



North Dakota Legislative Council

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SPECIAL ASSESSMENTS LEVIED AGAINST POLITICAL SUBDIVISIONS - BACKGROUND MEMORANDUM

Section 1 of Senate Bill No. 2359 (2023) ([appendix](#)) provides for a study of the impact of political subdivisions levying special assessments against other political subdivisions and the overall impact on taxpayers. The study must include analysis of the impact on taxpayers not governed by the political subdivision levying special assessments and explore forms of taxation policy that minimize the levying of special assessments in the form of taxes through political subdivisions.

As introduced, Section 1 of Senate Bill No. 2359 would have expanded a political subdivision's ability to exceed its otherwise applicable maximum property tax levy limits if a political subdivision was levying a tax to pay for land acquisition costs. The substantive portion of the bill was removed in the Senate, leaving the study language as the only remaining bill section.

SPECIAL ASSESSMENT BACKGROUND AND OVERVIEW OF STATUTORY AUTHORITY

Cities were the first political subdivision in North Dakota to receive authority to levy special assessments for improvements. Cities have had authority to levy special assessments since 1897, and as a result, the statutory provisions relating to special assessments in cities are the oldest and most detailed. Recreation service districts were the second political subdivision to receive special assessment levy authority in 1975, followed by water resource districts in 1981, counties in 1983, water districts in 1995, and townships in 2001.

Several chapters of North Dakota Century Code Title 40 govern improvements by special assessment in cities. Recreation service districts and counties glean authority to levy special assessments for improvements by adopting the provisions relating to cities by reference. Special assessment levy authority and related procedures for water resource districts are contained in Chapter 61-16.1 and special assessment levy authority and related procedures for water districts are contained in Chapter 61-35. Township special assessment levy authority is governed by an abbreviated statutory procedure in Chapter 58-18.

Purposes for Which Special Assessments Are Imposed

Pursuant to Section 40-22-01, a city may defray the expenses related to a number of improvements by levying special assessments. Improvement costs for which special assessments may be levied include costs for new water supply or sewage systems, or the extension or replacement of existing systems; improvements to a municipal street system, broadly ranging from paving and resurfacing streets to installing Christmas streetlighting decorations; improvements to boulevards or other public places and the maintenance of those improvements; the acquisition of land and easements for flood protection purposes and the construction of necessary works; and the acquisition or leasing of property and easements for parking lots, ramps, and garages and associated construction costs. A city also may establish a special assessment district pursuant to Chapter 40-22.1 for the promotion of business activity and new business development.

For a defined area outside the limits of an incorporated city, the board of county commissioners may initiate a special assessment district and levy special assessments for improvements. Pursuant to Section 11-11-55.1, a county is given all the authority and duties pertaining to special assessments which belong to cities in Chapters 40-22 through 40-28.

Townships may defray expenses of improvements through special assessment districts pursuant to Chapter 58-18. The board of township supervisors may create an improvement district upon petition of at least 60 percent of the property owners in a proposed improvement district area. Each improvement district must be of a size and form to include all properties the township board of supervisors believes will be benefited by the improvement project.

A recreation service district may levy special assessments to provide services, including police protection, sewer and water, garbage removal, and public road construction and maintenance. Pursuant to Section 11-28.2-04.1, a recreation service district is deemed to be a "municipality" for purposes of the special assessment provisions in Chapters 40-22 through 40-27.

Chapter 61-16.1 governs the administration of special assessments by water resource districts. Pursuant to Section 61-16.1-15, a water resource board may provide for the cost of construction, alteration, repair, operation, and maintenance of a water resource district project through issuance of improvement warrants or with funds raised by special assessments, a general tax levy, issuance of revenue bonds, or a combination of these methods.

Chapter 61-35 governs the administration of special assessments by water districts. Under Section 61-35-14, a water district board of directors may provide for the cost of construction, alteration, repair, operation, and maintenance of a project with funds raised by special assessments and may issue improvement bonds in anticipation of the levy and collection of special assessments. Section 61-35-48 also allows a water district to defray the expense of certain improvements by special assessment.

Manner in Which Special Assessments Are Calculated

For purposes of this memorandum, this section provides a brief overview of the manner in which special assessments are calculated under Title 40.

