bekkedahl, Unruh

Representatives Hatlestad, Steiner, Streyle, Zubke

1 A BILL for an Act to create and enact chapter 40-64 of the North Dakota Century Code, relating
2 to formation of a community facilities district for public improvements.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** Chapter 40-64 of the North Dakota Century Code is created and enacted as
5 follows:

6 **40-64-01. Definitions.**

7 In this chapter, unless the context otherwise requires:

- 8 1. "Clerk" includes any person or official who performs the duties of clerk of the
9 municipality or county or any person appointed by the district board to be the district
10 clerk.
- 11 2. "County" means a county that forms a community facilities district pursuant to this
12 chapter in an unincorporated area or in an incorporated area with the municipality's
13 consent.
- 14 3. "Debt service" means the principal of, interest on and premium, if any, on the bonds,
15 when due, whether at maturity or prior redemption and fees and costs of registrars,
16 trustees, paying agents, or other agents necessary to handle the bonds and the costs
17 of credit enhancement or liquidity support.
- 18 4. "District" means a tax levying community facilities district formed under to this chapter
19 by a municipality or by a county in an unincorporated area or in an incorporated area
20 with the municipality's consent.
- 21 5. "District board" means the board of directors of the district, which shall be five
22 directors appointed by the governing body under section 40-64-05.
- 23 6. "Enhanced municipal services" means public service provided by a county or
24 municipality within the district at a higher level or to a greater degree than provided in

- 1 the remainder of the county or municipality, including such services as public safety,
2 fire protection, street or sidewalk cleaning, or landscape maintenance in public areas.
- 3 7. "General obligation bond" means a bond that is issued pursuant to section 40-64-19
4 and that is secured by a pledge of ad valorem taxes levied by the district.
- 5 8. "General plan" means the general plan described in section 40-64-02.
- 6 9. "Governing body" means the body or board which by law is constituted as the
7 legislative department of the municipality or county.
- 8 10. "Municipality" means an incorporated city.
- 9 11. "Owner" means the person who, on the day the action, election, or proceeding is
10 begun or held, appears to be the owner of real property as shown on the property tax
11 assessment roll.
- 12 12. "Public infrastructure" means all improvements and development fees listed in this
13 subsection which will result in a beneficial use principally to land within the
14 geographical limits of the district and may include a district's share of any
15 improvements listed in this subsection if the district board determines such share is
16 reasonably proportionate to the beneficial use of such improvements to land within the
17 geographical limits of the district, improvements within or outside the geographical
18 limits of the district, necessary or incidental work, whether newly constructed,
19 renovated or existing, and all necessary or desirable appurtenances. For the purposes
20 of this subsection, adoption by the district board of a resolution of intent pursuant to
21 section 40-64-15 shall conclusively establish that the improvements or, if applicable,
22 share of the improvements that are the subject of the resolution will result in a
23 beneficial use principally to land within the geographical limits of the district. Public
24 infrastructure improvements are:
- 25 a. Sanitary sewage systems, including collection, transport, storage, treatment,
26 dispersal, effluent use, and discharge.
- 27 b. Drainage and flood control systems, including collection, transport, diversion,
28 storage, detention, retention, dispersal, recharge, use, and discharge.
- 29 c. Water systems for domestic, industrial, irrigation, municipal or fire protection
30 purposes, production, collection, storage, treatment, transport, delivery,
31 connection and dispersal, but not including facilities for agricultural irrigation

- 1 purposes unless for the repair or replacement of existing facilities when required
2 by other improvements permitted by this chapter.
- 3 d. Highways, streets, roadways, and parking facilities, including all areas for
4 vehicular use for travel, ingress, egress, and parking.
- 5 e. Areas for pedestrian, equestrian, bicycle, or other nonmotor vehicle use for
6 travel, ingress, egress, and parking.
- 7 f. Pedestrian malls, parks, recreational facilities, and open space areas for the use
8 of members of the public for entertainment, assembly, and recreation.
- 9 g. Landscaping, including earthworks, structures, lakes and other water features,
10 plants, trees, and related water delivery systems.
- 11 h. Public buildings, public safety facilities, and fire protection facilities.
- 12 i. Lighting systems.
- 13 j. Traffic control systems and devices, including signals, controls, markings, and
14 signage.
- 15 k. Development fees charged by the county or municipality.
- 16 l. Equipment, vehicles, furnishings, and other personalty related to the items listed
17 in this subsection.
- 18 m. Easements, rights of way, licenses, and other rights benefits, enjoyments, and
19 interests, tangible and intangible, and whether in the nature of personal property
20 or real property, incidental to or necessary or appropriate in connection with the
21 items listed in this subsection.
- 22 13. "Public infrastructure purpose" means:
- 23 a. Planning, design, engineering, permitting, fees, construction, acquisition, or
24 installation of public infrastructure.
- 25 b. Acquiring, converting, renovating, or improving existing facilities for public
26 infrastructure.
- 27 c. Acquiring interests in real property for public infrastructure.
- 28 d. Establishing, maintaining, and replenishing reserves from any source described
29 in section 40-64-17 or from any other source in order to secure payment of debt
30 service on bonds.

- 1 e. Funding and paying from bond proceeds interest accruing on bonds for a period
2 of not to exceed three years from their date of issuance.
- 3 f. Providing for the timely payment of debt service on bonds or other indebtedness
4 of the district.
- 5 g. Refinancing any matured or unmatured bonds with new bonds.
- 6 h. Incurring expenses of the district incident to and reasonably necessary to carry
7 out the purposes specified in this subsection.
- 8 i. Providing for the funding of financing costs incurred by the district or owner
9 related to the provision of public infrastructure or public infrastructure purposes.
- 10 j. Providing for public safety and other public services for districts located in
11 unincorporated areas of the county.
- 12 14. "Revenue bonds" means those bonds that are issued pursuant to section 40-64-20
13 and that are secured by a pledge of revenues of the district or revenues collected by
14 the county or municipality and returned to the district.
- 15 15. "Treasurer" includes any person or official appointed by the district board as the district
16 treasurer pursuant to section 40-64-11.
- 17 **40-64-02. Resolution declaring intention to form district.**
- 18 If the public convenience and necessity require, and on presentation of a petition signed by
19 the owners of at least twenty-five percent of the land area proposed to be included in the
20 district, the governing body may adopt a resolution declaring its intention to form a community
21 facilities district to include contiguous or noncontiguous property which shall be wholly within the
22 corporate boundaries of the municipality or county. The resolution shall state the following:
- 23 1. The area or areas to be included in the district.
- 24 2. The purposes for which the district is to be formed.
- 25 3. That a general plan for the district is on file with the clerk.
- 26 4. The date, time, and place of the hearing to be held on the formation of the district.
- 27 5. The place where written objections to the formation of the district may be filed.
- 28 6. That formation of the district may result in the levy of taxes to pay the costs of
29 improvements constructed by the district and for their operation and maintenance.
- 30 7. A reference to this chapter.

