

Introduced by

Senators Wardner, Burckhard, Warner

Representatives N. Johnson, Rust, Onstad

1 A BILL for an Act to create and enact a new section to chapter 48-02.1 of the North Dakota  
2 Century Code, relating to public records; and to amend and reenact sections 48-02.1-01,  
3 48-02.1-02, 48-02.1-03, 48-02.1-04, 48-02.1-06, 48-02.1-07, 48-02.1-09, 48-02.1-10,  
4 48-02.1-11, and 48-02.1-12 of the North Dakota Century Code, relating to public private  
5 partnerships.

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

7 **SECTION 1. AMENDMENT.** Section 48-02.1-01 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **48-02.1-01. Definitions.**

10 As used in this chapter, unless the context or subject matter otherwise requires:

- 11 1. "Build, operate, and transfer facility" means a build, operate, and transfer fee-based  
12 facility constructed, improved, or rehabilitated and afterward operated by a private  
13 operator who holds title to the facility subject to a development agreement that  
14 includes a provision that title will be transferred or revert to the public authority on  
15 expiration of an agreed term.
- 16 2. "Build, transfer, and operate facility" means a build, transfer, and operate fee-based  
17 facility constructed, improved, or rehabilitated by a private operator who:  
18 a. Transfers the interest it may have in the facility to the public authority before  
19 operation begins; and  
20 b. Operates the fee-based facility for an agreed term pursuant to a lease,  
21 management, or concession agreement.
- 22 3. "Development agreement" means a written agreement by and between a public  
23 authority and a private operator which memorializes the parties' agreement with  
24 respect to the construction, improvement, rehabilitation, ownership, or operation of a

- 1            ~~fee-based facility~~qualifying project. A development agreement must satisfy the  
2            requirements of section 48-02.1-03.
- 3            4. "Fee-based facility" means a facility that provides a service in which the charge is  
4            based on the level of service by users or a rental fee paid by a public authority. The  
5            facility may be a library, city hall, and an appurtenant building, a water or sewage  
6            treatment plant, or other public improvement; land lying within applicable rights of way;  
7            and other appurtenant rights or hereditaments that together comprise a project for  
8            which a private operator is authorized to operate or own and impose fees or derive a  
9            rent as expressed in the development agreement.
- 10          5. "Private operator" means a private person, a corporation or partnership, a cooperative  
11          or unincorporated association, a joint venture or consortium that constructs, improves,  
12          rehabilitates, owns, leases, operates, or manages a ~~fee-based facility~~qualifying project  
13          subject to this chapter. The term includes related parties and entities that together  
14          perform some or all of these functions for the same facility.
- 15          6. "Public authority" means the state subject to legislative authority, a county, township,  
16          or city when ownership of or jurisdiction over a ~~fee-based facility~~qualifying project has  
17          been tendered to and accepted by said authority.
- 18          7. "Qualifying project" means: any build, operate, and transfer facility; any build, transfer,  
19          and operate facility; any ferry, mass transit facility; vehicle parking facility; power  
20          generation facility; fuel supply facility; oil or gas pipeline water supply facility; public  
21          work, waste treatment facility; hospital, school, medical or nursing care facility;  
22          recreational facility; public building, housing for public workers, or other similar facility  
23          currently available or to be made available to a governmental entity for public use,  
24          including any structure, parking area, appurtenance, and other property required to  
25          operate the structure or facility and any technology infrastructure installed in the  
26          structure or facility that is essential to the project's purpose; or any improvements  
27          necessary or desirable to real estate owned by a governmental entity.

28            **SECTION 2. AMENDMENT.** Section 48-02.1-02 of the North Dakota Century Code is  
29            amended and reenacted as follows:

1       **48-02.1-02. Private operators.**

2       Notwithstanding any other provision of law, private operators may construct, improve,  
3       rehabilitate, own, lease, manage, and operate ~~fee-based facilities~~qualifying projects subject to  
4       the terms of this chapter. Private operators may mortgage, grant security interests in, and  
5       pledge their interests in, for a period not to exceed the length of the development agreement:

- 6       1.   ~~Fee-based facilities~~Qualifying projects and their components;  
7       2.   Development, leases and concessions, and other related agreements; and  
8       3.   Income, profits, and proceeds of the ~~fee-based facility~~qualifying project.

