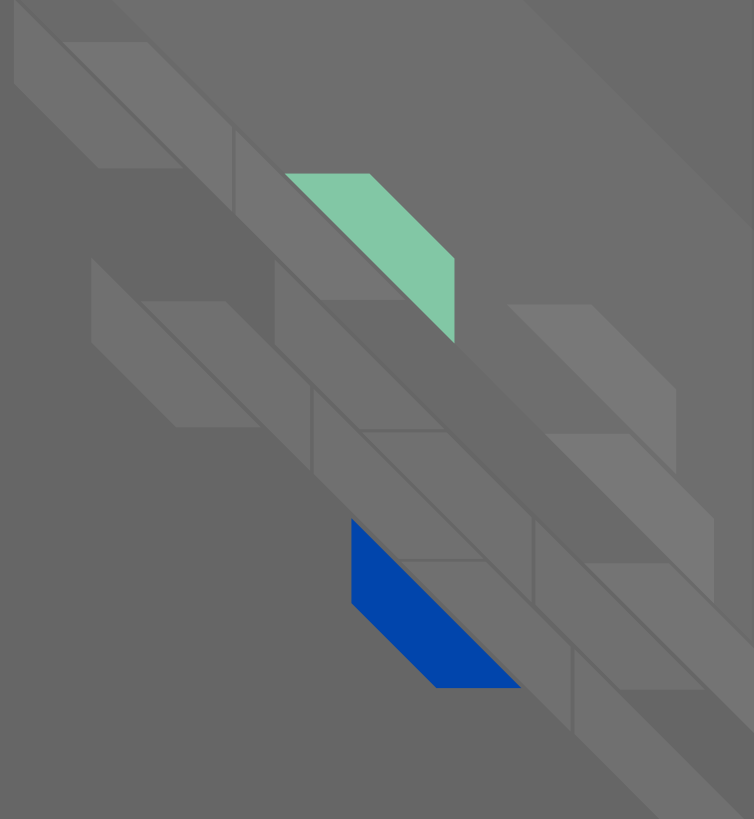




# Nuts and Bolts of Bond Referendums

Amy L. De Kok  
NDSBA Legal Counsel  
August 2022 Brunch & Learn

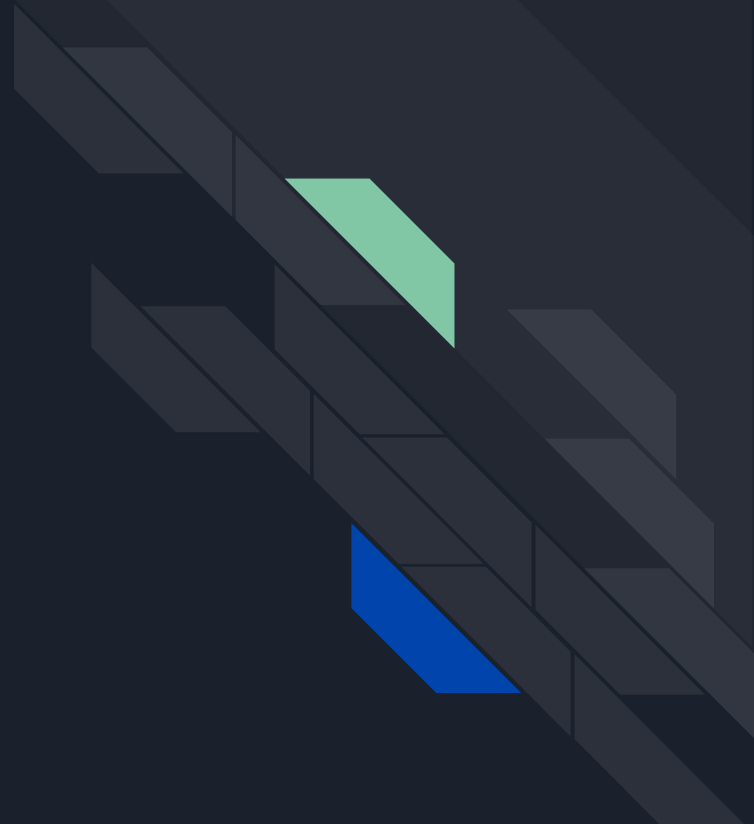
# Bond Referendum Basics



Process and requirements generally addressed in NDCC chapter 21-03

No school board may issue bonds without first being authorized by 60% of qualified voters voting on question

