County borrowing options

1) **Certificates of Indebtedness – These are short term loans to cover against shortfalls when taxes have been levied but not yet collected. There is no citizen vote requirement.**

21-02-02. Certificates of indebtedness - By whom issued - Term - Interest - General obligation. Political subdivisions may borrow against revenues through the issuance of certificates of indebtedness. A certificate of indebtedness consists of an agreement on the part of a political subdivision to pay a stated sum on or before a specified date, together with interest thereon at a rate or rates resulting in an average annual net interest cost not exceeding twelve percent if the certificate is sold privately. There is no interest rate ceiling on a certificate sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. The certificate must be signed on behalf of the political subdivision by its president or chairman, or equivalent officer, and also by its auditor, business manager or secretary, or equivalent officer, and must be payable from revenues. A certificate of indebtedness issued wholly or in part against revenues that consist of levied and uncollected taxes is a general obligation of the issuing political subdivision to the extent of the levied and uncollected taxes.

2) **General borrowing from a bank authority – Counties can borrow up to $500,000 from a bank or credit union. These loans are limited to no more than 5 years and do not require a public vote.**

21-13-02. Political subdivision authority to enter agreement for bank or credit union loans. A political subdivision may borrow against its anticipated revenue, from a bank or credit union located in this state. A bank or credit union loan and terms must be authorized by resolution of the governing body for the political subdivision. The resolution must identify the revenue to be used to repay the loan and any collateral that will secure repayment of the loan. The loan agreement must be signed on behalf of the political subdivision by the president, chairman, or equivalent officer, and also by the political subdivision's auditor, business manager, secretary, or equivalent officer.

3) **General Obligation Bonds & Revenue Bonds – Both Longer term loans to cover larger projects such as roads/bridges, jails, shops or courthouses. The distinction between the two bonds is GO bonds are paid back by revenue from general taxes from the citizens. Revenue Bonds are paid back on specific "fees" associated with the project. The example is a water treatment plant expansion. Revenue from water users monthly bill would be dedicated to re-pay the bond. Both GO and Revenue Bonds require approval from the citizens. However, GO bonds require 60% approval while Revenue Bonds are a majority. There are some very specific exception to these percentages. Counties debt limit is set both by statute and the North Dakota Constitution (Article X § 15) at no more than five per centum upon the assessed value of the taxable property therein**

***The century code doesn't specifically put a limit on the term of bonds.*

***That's a difficult question and in my opinion these chapters are really inconsistent. I think over the years they have all been amended so much it becomes unclear. I think most bond counsel would suggest revenue bonds do not need votes. NDCC 21-03-02 specifically says revenue bonds under 40-*

35 are not subjected to the restrictions in 21-03 which is the voting requirements. However, then 21-03-04 specifically says county or cities WOULD need a majority vote to issue bonds for a revenue-producing utility if that bond puts them over the 5% of the assessed value of all present debt. So I think each project may have to be evaluated to see if a voting requirement exists. I should have also mentioned if the bond is completely funded by a special assessment district those do not require votes either. Of course the assessment district could petition to stop the project then too…..

21-03-04. Grant of power to borrow - General limitations of indebtedness. Every municipality may borrow money and issue municipal obligations thereof for the purpose specified and by the procedure provided in this chapter, and for no other purpose and in no other manner, except as otherwise provided in section 21-03-02. No municipality may incur indebtedness in any manner or for any purpose in an amount which, with all other outstanding indebtedness of the municipality, exceeds five percent of the assessed value of the taxable property therein, except:

1. Any incorporated city, by a two-thirds vote of the qualified voters thereof voting upon said question at a general or special election, may increase such limit of indebtedness three percent on such assessed value beyond said five percent limit, and a school district, by a majority vote of the qualified voters thereof voting upon said question at a general or special election, may increase such limitation of indebtedness five percent on such assessed value beyond the said five percent limit.