9       **SECTION 3. AMENDMENT.** Section 48-02.1-03 of the North Dakota Century Code is  
10      amended and reenacted as follows:

11      **48-02.1-03. Public authority may enter into development agreement.**

- 12      1.   A public authority may solicit or accept proposals from private operators for the  
13      constructing, improving, rehabilitating, operating, managing, and owning of a  
14      ~~fee-based facility~~qualifying project that will be situated in an area subject to the public  
15      authority's jurisdiction. A private party may initiate the process by submitting a  
16      proposal that conceptually identifies any facility, building, infrastructure, or  
17      improvement constituting all or part of a qualifying project. After a hearing, the public  
18      authority may accept a proposal that it determines to be in the public interest. A  
19      determination that a proposal is in the public interest must include a cost comparison  
20      of alternative forms of financing.  
21      2.   A public authority may negotiate and enter into a development agreement with any  
22      private operator.

23      **SECTION 4. AMENDMENT.** Section 48-02.1-04 of the North Dakota Century Code is  
24      amended and reenacted as follows:

25      **48-02.1-04. Contents of development agreements.**

26      A development agreement for a ~~fee-based facility~~qualifying project entered into pursuant to  
27      this chapter may provide for private ownership of the facility without reversion of title; for  
28      operating the facility under lease or management contract; for build, operate, and transfer  
29      facilities or build, transfer, and operate facilities; or any other form of ownership or operation  
30      considered advisable by the public authority. A development agreement may permit ~~the private~~  
31      ~~operator to:~~

- 1        1. ~~Assemble~~Assembly of funds from any available source, including federal, state, and
- 2            local grants, bond revenues, loans, contributions, and pledges; and
- 3        2. ~~Incorporate~~Incorporation of related improvements into the ~~fee-based facility~~qualifying
- 4            project, subject to requirements of state and federal law.
- 5        3. Receipt by the private authority of payments from the public authority, including user
- 6            fees, lease payments, service payments, availability payments, or performance-based
- 7            payments.

8        A development agreement may also include grants of title, easements, rights of way, and  
9        leasehold estates that are necessary to the ~~fee-based facility~~qualifying project. In addition, a  
10       development agreement may authorize the private operator to ~~charge~~be paid variable-rate fees  
11       based on time of day, characteristics of services, or other factors and measurement methods  
12       considered significant by the public authority for the particular facility.

13       **SECTION 5. AMENDMENT.** Section 48-02.1-06 of the North Dakota Century Code is  
14       amended and reenacted as follows:

15       **48-02.1-06. Lease term.**

16       A lease for public facilities must be for terms of no more than fifty years and ~~must~~may be  
17       reviewed and ~~may be revised every five years~~periodically as mutually agreed in the  
18       development agreement.

19       **SECTION 6. AMENDMENT.** Section 48-02.1-07 of the North Dakota Century Code is  
20       amended and reenacted as follows:

21       **48-02.1-07. Application of other law.**

22       This chapter does not excuse private operators of ~~fee-based facilities~~qualifying projects  
23       from the necessity of obtaining environmental, navigational, design, or safety approvals that  
24       would be required if the facility were constructed or operated by a public body.

25       **SECTION 7. AMENDMENT.** Section 48-02.1-09 of the North Dakota Century Code is  
26       amended and reenacted as follows:

27       **48-02.1-09. Development agreements - Mandatory provisions.**

28       A development agreement must require:

- 29       1. That the plans and specifications for the ~~fee-based facility~~qualifying project satisfy the
- 30            public authority's standards of construction for infrastructure of the same functional
- 31            classification;