1 8. That the district will be governed by a district board comprised of five directors
2 appointed by the governing body pursuant to section 40-64-05.

3 Before adopting a resolution under this section, a general plan for the district must be filed
4 with the clerk setting out a general description of the public infrastructure improvements for
5 which the district is proposed to be formed and the general areas to be improved.

6 **40-64-03. Notice.**

7 The clerk shall execute a notice which must read substantially as follows:

8 To whom it may concern:

9 The governing body of the (city) (county) of _____, on (date), adopted the attached
10 resolution declaring its intention to form a tax levying community facilities district. A hearing on
11 formation will be held on (date), at (time) at (location). All persons owning or claiming an interest
12 in property in the proposed district who object to the inclusion of their land in the district, to the
13 formation of the district, or to the contents of the general plan must file a written objection with
14 the undersigned at the following address before the time set for the hearing.

15 (Date)_____

16 _____

17 Clerk

18 _____

19 Address

20 (Name of municipality or county)

21 A copy of the resolution declaring the governing body's intention to form the district must be
22 attached to the notice and the clerk shall cause a copy to be mailed to the owners of real
23 property in the district as shown on the most recent property tax assessment roll and to all other
24 persons claiming an interest in such property who have filed a written request for a copy of the
25 notice within the six months preceding or at any time following the adoption of the resolution of
26 intent to form the district. The clerk shall also publish a copy of the notice and resolution at least
27 once in the official newspaper of the municipality or county, if there is one, or, if there is no
28 official newspaper of the municipality, in a newspaper of general circulation in the county in
29 which the municipality is located. The mailing and publication must be completed at least twenty
30 days before the date set for hearing. The clerk shall execute an affidavit of mailing stating the
31 date of mailing and the names and addresses of the persons to whom the notices and copies of

1 the resolutions were mailed. The clerk shall obtain an affidavit from the newspaper in which the
2 publication was made. The clerk shall cause both affidavits to be placed in the official records of
3 the municipality or county. The affidavits are conclusive evidence of the mailing and publishing
4 of notice. Notice may not be held invalid for failure of delivery to the addressee.

5 If the clerk is informed that the person listed on the assessment roll is no longer the owner
6 and the name and address of the successor owner become known, the clerk shall cause a copy
7 of the notice and resolution to be mailed to the successor owner as soon as practicable after
8 learning of the change of ownership.

9 **40-60-04. Hearing on objections.**

10 Any person claiming an interest in real property that the resolution discloses is situated in
11 the district may file a written objection with the clerk before five pm on the business day
12 preceding the date and time set for the hearing. The objection may raise one or more of the
13 following:

- 14 1. That the objector's property would not be benefited from the improvements set forth in
15 the general plan and that the property should be excluded from the district.
- 16 2. That the district should not be formed, stating the specific reasons.
- 17 3. That the general plan should be modified, stating the reasons for modification.

18 At the hearing, including any adjournments or continuances, the governing body shall hear
19 and pass only on the written objections and the testimony and evidence presented in support of
20 or opposition to the objections. The hearing must be either transcribed by a court reporter or
21 recorded by a tape recorder. The court reporter's transcript or a transcription of the tape
22 recording certified to be true and correct by the clerk must be filed in the official records of the
23 governing body.

24 In furtherance of the hearing, the clerk, on written request or praecipe being presented,
25 shall issue subpoenas or subpoenas duces tecum to compel the attendance and testimony of
26 any person or the submission of any documents at the hearing. Compliance with the subpoena
27 shall be enforced as if the subpoena were issued by a clerk of the superior court.

28 Testimony at the hearing need not be under oath, unless requested by any owner or
29 required by the governing board. Requests by owners that the testimony be under oath must be
30 made in writing and be filed with, or served on, the clerk before the hearing begins or the
31 request is deemed waived.

1 The minutes or a copy of a written transcript or a tape recording of the proceedings of a
2 hearing conducted pursuant to this section must be open to public inspection three working
3 days after the conclusion of a hearing. Any person may request to examine or be furnished
4 copies, printouts, photographs, transcripts, or recordings of a hearing during regular office hours
5 of the governing body. The custodian of the records shall furnish the copies, printouts,
6 photographs, transcripts, or recordings and may charge a reasonable fee which does not
7 exceed the actual cost of reproducing the item requested.

8 **40-60-05. Order forming district - Election.**

9 After the hearing, the governing body may adopt a resolution ordering the formation of the
10 district, deleting any property determined not to be benefited by the district or modifying the
11 general plan and then ordering the formation of the district or determining that the district not be
12 formed. A resolution ordering formation of the district shall state that the district will be governed
13 by a district board comprised of five directors appointed by the governing body from a list of at
14 least ten names nominated by the owner. The resolution must contain the names of the five
15 initial directors and the terms of office of each.

16 If the governing body determines that the district should be formed, it shall submit the
17 formation to an election of the owners of land in the district who are qualified electors of this
18 state and other landowners, unless a petition is presented to the governing body pursuant to
19 section 40-64-07. Each owner has the number of votes or portions of votes equal to the number
20 of acres or portions of acres rounded upward to the nearest one-fifth of an acre owned by that
21 owner in the submitted district. In addition to holding the landowner election required by this
22 subsection or receipt of the landowner petition pursuant to section 40-64-07 and subject to
23 section 40-64-07, the governing body shall submit the formation of the district to a vote of any
24 qualified electors who reside within the boundaries of the proposed district.

