

2021 HOUSE POLITICAL SUBDIVISIONS

HB 1484

2021 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Room JW327B, State Capitol

HB1484
1/28/2021
House Political Subdivisions

Relating to county bonding authority

Chairman Dockter: (9:33). Opened the hearing.

Representatives	
Representative Jason Dockter	P
Representative Brandy Pyle	P
Representative Mary Adams	P
Representative Claire Cory	P
Representative Sebastian Ertelt	P
Representative Clayton Fegley	P
Representative Patrick Hatlestad	P
Representative Mary Johnson	A
Representative Lawrence R. Klemin	P
Representative Donald Longmuir	P
Representative Dave Nehring	P
Representative Marvin E. Nelson	P
Representative Luke Simons	P
Representative Nathan Toman	P

Discussion Topics:

- Threshold for 2/3 approval
- Bonding projects

Rep. Christensen: Introduced the bill. (Testimony #4034).

John Ertelt: (9:36). In favor. (Testimony #4018, 4019).

Arvid Winkler: (9:45). In favor. (Testimony #4024).

Aaron Burst, Association of Counties: In opposition. No written testimony.

Chairman Dockter: Vice Chairman Pyle will work with Aaron Burst and Rep. Christensen on the bill.

Chairman Dockter: (9:52). Closed the hearing.

Carmen Hickle, Committee Clerk

1484

Mr. Chairman and members of the committee, my name is Cole Christensen. I am the representative from district 24.

HB 1484 creates a threshold for 2/3 approval of the qualified electors in a county. The approval would be for bonding projects to provide buildings, and to acquire land for county purposes. Other examples can be seen in the rest of subsection a.

You will hear from people that will testify after me to give some examples of how this has been used.

Mr. Chairman that ends my testimony, and I will stand for questions.

COUNTY FINANCING OPTIONS - CORRECTION CENTER

1. General Obligation Bonds

NDCC §21-03-06(1)(a)

Levy No. 1231

- requires 60% public vote
- unlimited excess mill levy
- 20 year maturity
- bond amount limited only by 5% of assessed valuation debt limit
- \$808,338,308 assessed valuation x 5% = \$40,416,915 debt limit (2018 figures)

*Generally speaking,
can't prepay until
around the 7-year
mark.*

2. Limited General Obligation Bonds

NDCC §21-03-07(6), §57-15-06.6

Levy No. 1208

- 10 mill capital projects levy (20 mills with vote)
- no vote, but subject to protest by owners of taxable property (5% of assessed valuation threshold to block the bond issue)
- bond amount limited to amount that 10 mills can support
- 20 year maturity

3. Limited Tax Bonds

NDCC Chapter 57-47

Levy No. 1201

- borrow against general fund mills for primary governmental functions
- term is limited to 5 years
- County used this method for \$500,000 Bridge Bonds (Nov. 1, 2018)

4. Sales Tax Bonds

NDCC Chapter 11-09.1

- need home rule charter / voter approval
- bond amount limited to level of sales tax collections
- no maturity limit

5. Lease Purchase

NDCC §11-11-14(20)

- acquire real & personal property by lease-purchase agreement
- ground lease and lease purchase agreement with Trustee (bank)
- bank sells certificates of participation in the lease purchase agreement
- annual rental payments budgeted by County Commission
- sources for payment – 10 mill capital projects levy & 60 mill general fund
- does not count against debt limit; bond amount limited by available mills
- 30 year maturity is an option (no set limit on maturity)

**THERE IS THE
SECURITY
FOR LOAN
REPAYMENT.
THE GENERAL
FUND**

BUILDING AUTHORITY FINANCING OF PUBLIC BUILDINGS FOR POLITICAL SUBDIVISION USE

If a political subdivision has decided to build a public building and the construction cost cannot be covered by existing funds, the question becomes whether to incur indebtedness through voter approval and issuance of bonds of the political subdivision or find an alternative means of financing the project. An alternative method of financing public building construction which has been used in North Dakota is establishment of a building authority.

Use of a building authority to construct a public building is similar in many respects to financing through a bond issue of the political subdivision, but differs in several significant respects. To be viable, bonds issued by the building authority must be eligible for the federal income tax exemption for bondholders to make the bonds attractive to purchasers. To qualify for the federal income tax exemption status, a building authority must be established as a nonprofit corporation and under Internal Revenue Service Ruling 63-20:

1. The corporation must engage in activities that are essentially public in nature;
2. The corporation must be one that is not organized for profit;
3. The corporate income must not inure to any private person;
4. The state or a political subdivision must have a beneficial interest in the corporation while the indebtedness remains outstanding and, when the indebtedness is retired, the state or political subdivision must obtain full legal title to the property of the corporation for which the indebtedness was incurred; and
5. The corporation must have been approved by the state or a political subdivision, either of which must also have approved the specific obligations issued by the corporation.