2. Any county or city, when authorized by **a majority vote** of the qualified voters thereof voting upon said question at a general or special election, may issue bonds upon any revenue-producing utility owned by such county or city, for the purchase or acquisition of such utility, or the building or establishment thereof, in amounts not exceeding the physical value of such utility, industry, or enterprise.

3. Any incorporated city, if authorized by a majority vote of the qualified voters thereof voting upon said question at a general or special election, may become indebted in any amount not exceeding four percent of such assessed value, without regard to the existing indebtedness of said city, for the purpose of constructing or purchasing waterworks for furnishing a supply of water to the inhabitants of such city or for the purpose of constructing sewers, and for no other purposes whatever, but the aggregate of such additional indebtedness for waterworks and sewers never may exceed such four percent over and above the limitations of indebtedness in this section heretofore prescribed. All bonds or obligations in excess of the amount of indebtedness permitted by this chapter, given by any municipality as herein defined, are void.

21-03-07. Election required - Exceptions. No municipality, and no governing 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 except:

1. As otherwise provided in section 21-03-04.

2. The governing body may issue bonds of the municipality for the purpose and within the limitations specified by subdivision e of subsection 1 of section 21-03-06, subdivision g of subsection 2 of section 21-03-06, and subsections 4.1 and 7 of section 21-03-06 without an election.

3. The governing body of any municipality may issue bonds of the municipality for the purpose of providing funds to meet its share of the cost of any highway project undertaken under an agreement entered into by the governing body with the United States government, the director of the department of transportation, the board of county commissioners, or any of them, including the cost of any construction, improvement, financing, planning, and acquisition of right of way of a bridge eligible for matching funds, highway routed through the municipality and of any bridges and controlled access facilities thereon and any necessary additional width or capacity of the bridge or roadway thereof greater than that required for federal or state bridge or highway purposes, and of any necessary relaying of utility mains and conduits, curbs and gutters, and the installation of utility service connections and streetlights. The portion of the total cost of the project to be paid by the municipality under the agreement, including all items of cost incurred directly by the municipality and all amounts to be paid by it for work done or contracted for by other parties to the agreement, may not exceed a sum equal to thirty percent of the total cost, including engineering and other incidental costs, of all construction and reconstruction work to be done plus fifty percent of the total cost of all right of way to be acquired in connection therewith. The initial resolution authorizing issuance of bonds under this subsection must be published in the official newspaper of the municipality. Within sixty days after publication, an owner of taxable property within the municipality may file with the auditor or chief fiscal officer of the municipality a written protest against adoption of the resolution. A protest must describe the property that is the subject of the protest. If the governing body finds protests have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property in the municipality, as most recently finally equalized, all further proceedings under the initial resolution are barred. Nothing herein may be deemed to prevent any municipality from appropriating funds for or financing out of taxes, special assessments, or utility revenues any work incidental to any such project, in the manner and to the extent otherwise permitted by law, and the cost of any work so financed may not be included in computing the portion of the project cost payable by the municipality, within the meaning of this subsection, unless the work is actually called for by the agreement between the municipality and the other governmental agencies involved.

4. The governing body of any city may also by resolution adopted by a two-thirds vote authorize and issue general obligation bonds of the city for the purpose of providing funds to pay the cost of any improvement of the types stated below, to the extent that the governing body determines that such cost should be paid by the city and should not be assessed upon property specially benefited thereby; provided that the initial resolution authorizing such bonds must be published in the official newspaper, and any owner of taxable property within the city may, within sixty days after such publication, file with the city auditor a protest against the adoption of the resolution. If the governing body finds such protests to have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the city, as theretofore last finally equalized, all further proceedings under such initial resolution are barred. This procedure is authorized for the financing of the following types of improvements: a. Any street improvement, as defined in subsection 2 of section 40-22-01, to be made in or upon any federal or state highway or any other street designated by ordinance as an arterial street. b. The construction of a bridge, culvert, overpass, or underpass at the intersection of any street with a stream, watercourse, drain, or railway, and the acquisition of any land or easement required for that purpose. c. Any improvement incidental to the carrying out of an urban renewal project, the issuance of bonds for which is authorized by subsection 4 of section 40-58-13. Nothing herein may be deemed to prevent any municipality from

appropriating funds for or financing out of taxes, special assessments, or utility revenues any work incidental to any such improvement, in the manner and to the extent otherwise permitted by law.