25 **40-64-06. Judicial review.**

26 An owner or other person claiming an interest in the property who filed a written objection
27 and who presented testimony or evidence at the hearing may seek review of the order forming
28 the district and the decision of the governing body at the hearing by filing, within thirty days after
29 the adoption of the resolution prescribed in section 40-64-05 which ordered the forming of the
30 district, a petition for special action with the court of appeals. The special action shall be
31 governed by the rules of civil procedure relating to special actions so far as applicable and not

1 in conflict with this chapter. The governing body shall transmit the transcript of the hearing, the
2 order forming the district, and the affidavits of mailing and publication of the notice and
3 resolution of intent to form the district to the court of appeals. The petitioner shall bear the cost
4 of preparing the record for appeal. The court of appeals shall place the special action on its
5 calendar and give it precedence for hearing over all other civil actions except election contests.
6 The review shall be limited to a review of the transcript of the hearing, the order forming the
7 district, and the affidavits of mailing and publication of the notice and resolution declaring the
8 governing body's intention to form the district. The court may review, on the merits, whether the
9 formation of the district and the adoption of the general plan complied with this chapter and the
10 laws and constitution of this state and whether land is benefited by the district.

11 Land in an area deleted by order of the court or in a district ordered by the court to not be
12 formed may not be included in a community facilities district for one year after the date the
13 court's order is entered unless otherwise provided in the court's order or otherwise agreed to by
14 the owner.

15 **40-64-07. Notice and conduct of elections - Waiver.**

16 Any election under this chapter must be a nonpartisan election called by posting notices in
17 three public places within the boundaries of the district not less than twenty days before the
18 election. Notice must also be published in a newspaper of general circulation in the municipality
19 or county or if there is no newspaper so circulated in the municipality in a newspaper of general
20 circulation in the county in which the municipality is located once a week for two consecutive
21 weeks before the election. The notice must state:

- 22 1. The place of holding the election.
- 23 2. The hours during the day, not less than six, in which the polls will be open.
- 24 3. If it is a formation election, the boundaries of the proposed district.
- 25 4. If it is a bond election, the amount of bonds to be authorized for the district, the
26 maximum rate of interest to be borne on the bonds, the maximum term of the bonds,
27 not exceeding thirty years, and the purposes for which the moneys raised will be used.
- 28 5. If it is an ad valorem tax levy election pursuant to section 40-64-23, the maximum tax
29 rate per one hundred dollars of assessed valuation to be imposed including a
30 limitation, if any, on the ad valorem tax levy, the purposes for which the moneys raised
31 will be used, and the existing maximum tax rate, if any.

1 6. That a general plan is on file with the clerk.

2 The district board or the governing body, as applicable, shall determine the date of the
3 election and the polling places for the election and may consolidate county precincts. For other
4 than a formation election pursuant to section 40-64-05 and an election held pursuant to this
5 section, precinct registers shall be used. The county recorder shall submit precinct registers on
6 the request of the clerk, and if the district includes land lying partly in and partly out of any
7 county election precinct, the precinct registers may contain the names of all registered voters in
8 the precinct and the election boards at those precincts shall require that a prospective elector
9 execute an affidavit stating that the elector is also a qualified elector of the district. For formation
10 elections and elections held pursuant to this section, a prospective elector shall execute an
11 affidavit stating that the elector is the owner of land in the proposed district and is a qualified
12 elector of this state or otherwise qualified to vote through a majority of acreage voting system
13 and stating the area of land in acres owned by the elector. Election board members may
14 administer oaths or take all affirmations for these purposes. A community facilities district
15 election held pursuant to this chapter may be held at any time.

16 Except as otherwise provided by this chapter, the election shall comply with the general
17 election laws of this state, except that the words to appear on the ballots shall be for a formation
18 election "district, yes" and "district, no", for a bond election "bonds, yes" and "bonds, no", for a
19 tax election if no tax is in place "tax, yes" and "tax, no", and for a tax election to change an
20 existing maximum or eliminate an existing tax "tax change, yes" and "tax change, no". The bond
21 election question shall include authorization for a tax levy, including a limitation, if any, on the
22 ad valorem property tax to pay debt service on the bonds. The returns of election must be made
23 to the governing body or, if after formation, to the district board.

24 Within fourteen days after an election, the governing body, or if after formation, the district
25 board shall meet and canvass the returns, and if a majority of the votes cast at the election is in
26 favor of formation, issuing the bonds, imposing the tax, or changing the tax, the governing body
27 or the district board, as appropriate, shall enter that fact on its minutes. The canvass may be
28 continued from time to time. Failure of a majority to vote in favor of the matter submitted does
29 not prejudice the submission of the same or similar matters at a later election.

30 If a person listed on the assessment roll is no longer the owner of land in the district and the
31 name of the successor owner becomes known and is verified by recorded deed or other similar

1 evidence of transfer of ownership, the successor owner is deemed to be the owner for the
2 purposes of this chapter.

3 Notwithstanding any other provision of this chapter, if a petition for formation is signed by
4 owners of all of the land in the district described in the petition, provided it is not a district being
5 established pursuant to section 40-64-26, the municipality or county shall waive any or all
6 requirements of posting, publication, mailing, notice, hearing, and landowner election. On
7 receipt of such a petition, and after approval by an election of resident electors, if any, the
8 municipality or county shall declare the district formed without being required to comply with the
9 provisions of this chapter for posting, publication, mailing, notice, hearing, or landowner
10 election.

11 Notwithstanding any other provision of this chapter, if no person has registered to vote
12 within the district within fifty days immediately preceding any scheduled election date, any
13 election required to be held pursuant to this chapter shall be held with the vote by the owners of
14 land within the district who are qualified electors of this state and other landowners. Each owner
15 has the number of votes or portion of votes equal to the number of acres or portion of acres
16 rounded upward to the nearest one-fifth of an acre owned in the district by that person.