School boards may incur debt and issue bonds only for certain purposes





# Purposes of Incurring Debt and Issuing Bonds

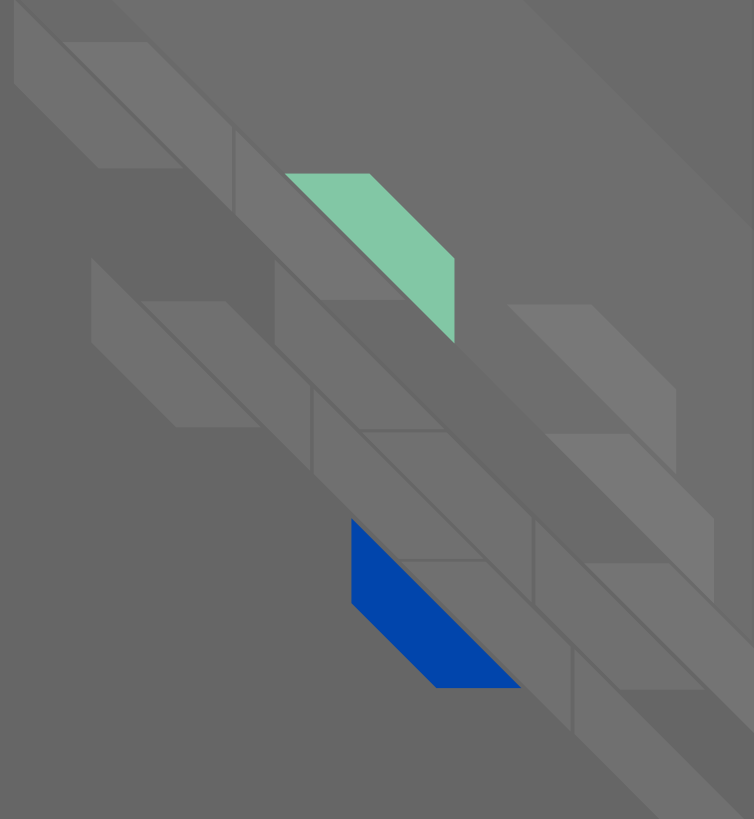
- **Purchase, erect, enlarge, and improve school buildings**
- To acquire sites for buildings or playgrounds
- To furnish and equip school buildings with heat, light, and ventilation
- To pay advance rentals to state school construction fund
- To purchase schoolbus equipment that meets state standards
- To pay a final judgment obtained against district which board does not deem advisable to pay out of current revenues

\*\*See NDCC 21-03-06 for additional purposes and NDCC 21-03-02 for issues that requirements not applicable to (e.g., bank loans)

# Limits on District Indebtedness

- Cannot incur indebtedness which, with all other outstanding indebtedness of district, exceeds 5% of assessed value of taxable property (NDCC 21-03-05 and Article X, Section 15 of ND Constitution)
- May increase limit of indebtedness by 5% (NDCC 15.1-07-03)
- By board resolution or petition signed by required number of qualified electors (1/3 of those who voted at most recent annual election)
- Approved by **majority** of electors voting on question

# The Planning Process





# Planning for a Bond Referendum

- Should start discussions regarding needs of district well in advance of starting bond process
- Can help prepare voters and increase chances of successful referendum
- Create committee to handle planning, make recommendations to board, etc.
- Other options to finance? (see NDCC ch. 21-13, Political Subdivision Borrowing)

# Planning Process

- ❑ Before start bond process, retain architect to help define project and cost
- ❑ NDCC ch. 48-01.2 (Public Improvement Bids and Contracts)
- ❑ Threshold for procuring plans, drawings and specs from architect if project will cost at least \$200,000
- ❑ Required to employ architect that provides plans, drawings and specs to provide construction admin and observation services







## Other Professional Services Needed

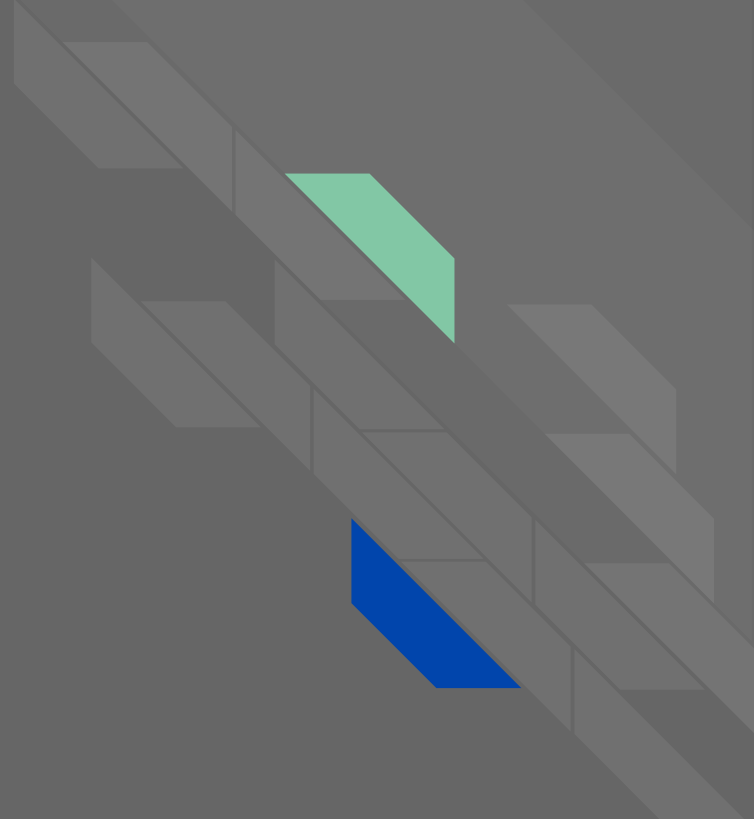
- Work with legal counsel (municipal financing and contracts)
- Retain before hire architect
- Proposed contracts should be part of the RFP packet
- AIA Contracts