A political subdivision lacks the power to form a nonprofit corporation building authority (see Attorney General Letter Opinion 2008-L-05). Individuals, including employees or elected officials of the political subdivision, may form a nonprofit corporation building authority. The building authority issues tax-exempt bonds for construction of a building to be leased to the political subdivision. The political subdivision makes lease payments from the building fund or other sources of the political subdivision. If lease rental payments are budgeted from available funds of the political subdivision, no indebtedness is incurred in the constitutional sense. However, because the revenue and appropriations of the political subdivision are an annual decision (school boards are limited to one-year leases by North Dakota Century Code Section 15.1-09-33(7)) and not an indebtedness backed by the property within the political subdivision, the bondholders run the risk of the political subdivision not appropriating funds to pay the lease rentals. The bondholders have no recourse against the political subdivision in the event of default.

One aspect of building authority financing of public buildings that has drawn criticism from some taxpayers is that use of a building authority avoids the requirement of voter approval, while bonding for construction of a public building generally requires 60 percent voter approval under Section 21-03-07. In addition, in the case of school buildings, construction of a new school building must be approved by the Superintendent of Public Instruction under Section 15.1-36-01, but that does not apply if a school building is to be constructed by a building authority.

USE OF BUILDING AUTHORITIES

The committee requested information on the extent of use of building authorities. There is no central source of information on building authority bonding of projects or leasing arrangements. The Secretary of State has the following 28 building authorities registered as corporations:

- City of Devils Lake Building Authority.
- Cass County Building Authority.
- Fargo School District Building Authority.
- Law Enforcement Center Building Authority.
- Minot School District Building Authority.
- Rugby Building Authority.
- West Fargo Park District Building Authority.
- Dickinson Recreation Building Authority.
- Grand Forks Public School District Building Authority.
- Glenburn Building Authority.
- South Heart Golf Course Building Authority.
- Morton County Building Authority.
- Devils Lake Public School District Building Authority.
- Enderlin Building Authority.
- Hankinson Public School District Building Authority.
- Nedrose School District Building Authority.
- Fort Yates Public School District Building Authority.
- Berthold School District Building Authority.
- Napoleon Public School District Building Authority.
- West Fargo Public School District Building Authority.
- Bismarck Park District Building Authority.
- South Prairie School District Building Authority.
- Grand Forks County Building Authority.
- Griggs County Central School District Building Authority.
- City of Fargo Building Authority.
- Central Cass Public School District Building Authority.
- Kindred Public School District Building Authority.
- Northern Cass Public School District Building Authority.

#4024

Arvid Winkler

From: "Arvid Winkler" <awinkler@bektel.com>
Date: Friday, July 31, 2020 5:55 AM
To: "Beth Didier" <bddidier@barnescounty.us>
Attach: Jail Bond Resolution.eml
Subject: Fw: Jail Bond Resolution

answered on Monday Aug 3 10 AM

Beth,

I am told that there is a protest petition circulating in the area.

According to NDCC 21-03-07 (6), your office will end up with the petition.

I am concerned about dates, such as resolution passing, publishing, and filing of protest petitions.

Would signatures obtained before the publishing date be valid?

Or is the real control over when the completed petitions are filed with your office?

Will "any owner of taxable property" mean that on property with multiple owners any one signature would be sufficient?

Will copies of signing authority be required for estates and created entities such as partnerships and trusts?

Would a parcel number suffice as a description of the property?

*parcel numbers
added later?*

Must signatures from absentee owners be notarized?

Hopefully some answers will be available on Tuesday.

Arvid

certificates of participation

7/31/2020

2021 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Room JW327B, State Capitol

HB 1484
2/4/2021

Relating to county bonding authority

Chairman Dockter: (11:49). Opened hearing for committee work.

Representatives	Roll Call
Representative Jason Dockter	P
Representative Brandy Pyle	P
Representative Mary Adams	P
Representative Claire Cory	P
Representative Sebastian Ertelt	P
Representative Clayton Fegley	P
Representative Patrick Hatlestad	P
Representative Mary Johnson	P
Representative Lawrence R. Klemin	P
Representative Donald Longmuir	P
Representative Dave Nehring	P
Representative Marvin E. Nelson	P
Representative Luke Simons	P
Representative Nathan Toman	P

Discussion Topics:

- Building or acquiring land

Rep. Hatlestad: Made a do not pass motion.

Rep. Pyle: Second the motion.

Representatives	Vote
Representative Jason Dockter	Y
Representative Brandy Pyle	Y
Representative Mary Adams	Y
Representative Claire Cory	Y
Representative Sebastian Ertelt	N
Representative Clayton Fegley	Y
Representative Patrick Hatlestad	Y
Representative Mary Johnson	Y
Representative Lawrence R. Klemin	Y
Representative Donald Longmuir	Y
Representative Dave Nehring	Y
Representative Marvin E. Nelson	Y

Representative Luke Simons	N
Representative Nathan Toman	N

Motion Carried. 11-3-0.

Vice Chairman Pyle: Will carry the bill.

Chairman Dockter: (11:50). Closed the hearing.

Carmen Hickle, Committee Clerk by Donna Whetham

REPORT OF STANDING COMMITTEE

HB 1484: Political Subdivisions Committee (Rep. Dockter, Chairman) recommends **DO NOT PASS** (11 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1484 was placed on the Eleventh order on the calendar.