17 For a district that is proposed to be formed by a county, so long as it is not a district being
18 formed pursuant to section 40-64-26, a district may be formed only if a petition for formation is
19 signed by the owners of all of the land in the district that is described in the petition and if it is
20 approved by the county. If the petition is signed by the owners of all of the land in the district,
21 the county may waive any or all requirements of posting, publication, mailing, notice, hearing
22 and landowner election. On receipt of such a petition, and after approval by an election of one
23 hundred percent of the resident electors, if any, the county shall declare the district formed
24 without being required to comply with the provisions of this chapter for posting.

25 **40-64-08. Formation - Debt limitation.**

26 If the formation of the district is approved by a majority of the votes cast at the election, the
27 governing body shall order the formation, appoint the initial directors of the district board, set the
28 district boundaries, and order that a map showing the district boundaries be drawn and a copy
29 of the order forming the district be delivered to the county director of tax equalization and the
30 board of county commissioners of the county in which the district is located and to the tax

1 commissioner. A notice of the formation showing the number and date of the order and giving a
2 description of the land included in the district shall be recorded with the county recorder.

3 On its formation, the district is a special purpose district for purposes of section 19 of
4 chapter IX of the Constitution of North Dakota. Except as otherwise provided in this section, a
5 district is considered to be a municipal corporation and political subdivision of this state,
6 separate and apart from the municipality or county. As such, the municipality or the county will
7 not be liable for any debt obligations of the district. Under no circumstances may the amount of
8 indebtedness evidenced by general obligation bonds issued pursuant to section 40-64-19 and
9 revenue bonds issued pursuant to section 40-64-20 exceed the estimated cost of the public
10 infrastructure improvements plus all costs connected with the public infrastructure purposes and
11 issuance and sale of bonds, including, without limitation, credit enhancement and liquidity
12 support fees and costs. The total aggregate outstanding amount of bonds and any other
13 indebtedness for which the full faith and credit of the district are pledged shall not exceed sixty
14 percent of the aggregate of the estimated market value of the real property and improvements
15 in the district after the public infrastructure of the district is completed plus the value of the
16 public infrastructure owned or to be acquired by the district with the proceeds of the bonds.

17 On formation of the district, the district board shall administer, in a reasonable manner, the
18 implementation of the general plan for the public infrastructure of the district and any
19 development agreement entered between the governing body and owners of land in the district.
20 The district board shall be considered a party to that agreement.

21 Fees and other charges assessed by a municipality or county in connection with the
22 submission and review of an application or petition to form a district may not exceed fifteen
23 thousand dollars.

24 **40-64-09. Powers of a community facilities district.**

- 25 1. In addition to the powers otherwise granted to a district pursuant to this chapter, to
26 further the general plan, a district may:
- 27 a. Enter into contracts and expend moneys for any public infrastructure purpose
28 with respect to the district.
 - 29 b. Enter into intergovernmental agreements for the planning, design, inspection,
30 ownership, control, maintenance, operation, or repair of public infrastructure or

- 1 the provision of enhanced municipal services by the municipality or county in the
2 district.
- 3 c. Sell, lease, or otherwise dispose of district property if the sale, lease, or
4 conveyance is not a violation of the terms of any contract or bond resolution of
5 the district.
- 6 d. Reimburse the county or municipality for providing enhanced municipal services
7 in the district.
- 8 e. Reimburse the county for providing public safety and other services in districts
9 located in the unincorporated areas of the county.
- 10 f. Operate, maintain, and repair public infrastructure.
- 11 g. Establish, charge, and collect user fees, rates, or charges for the use of any
12 public infrastructure or service.
- 13 h. Employ staff, counsel, and consultants.
- 14 i. Reimburse the municipality or county for staff and consultant services and
15 support facilities supplied by the municipality or county.
- 16 j. Accept gifts or grants and incur and repay loans for any public infrastructure
17 purpose.
- 18 k. Enter into agreements with landowners and the municipality or county for the
19 collection of fees and charges from landowners for public infrastructure purposes,
20 the advance of moneys by landowners for public infrastructure purposes, or the
21 granting of real property by the landowner for public infrastructure purposes.
- 22 l. By resolution, levy and assess the costs of any public infrastructure purpose on
23 any land benefited in the district.
- 24 m. Pay the financial, legal, and administrative costs of the district.
- 25 n. Enter into contracts, agreements, and trust indentures to obtain credit
26 enhancement or liquidity support for its bonds and process the issuance,
27 registration, transfer, and payment of its bonds and the disbursement and
28 investment of proceeds of the bonds.
- 29 o. With the consent of the governing body of the municipality or county which
30 formed the district, enter into agreements with persons outside of the district to
31 provide services to persons and property outside of the district.

- 1 p. Use public easements and rights of way in or across public property, roadways,
2 highways, streets, or other thoroughfares and other public easements and rights
3 of way, whether in or out of the geographical limits of the district, the municipality,
4 or the county.
- 5 2. This chapter does not authorize:
- 6 a. A district to acquire, construct, operate, or maintain an electric generation or
7 distribution system or natural gas distribution system without the written consent
8 of any affected public service corporation, electric cooperative, agricultural
9 improvement or power district, or other district, the service area of which
10 encompasses all or part of the district, if that entity is providing electrical utility
11 service or natural gas utility service in the district.
- 12 b. A district to provide service outside its boundaries without the written consent of
13 any affected public service corporation, electric cooperative, agricultural
14 improvement or power district, or other district with a service area that lies
15 outside of the district, if that entity is providing or is capable of adequately
16 providing electrical utility service or natural gas utility service in the area that the
17 district proposes to serve.
- 18 3. If a district is granted written consent pursuant to this section, the district shall provide
19 a copy to the governor, the president of the senate, the speaker of the house of
20 representatives, and the secretary of state no later than thirty days after consent is
21 granted.
- 22 4. In connection with any power authorized by statute, the district may:
- 23 a. Contract.
- 24 b. Enter into intergovernmental agreements.
- 25 c. Adopt and change a seal.
- 26 d. Sue and be sued.
- 27 e. Enter into development agreements with a municipality or county.
- 28 f. Exercise the same right and power of eminent domain as a public service
29 corporation to acquire any property or right of way, except political subdivision,
30 county, state, or federal property, for any public infrastructure purpose.