- 1        2. For ~~fee-based facilities~~qualifying projects to be incorporated into the existing  
2            infrastructure, that any applicable department or authority review and approve the  
3            facility to the same extent as it would for a similar publicly constructed facility;
- 4        3. That, after public notice, the private operator manage and operate a ~~fee-based-~~  
5            facilityqualifying project in cooperation with the applicable public authority and subject  
6            to any bylaws that the public authority and the private operator may from time to time  
7            mutually agree upon;
- 8        4. That the ~~fee-based facility~~qualifying project be subject to regular safety inspections by  
9            the applicable public authority;
- 10      5. ~~That~~For ~~fee-based facilities that~~ the anticipated fees, rental income, and revenues  
11            from the operation of the facility, or other sources of funding, or any combination  
12            thereof, ~~be sufficient to pay~~contribute the payment of maintenance and operation costs  
13            for the facility, and principal of and interest on any evidence of indebtedness to finance  
14            the facility; and
- 15      6. Any other provisions negotiated by the parties.

16        **SECTION 8. AMENDMENT.** Section 48-02.1-10 of the North Dakota Century Code is  
17        amended and reenacted as follows:

18        **48-02.1-10. Cost recovery.**

19        Development agreements entered into under this chapter may authorize private operators  
20        of ~~fee-based facilities~~qualifying projects to impose a fee-based charge for the use of the facility  
21        and ~~must~~may require that the fee revenues be applied:

- 22            1. To repayment of indebtedness incurred for the ~~fee-based facility~~qualifying project;
- 23            2. To lease or fee-based concessions payments, if any;
- 24            3. To costs associated with the operation, administration, and maintenance of the facility;  
25            and
- 26            4. To reasonable reserves for future capital outlays, if any.

27        Residual fee revenues belong to the private operator, except for any royalties that may be  
28        payable to a public authority under the development agreement or a related fee-based  
29        concession agreement. After the expiration of any lease for a build, transfer, and operate facility,  
30        or after title has reverted for a build, operate, and transfer facility, the public authority may  
31        continue to charge a fee for the use of the facility.

1       **SECTION 9. AMENDMENT.** Section 48-02.1-11 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **48-02.1-11. Joint authority.**

4       When a ~~fee-based facility~~qualifying project is or will be situated in the jurisdiction of more  
5 than one public authority, or is or will be an interstate or international facility, the applicable  
6 authorities concerned may enter into a compact to delegate to one or more of the authorities or  
7 a board appointed by the various authorities the authority to exercise all of the powers, duties,  
8 and functions of the other authorities regarding the ~~fee-based facility~~qualifying project, including  
9 the authority to negotiate and administer the development agreement and any related lease and  
10 fee-based concession agreement. In addition, if all public authorities having jurisdiction over a  
11 ~~fee-based facility~~qualifying project concur, title to or authority over the facility may be tendered  
12 to the agreed-upon authority of choice, which may at its option accept the title of authority to  
13 administer pursuant to the development agreement and this section.

14       **SECTION 10. AMENDMENT.** Section 48-02.1-12 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16       **48-02.1-12. Property tax exemptions - Exemptions from bidding requirements.**

- 17       1. If approved by the governing body of the city, for property within city limits, or by the  
18 governing body of the county, for property outside city limits, new ~~fee-based~~  
19 ~~facilities~~qualifying projects are exempt from all ad valorem and property taxes.
- 20       2. ~~For portions of the project that do not involve contractor ownership, the~~The  
21 construction, improvement, rehabilitation, operation, and management of ~~fee-based~~  
22 ~~facilities by private operators under this chapter are subject to all a~~qualifying project  
23 that is subject to a development agreement that describes the allowed methods of  
24 bidding and procurement is not be subject to the competitive bidding and procurement  
25 requirements otherwise applicable under state and local laws, rules, and ordinances, ~~if~~  
26 ~~so determined by resolution of the governing body of the public authority.~~

27       **SECTION 11.** A new section to chapter 48-02.1 of the North Dakota Century Code is  
28 created and enacted as follows:

29       **Public records and meetings.**

30       Information of a public authority that would adversely affect the financial interest or  
31 bargaining position of the authority and information provided by a private operator which is a

Sixty-third  
Legislative Assembly

- 1 trade secret, which is a financial record that is not otherwise public, or which would adversely
- 2 affect the financial interest or bargaining position of the operator is exempt from chapter 44-04.
- 3 The record may not be disclosed to the public and matters relating to the information may be
- 4 discussed by the public authority in executive session.