Section 40-23-01 requires the executive officer of a city to appoint three "reputable residents and freeholders" of the city to the city's special assessment commission. Pursuant to Section 40-23-07, the special assessment commission is required to determine the lots and parcels of property that will benefit from the improvement and the amount in which each lot and parcel will be benefited. The commission is required to assess against each lot and parcel a fair portion of the total cost of the improvement, which may not exceed the amount each property will benefit from the improvement. As an alternative, Chapter 40-23.1 provides the city governing body may assess benefits against property on a per-square-foot basis and considering the distance of the property from the marginal line of the public way or area improved.

Sections 40-23-09 and 40-23.1-07 require the special assessment commission or the city auditor to prepare a complete list of benefits and assessments showing each lot, tract, or parcel benefited by the improvement and the amount assessed against it. Section 40-23-25 requires the special assessment commission to prepare a list of estimated future assessments on property presently located outside the corporate limits of the city, but likely to be annexed, which the commission determines is potentially benefited by the improvement. Sections 40-23-10 and 40-23.1-08 require the special assessment commission or the city auditor to publish the assessment list in the official newspaper of the city once each week for 2 consecutive weeks and include notice of the time and place the commission or the city auditor will meet to hear objections to assessments by any interested party. The special assessment commission or the city auditor may alter assessments at the hearing, as may be just or necessary, pursuant to Sections 40-23-11 and 40-23.1-09.

Any person still aggrieved after consideration by the commission or city auditor may file a written notice of appeal stating the grounds for the appeal pursuant to Sections 40-23-14 and 40-23.1-12. At the regular meeting of the city governing body at which the assessment list is to be acted upon, in accordance with Sections 40-23-15 and 40-23.1-13, any person that has appealed may appear and present the reasons why the action of the commission or city auditor should not be approved. The governing body of the city may increase or diminish any assessment as it deems just.

AUTHORITY FOR A POLITICAL SUBDIVISION TO LEVY SPECIAL ASSESSMENTS AGAINST PROPERTY OWNED BY A POLITICAL SUBDIVISION

Political subdivisions with special assessment levy authority are statutorily authorized to levy special assessments against property owned by a political subdivision and to levy property taxes to pay for special assessments levied against a political subdivision's property without a levy limitation.

Sections 40-23-07 and 40-23.1-06 provide property of a political subdivision is not exempt from special assessments. Section 40-23-07 provides in pertinent part "[b]enefited property belonging to counties, cities, school districts, park districts, and townships is not exempt from [special] assessment, and such public corporations whose property is so assessed shall provide for the payment of such assessments, installments thereof and interest thereon, by the levy of taxes according to law." Section 40-23.1-06 is applicable to the alternative allocation of special assessments under Chapter 40-23.1 and contains language almost identical to the language in Section 40-23-07.

Sections 61-16.1-21 and 61-35-61 similarly provide political subdivisions are not exempt from special assessments levied by a water resource board or water district. Pursuant to these sections, political subdivisions are required to provide for the payment of these special assessments, special assessment installments, and interest by the levy of taxes according to law.

Section 57-15-41 allows a political subdivision to exceed its otherwise applicable maximum property tax levy limits if the political subdivision is levying tax to pay special assessments or to pay the debt service on bonds issued to prepay special assessments.¹ Section 57-15-41 provides in pertinent part "no tax levy limitations provided by any statute of this state apply to tax levies by any county, city, school district, park district, or township for the purpose of paying any special assessments or paying debt service on bonds issued to prepay special assessments made in accordance with the provisions of title 40, against property owned by such county, city, school district, park district, or township." Section 57-15-41 also requires any surplus in the special assessment fund to be placed in the general fund of the political subdivision. Sections 61-16.1-21 (water resource board) and 61-35-61 (water district) similarly prohibit the application of statutory tax limitations to tax levies made by a political subdivision for the purpose of paying any special assessments levied under each corresponding chapter. As such, in the circumstance in which a political subdivision levies special assessments against property owned by a political subdivision, the political subdivision responsible for paying the special assessment may levy a general tax to raise revenue sufficient to pay the special assessment, without limitation.

SUGGESTED STUDY APPROACH

The committee may wish to proceed with the study by seeking input from various stakeholders, including the Tax Department, representatives of political subdivisions, interested parties, and the public regarding the impact of political subdivisions levying special assessments against other political subdivisions and the overall impact on taxpayers.

¹ Section 21-03-07(10) allows a governing board of any county, city, public school district, park district, or township, by resolution adopted by a two-thirds vote rather than election, to dedicate the tax levy authorized by Section 57-15-41 and authorize and issue general obligation bonds to be paid by the dedicated levy for the purpose of providing funds to prepay outstanding special assessments made in accordance with the provisions of Title 40 against property owned by the county, city, public school district, park district, or township.