- 1 5. A district that proposes to provide domestic water service in the certificated area of a
2 public service corporation serving domestic water shall provide just compensation to
3 the public service corporation.
- 4 6. Public infrastructure other than personalty may be located only in or on lands owned
5 by the state, county, municipality, or district or dedicated or otherwise designated as
6 public roadways, highways, streets, thoroughfares, easements, or rights of way,
7 whether in or out of the district or the municipality. Personalty may be used only for
8 purposes authorized by the district board.
- 9 7. An agreement pursuant to this section may include agreements to repay all or part of
10 such advances, fees and charges from the proceeds of bonds if issued or from
11 advances, fees, and charges collected from other landowners or users or those having
12 a right to use any public infrastructure. A person does not have authority to compel the
13 issuance or sale of the bonds of the district or the exercise of any taxing power of the
14 district to make repayment under any agreement.
- 15 8. Notwithstanding chapter 48-01.2 or section 40-64-02, the district at the option of the
16 district board may enter into contracts for the performance of district projects with
17 landowners in the district after calling for bids but before publishing notice of the award
18 of a contract if all of the following conditions are met:
- 19 a. The landowner or landowners own three-fourths or more of the total land area of
20 the district.
- 21 b. The landowner or landowners contract to perform the work at a cost that does not
22 exceed the cost specified in the bid of the bidder who would have been awarded
23 that bid.
- 24 c. The work for which the contract was let is to be financed pursuant to this chapter.
- 25 d. All contracts and work executed pursuant to this section are subject to those
26 rules as the district board may prescribe.

27 **40-64-10. Perpetual succession.**

28 The district has perpetual succession.

29 **40-64-11. Records - Board of directors - Open meetings.**

30 The district shall keep the following records, which must be open to public inspection:

- 31 1. Minutes of all meetings of the district board.

- 1 2. All resolutions.
- 2 3. Accounts showing all moneys received and disbursed.
- 3 4. The annual budget.
- 4 5. All other records required to be maintained by law.

5 If the resolution ordering formation of the district provides that the district will be governed
6 by a district board appointed by the governing body, each appointed director shall serve for a
7 term of six years, except that two directors initially appointed by the governing body in the
8 resolution shall serve for a term of four years. The resolution shall state which directors shall
9 serve four-year terms and which shall serve six-year terms. On the expiration of the term of an
10 appointed director, the governing body from a list of at least three persons nominated by the
11 owner, shall appoint a person to fill the position. If a vacancy occurs on the district board
12 because of death, resignation, or inability of the director to discharge the duties of director, the
13 vacancy shall be filled by appointment made by the governing body from a list of at least three
14 persons nominated by the owner. A director appointed by the governing body shall hold office
15 for the remainder of the unexpired term until a successor is appointed. An appointed director
16 may not be a landowner owning more than fifty acres in the district, an elected official of the
17 municipality or county, or an employee or agent of the municipality or county but may be a
18 director of more than one district. The director may be an employee or agent of the owner.

19 The board of directors shall comply with public meeting laws as a separate political
20 subdivision.

21 The district manager, district clerk, district treasurer, and other district staff positions which
22 may be required shall be appointed by the district board.

23 **40-64-12. Participation by municipality or county.**

24 The governing body of the municipality or county, by resolution, may summarily order the
25 participation by the municipality or county in the costs of any public infrastructure purpose.

26 **40-64-13. Other districts or improvements.**

27 The formation of a district under this chapter does not prevent the subsequent
28 establishment of similar districts or the improvement or assessment of land in the district by the
29 municipality or county pursuant to section 40-64-02 or the exercise by the municipality or county
30 of any of its powers on the same basis as on all other land in its corporate boundaries.

1 **40-64-14. Change in district boundaries or general plan.**

2 After the formation election, an area may be deleted from the district only following a
3 hearing on notice to the owners of land in the district, given in the manner prescribed for the
4 formation hearing, adoption of a resolution of intention to do so by the district board and
5 approval by the owners of land in the district pursuant to section 40-64-05 or section 40-64-07.
6 Deleted areas remain subject to the levy for debt service on any bonds issued before the date
7 of deletion.

8 At any time after adoption of the resolution of intention to form the district, an area may be
9 added to the district on adoption by the governing board of a resolution of intention to do so,
10 and approval by the district board following a hearing on notice to the owners of land in the
11 proposed addition to the district in the manner prescribed for the formation hearing. Approval for
12 addition of the area to the district shall be received from the owners of land in the proposed
13 addition area pursuant to section 40-64-05 or section 40-64-07 if the approval by the owners of
14 land in the proposed addition includes in its petition a waiver of any requirement for a separate
15 resolution of intention by the district board and a waiver of any requirement of posting,
16 publication, mailing, notice, hearing, and election as to that addition to the district.

17 The district board may amend the general plan in any manner which it determines will not
18 substantially reduce the benefits to be received by any land in the district from the public
19 infrastructure on completion of the work to be performed under the general plan.

20 The hearings required by this section shall be conducted in the same manner as a hearing
21 on formation, and the right to object to the change in the district or the general plan shall be the
22 same as for the hearing on formation.

23 **40-64-15. Project approval.**

24 Before constructing or acquiring any public infrastructure, the district board shall cause a
25 study of the feasibility and benefits of the project to be prepared by engineers and other
26 qualified persons, which shall include a description of the public infrastructure to be constructed
27 or acquired and all other information useful to understand the project, a map showing, in
28 general, the location of the project, an estimate of the cost to construct, acquire, operate, and
29 maintain the project, an estimated schedule for completion of the project, a map or description
30 of the area to be benefited by the project, and a plan for financing the project. The board shall
31 hold a public hearing on the report and provide notice of the hearing by publication not less than

1 ten days in advance in the official newspaper of the municipality or county or, if none in the
2 municipality, a newspaper of general circulation in the county and by mail to the governing body
3 of the municipality. After the hearing, the district board may reject, amend, or approve the report.
4 If the report is amended substantially, a new hearing shall be held before approval. If the report
5 is approved, the district board shall adopt a resolution of intent which identifies the public
6 infrastructure of the project, the areas benefited, the expected method of financing, and an
7 appropriate system of providing revenues to operate and maintain the project.