5. The governing body of any city may also by resolution adopted by a two-thirds vote dedicate the mill levy authorized by section 57-15-42 and may authorize and issue general obligation bonds to be paid by the dedicated levy for the purpose of providing funds for the purchase, construction, reconstruction, or repair of public buildings or fire stations; provided, that the initial resolution authorizing the mill levy dedication and general obligation bonds must be published in the official newspaper, and any owner of taxable property within the city may, within sixty days after publication, file with the city auditor a protest against the adoption of the resolution. Protests must be in writing and must describe the property which is the subject of the protest. If the governing body finds such protests to have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the city, as theretofore last finally equalized, all further proceedings under the initial resolution are barred.

6. The governing body of any county may also by resolution adopted by a two-thirds vote dedicate the tax levy authorized by section 57-15-06.6 and may authorize and issue general obligation bonds to be paid by the dedicated levy for the purpose of providing funds for the purchase, construction, reconstruction, or repair of regional or county correction centers, or parks and recreational facilities; provided, that the initial resolution authorizing the tax levy dedication and general obligation bonds must be published in the official newspaper, and any owner of taxable property within the county may, within sixty days after publication, file with the county auditor a protest against the adoption of the resolution. Protests must be in writing and must describe the property which is the subject of the protest. If the governing body finds such protests to have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the county, as theretofore last finally equalized, all further proceedings under the initial resolution are barred.

7. The governing body of any public school district may also by resolution adopted by a two-thirds vote dedicate the tax levies as authorized by section 15.1-09-47, 15.1-09-49, or 57-15-16 and may authorize and issue general obligation bonds to be paid by these dedicated levies 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. The initial resolution authorizing the tax levy dedication and general obligation bonds must be published in the official newspaper of the school district, and any owner of taxable property within the school district may, within sixty days after publication, file with the business manager of the school district a protest against the adoption of the resolution. Protests must be in writing and must describe the property that is the subject of the protest. If the governing body finds the protests have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the school district, as theretofore last finally equalized, all further proceedings under the initial resolution are barred.

8. The governing body of any city having a population of twenty-five thousand persons or more may use the provisions of subsection 3 to provide funds to participate in the cost of any construction, improvement, financing, and planning of any bypass routes, interchanges, or other intersection improvements on a federal or state highway system which is situated in whole or in part outside of the

corporate limits of the city; provided, that the governing body thereof shall determine by resolution that the undertaking of such work is in the best interest of the city for the purpose of providing access and relieving congestion or improving traffic flow on municipal streets.

9. The governing body of a municipality or other political subdivision, located at least in part within a county that is included within a disaster or emergency executive order or proclamation of the governor under chapter 37-17.1, may by resolution adopted by a two-thirds vote authorize and issue general obligation bonds of the political subdivision without an election for the purpose of providing funds to pay costs associated with the emergency condition. The political subdivision may dedicate and levy taxes for retirement of bonds under this subsection and such levies are not subject to limitations as otherwise provided by law.

10. The governing board of any county, city, public school district, park district, or township may by resolution adopted by a two-thirds vote 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.

11. The governing body of any park district that constitutes a distinct municipality may issue general obligation bonds of the park district for the purpose of providing funds to acquire, lay out, and improve parks, parkways, boulevards, and pleasure drives, and to acquire land for these purposes, but the indebtedness may not at any time exceed one percent of the assessed valuation of the taxable property in the park district. The initial resolution authorizing the issuance of general obligation bonds under this subsection must be published in the official newspaper of the park district, and any owner of taxable property within the park district may, within sixty days after publication, file with the clerk of the park district a protest against the adoption of the resolution. Protests must be in writing and must describe the property that is the subject of the protest. If the governing body finds the protests have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the park district, as last finally equalized, all further proceedings under the initial resolution are barred.