8 **40-64-16. Budget.**

9 On or before July fifteenth each year, the district treasurer shall prepare a proposed budget
10 for the ensuing fiscal year to be submitted to the district board for approval. The board shall
11 indicate its approval of the budget by resolution, which shall provide for a hearing on the budget
12 as approved. Notice of the hearing on the budget shall be provided in the manner prescribed by
13 section 40-64-15. At the conclusion of the budget hearing, the district board, by resolution, shall
14 adopt the budget as finally approved by the board. The budget shall be adopted before
15 October first each year.

16 **40-64-17. Finances.**

17 The projects to be constructed or acquired as shown in the general plan may be financed
18 from the following sources of revenue:

- 19 1. Proceeds received from the sale of bonds of the district.
- 20 2. Moneys of the municipality or county contributed to the district.
- 21 3. Annual tax levies.
- 22 4. Special assessments.
- 23 5. State or federal grants or contributions.
- 24 6. Private contributions.
- 25 7. User, landowner, and other fees and charges.
- 26 8. Proceeds of loans or advances.
- 27 9. Any other moneys available to the district by law.

28 **40-64-18. Recording documents.**

29 The district shall file and record with the county recorder the order forming the district, the
30 general plan of the district, the canvass of any general obligation bond election, and any special
31 assessments levied by the district.

1 **40-64-19. General obligation bond - Tax levy.**

2 At any time after the hearing on formation of the district, the district board may from time to
3 time order and call a general obligation bond election to submit to the qualified electors of the
4 district or to those persons who are qualified to vote pursuant to section 40-64-07 the question
5 of authorizing the district board to issue general obligation bonds of the district to provide
6 moneys for any public infrastructure purposes consistent with the general plan. The election
7 may be held in conjunction with the formation election.

8 If general obligation bonds are approved at an election, the district board may issue and sell
9 general obligation bonds of the district.

10 If the bonds are to be sold in a public offering, no bonds may be issued by the district
11 unless the bonds receive one of the four highest investment grade ratings by a nationally
12 recognized bond rating agency.

13 The district may issue and sell refunding bonds to refund any general obligation bonds of
14 the district. If general obligation bonds are issued to refund any general obligation bonds of the
15 district, no election on the issuance of such refunding bonds is required.

16 After the bonds are issued, the district board shall enter in its minutes a record of the bonds
17 sold and their numbers and dates and unless otherwise limited by the bond election, shall
18 annually levy and cause an ad valorem tax to be collected, at the same time and in the same
19 manner as other taxes are levied and collected on all taxable property in the district, sufficient,
20 together with any moneys from the sources described in section 40-64-17, to pay debt service
21 on the bonds when due. In pledging the proceeds of an ad valorem property tax, the district
22 board may limit the rate of taxation or the amount of ad valorem tax dollars that it is obligated to
23 impose or collect to pay any securities as set forth in the bond election described in section
24 40-64-07. Moneys derived from the levy of the tax provided in this section when collected
25 constitute funds to pay the debt service on the bonds and shall be kept separately from other
26 funds of the district.

27 **40-64-20. Revenue bonds - Fees and charges.**

28 At any time after the hearing on formation of the district, the district board may hold a
29 hearing on the question of authorizing the district board to issue revenue bonds of the district to
30 provide moneys for any public infrastructure purposes consistent with the general plan.

1 If revenue bonds are approved by resolution, the district board may issue and sell revenue
2 bonds of the district.

3 If the bonds are to be sold in a public offering, no bonds may be issued by the district
4 unless the bonds receive one of the four highest investment grade ratings by a nationally
5 recognized bond rating agency.

6 The district board may pledge to the payment of its revenue bonds any revenues of the
7 district or revenues to be collected by the municipality or county in trust for the district and
8 returned to the district.

9 The district shall prescribe fees and charges, and shall revise them when necessary, to
10 generate revenue sufficient, together with any moneys from the sources described in section
11 40-64-17, to pay when due the principal and interest of all revenue bonds for the payment of
12 which revenue has been pledged. The establishment or revision of any rates, fees, and charges
13 shall be identified and noticed concurrently with the annual budget process of the district
14 pursuant to section 40-64-16.

15 If, in the resolution of the district board, the revenues to be pledged were limited to certain
16 types of revenues, only those types of revenues may be pledged and only those revenues must
17 be maintained.

18 No holder of revenue bonds issued under this chapter may compel any exercise of the
19 taxing power of the district, municipality, or county to pay the bonds or the interest on the bonds.
20 Revenue bonds issued under this chapter are not a debt of the district, municipality, or county,
21 nor is the payment of revenue bonds enforceable out of any moneys other than the revenue
22 pledged to the payment of the bonds.

23 The district may issue and sell refunding bonds to refund any revenue bonds of the district.

24 **40-64-21. Special assessments - Assessment lien bonds.**

25 The district board, by resolution and pursuant to the procedures prescribed by sections
26 40-22-08 through 40-22-19, as nearly as practicable, or such other procedures as the district
27 board provides, may levy an assessment of the costs of any public infrastructure purpose, any
28 operation and maintenance of public infrastructure, any enhanced municipal services or
29 operations of the district on any land in the district based on the benefit determined by the
30 district board to be received by the land. Prior to the issuance of special assessment bonds, the
31 district may enter into a written agreement with a landowner as to the manner in which the

1 assessment is to be allocated if the land is to be divided into more than one parcel. If an issue
2 of special assessment lien bonds finances more than one purpose or service, the benefit
3 received by the land, in the discretion of the district, may be determined by reference to the
4 purposes and services as a whole or individually. The assessment may be based on estimated
5 costs and amended to reflect actual costs, and the preparation of plans and specifications and
6 the awarding of the contract are not a prerequisite to the levying of the assessment. An owner
7 of land on which an assessment has been levied may seek judicial review of whether the land is
8 benefited by the proposed infrastructure, on the merits, by special action filed with the court of
9 appeals pursuant to the procedures of section 40-64-06, within thirty days of the effective date
10 of the resolution.

11 After adoption by the district board of a resolution levying a special assessment on property
12 in the district pursuant to section 40-64-09, the district board may issue and sell special
13 assessment lien bonds payable from amounts collected from the special assessments, from
14 amounts available from time to time in any reserve fund established for those bonds, and from
15 any other amounts available for those purposes as prescribed by section 40-64-17. The district
16 and the county treasurer for the county in which the district is located may enter into an
17 agreement for the county treasurer to collect the district's special assessments in the manner
18 and by the officers provided by law for the collection and enforcement of general taxes. The
19 district and the county treasurer may provide by agreement for the payment of the county
20 treasurer's collection expenses directly related to the levy of the special assessment and, if so
21 provided, the levy of the special assessment may include an amount for compensation of the
22 county treasurer directly related to the collection of the special assessment. The district board
23 may also issue and sell bond anticipation notes. The assessment shall be a first lien on the
24 property assessed subject only to general property taxes and prior special assessments. In the
25 event of nonpayment of an assessment and except as otherwise provided in an agreement
26 between the district and the county treasurer pursuant to this section, the procedures for
27 collection of delinquent assessments, sale of delinquent property and issuance and effect of the
28 superintendent's deed prescribed by title 57 apply, as nearly as practicable, except that in no
29 event is the district or the municipality required to purchase the delinquent land at the sale if
30 there is no other purchaser. If the landowner owns more than one parcel in the district, the
31 district board may provide procedures for the collection and enforcement of assessments as the

1 board deems appropriate by contract with a landowner to permit the sale of any or all of the
2 landowner's parcels in the district if the landowner becomes delinquent as to any parcel that the
3 landowner owns in the district.

4 On adoption of the resolution, but before issuance of the special assessment lien bonds,
5 the district may direct the treasurer to make demand on the owners of the property so
6 assessed, as shown on the property tax roll, for advance payment of the amount assessed. The
7 demand shall state a date not less than twenty days after the date of adoption of the ordinance
8 after which the treasurer may refuse to accept advance payments of the assessment. The
9 treasurer shall certify to the clerk on or after the date specified in the demand the amount
10 collected and the assessments remaining unpaid against each parcel of land assessed. Special
11 assessment lien bonds may not be issued in an amount in excess of the amount assessed in
12 the ordinance or, if advance payments are demanded, the amount certified to the clerk. The
13 district may adopt procedures for prepayment and provisions for payment and reallocation of
14 assessments.

15 The district may issue and sell refunding bonds to refund any special assessment bonds of
16 the district.

17 **40-64-22. Terms of bonds.**

18 Notwithstanding section 40-64-02, with respect to any bonds the district board shall
19 prescribe the denominations of the bonds, the size of each issue and the form of the bonds and
20 shall establish the maturities, interest payment dates, and interest rates, whether fixed or
21 variable, not exceeding the maximum rate stated in the notice of the election or the resolution of
22 the district board. The bonds may be sold by competitive bid or negotiated sale for public or
23 private offering at, below or above par. If the bonds are sold below par, the aggregate amount of
24 discount and interest to be paid on the bonds shall not exceed the amount of interest which
25 would have been payable on those bonds pursuant to the maturity schedule prescribed by the
26 district board at the maximum rate set out in the bond resolution. The proceeds of the sales
27 shall be deposited with the treasurer, or with a trustee or agent designated by the district board,
28 to the credit of the district to be withdrawn for the purposes provided by this chapter. Pending
29 that use, the proceeds may be invested as determined by the district. The bonds may contain
30 such terms, conditions, covenants, and agreements as the district board deems proper. The
31 bonds may be payable from any combination of taxes, revenues, or special assessments of the

1 types described in sections 40-64-19, 40-64-20, and 40-64-21 and as specified in the bonds
2 provided that all applicable requirements of those sections are met.

3 **40-64-23. District taxes - Annual financial estimate and budget.**

4 Except as provided in this section and at any time after the hearing on formation of the
5 district, the district board, or, if before formation, the governing body, may call an election to
6 submit to the qualified electors of the district or to the persons qualified to vote pursuant to
7 section 40-64-07 the question of authorizing the district board to levy an ad valorem tax on the
8 assessed value of all the real and personal property in the district at a rate or rates which do not
9 exceed the maximum rate or rates specified in the ballot. All taxes attributable to the operation
10 and maintenance expenses of the district, excluding expenses for an area described in section
11 40-64-09, shall not exceed an amount equal to thirty cents per one hundred dollars of assessed
12 valuation for all real and personal property in the district, unless a higher rate is approved by a
13 vote of the electors of the district, or by the persons who are qualified to vote as provided in
14 section 40-64-07. The election may be held in conjunction with the formation election. Once
15 approved at an election, the maximum rate remains in effect until increased or decreased at a
16 subsequent election. If a maximum rate is in effect, the district board, on petition of twenty-five
17 percent of the qualified electors of the district, or by those persons owning twenty-five percent of
18 the land area who are qualified to vote pursuant to section 40-64-07, shall call an election to
19 reduce the maximum tax rate but not below the lesser of that rate determined by the district
20 board to be necessary to maintain the district's facilities and improvements or the actual rate
21 then in effect. On the presentation to the district board of a petition signed by the owners of a
22 majority of the property in the district, the district board shall adopt a resolution to reduce or
23 eliminate the portion of the tax, beginning the next fiscal year, required for one or more
24 enhanced municipal services specified in the petition. Signatures on a petition to reduce or
25 eliminate a tax are valid for a period of sixty days.

26 Provided the district is not limited by the bond election, the district may not levy, other than
27 for the payment of debt service on general obligation bonds, at a rate or rates in excess of the
28 maximum rate then in effect.

29 When levying an ad valorem tax, taking into account any limitation pursuant to the bond
30 election, the district board shall make annual statements and estimates of the operation and
31 maintenance expenses of the district, the costs of capital improvements to be financed by the

1 tax levy or levies, and the amount of all other expenditures for public infrastructure and
2 enhanced municipal services proposed to be paid from the tax levy or levies and of the amount
3 to be raised to pay general obligation bonds of the district, all of which shall be provided for by
4 the levy and collection of ad valorem taxes on the assessed value of all the real and personal
5 property in the district. The district board shall file the annual statements and estimates with the
6 clerk. The district board shall publish a notice of the filing of the estimate, shall hold hearings on
7 the portions of the estimate not relating to debt service on general obligation bonds, and shall
8 adopt a budget. The board, on or before the date set by law for certifying the annual budget of
9 the county or municipality, shall fix, levy, and assess the amounts to be raised by ad valorem
10 taxes of the district and shall cause certified copies of the order to be delivered to the board of
11 county commissioners and to the tax commissioners. All statutes relating to the levy and
12 collection of general county taxes, including the collection of delinquent taxes and sale of
13 property for nonpayment of taxes, apply to the district taxes provided for by this section.

14 **40-64-24. Dissolution of district.**

- 15 1. The district may be dissolved by the district board by a resolution of the district board if
16 the following conditions exist:
- 17 a. All of the property owned by the district has been or will be conveyed to the
18 municipality, county, or school district; and
- 19 b. Either the district has no obligations or the municipality or county has assumed all
20 of the obligations of the district.
- 21 2. The district board shall comply with the conditions prescribed by subsection 1 and
22 shall dissolve the district if both of the following occur:
- 23 a. The governing body has consented to comply with the conditions prescribed by
24 subsection 1 and either:
- 25 (1) Dissolution has been approved by a vote of the qualified electors of the
26 district or by the persons who are qualified to vote pursuant to section
27 40-64-07 voting in an election called for that purpose.
- 28 (2) The district board determines that the district has been inactive for at least
29 five consecutive years and has no future purpose.
- 30 b. The district board adopts a resolution dissolving the district and records the
31 resolution in the office of the county recorder.

1 3. The district board may call such an election and shall call such an election if requested
2 to do so in a petition signed by ten percent of the qualified electors of the district, or by
3 the persons who are qualified to vote pursuant to section 40-64-07.

4 4. The election shall be called and held in the same manner as a bond or tax levy
5 election, except that the ballot shall contain the words "dissolution, yes" and
6 "dissolution, no".

7 5. All property in the district, except federal, state, county, and municipal property,
8 remains subject to the lien for the payment of general obligation bonds, and any
9 property subject to a special assessment lien remains subject to the lien
10 notwithstanding dissolution of the district. The district may not be dissolved if any
11 revenue bonds of the district remain outstanding unless an amount of money
12 sufficient, together with investment income thereon, to make all payments due on the
13 revenue bonds either at maturity or prior redemption has been deposited with a trustee
14 or escrow agent and pledged to the payment and redemption of the bonds. The district
15 may continue to operate after dissolution only as needed to collect money and make
16 payments on any outstanding bonds.

17 **40-64-25. Wastewater treatment or drinking water facility and nonpoint source**
18 **projects - Loan repayment agreements - Definitions.**

19 Notwithstanding any other law, a community facilities district may construct, acquire, or
20 improve a wastewater treatment facility, drinking water facility, or nonpoint source project with
21 moneys borrowed from or financial assistance including forgivable principal provided by the
22 state water commission.

23 To repay a loan from the state water commission, a district may enter into a loan repayment
24 agreement with the authority. A loan repayment agreement is payable from any revenues
25 otherwise authorized by law to be used to pay long-term obligations.

26 The board of directors shall obtain approval for the loan repayment agreement in the same
27 manner provided by law for approving and issuing other long-term obligations payable from
28 those revenues that are to be used to pay the loan.

29 A loan repayment agreement entered into pursuant to this section shall contain the
30 covenants and conditions pertaining to the construction, acquisition, or improvement of a
31 wastewater treatment facility, drinking water facility, or nonpoint source project and repayment

1 of the loan as the state water commission deems proper. Loan agreements may provide for the
2 payment of interest on the unpaid principal balance of that agreement at the rates established in
3 the agreement. These costs may be included in the assessment amounts pledged to repay the
4 loan. Districts are bound by and shall fully perform the loan repayment agreements, and the
5 agreements are incontestable after the loan is funded by the state water commission. The
6 community facilities district shall also agree to pay the commission's cost in issuing bonds or
7 otherwise borrowing to fund a loan.

8 A loan repayment agreement under this section does not create a debt of the community
9 facilities district, and the authority shall not require that payment of a loan agreement be made
10 from other than those sources permitted in this section.

11 A community facilities district may employ or contract for the services of attorneys,
12 accountants, financial consultants and other experts in their fields as deemed necessary to
13 perform services with respect to the loan repayment agreement.

14 This section is supplemental and alternative to any other law under which a district may
15 borrow money or issue bonds. This section shall be construed as the exclusive authorization to
16 enter into loan agreements with the water infrastructure finance authority.

17 For purposes of this section:

- 18 1. "Authority" means the state water commission.
- 19 2. "Board" means the state water commission board of directors.

20 **40-64-26. Alternative district formation method.**

21 Notwithstanding anything to the contrary, upon the presentation of a petition to the
22 municipality or county signed by all of the owners of property to be included in a district in
23 excess of seventy-five acres, and provided there are no qualified residential electors residing
24 within the proposed district as evidenced by a report provided by the county voter registration
25 and elections department, the public welfare, necessity, and convenience require that the
26 district be established.

27 Upon the establishment of a district pursuant this section, the governing body will appoint
28 five directors from a listing of ten names with qualifications consistent with section 40-64-11
29 nominated by the owners.

1 Upon the establishment of a district under this section, other than the reporting of the district
2 formation to state and county agencies as contained in this chapter, the municipality or county
3 shall have no further responsibilities with respect to the district.

4 As it relates to a district established pursuant to this section, the district will contract with
5 qualified third-party providers of professional services to administer the operations of the district
6 as well as legal professionals, finance professionals, underwriters, and other professionals as
7 approved by the district board.