# Hiring the Architect

- No process dictated in NDCC
- NDCC ch. 54-44.7 (applies to state agencies)
- Use procurement procedures as guide
- Selection committee to handle procurement process

# Legal/Procedural Requirements





# How to start the process...

- No school board may issue bonds without first being authorized to do so by a vote of 60% of all the district's qualified voters voting on question
- Some exceptions – see NDCC 21-03-07
- Board issues initial resolution to start process
- Resolution adopted by majority vote OR proposed by petition signed by  $\frac{1}{4}$  of number of qualified electors who voted in last annual election



# Initial Resolution of Board

- Initial resolution must state:
  1. Maximum amount of bonds proposed to be issued
  2. Purpose for which they are proposed to be issued
  3. The assessed valuation of all taxable property as defined in section 21-03-01
  4. Total amount of bonded indebtedness of district
  5. Amount of outstanding bonds of district issued for similar purposes
  6. Any other statement of fact deemed advisable by school board or voters proposing the same

# Submitting Question to Voters

- After adoption of initial resolution, board must adopt another resolution to submit the question of whether the initial resolution shall be approved to the voters
- Date of election must be **not less than 20 days** after passage of initial resolution or filing of sufficient petition by qualified electors



# Bond Election

The school board must:

- ✓ set the date of the election and designate polling hours and polling place(s)
- ✓ must appoint an **inspector**, two judges and two clerks for each polling place

Election must be conducted, and returns canvassed in same manner as election of members of the school board (NDCC 21-03-11)

NDSBA's School Elections Handbook

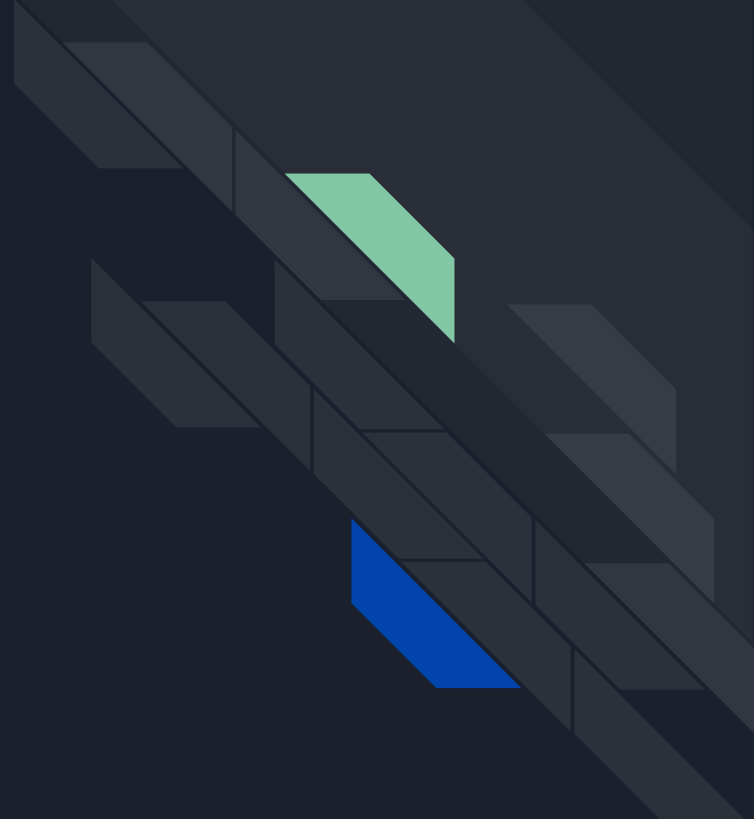
# Notice of Election

- Notice of election must be published in official newspaper once each week for at least two weeks prior to the date of election
- Date of first publication must be at least 15 days before the date of election, exclusive of the day of first publication
- Notice must contain:
  - Date of election
  - Polling hours
  - Polling place(s)
  - Complete copy of initial resolution
  - Statement that question to be submitted is whether initial resolution shall be approved



# Bond Election Ballot

- ❑ Ballot for bond election must be *separate* from other ballots used on the same day for other election
- ❑ Contents of ballot must state the question in substantially the form set forth in NDCC 21-03-13



# Sample Bond Election Ballot

## Official Ballot

[Name of District]

School Bond Election

[Date of Election]

Shall the [Name of District] issue bonds in the amount of not to exceed \$ [Insert the amount] maturing within a maximum of [Insert the duration] resulting in an estimated additional millage of [Insert # of mills] mills, equal to \$ [Insert equivalent in dollars] on each \$1,000 of taxable valuation for the first taxable year for the purpose of [Insert the purpose]?

YES

NO



# Additional Requirements

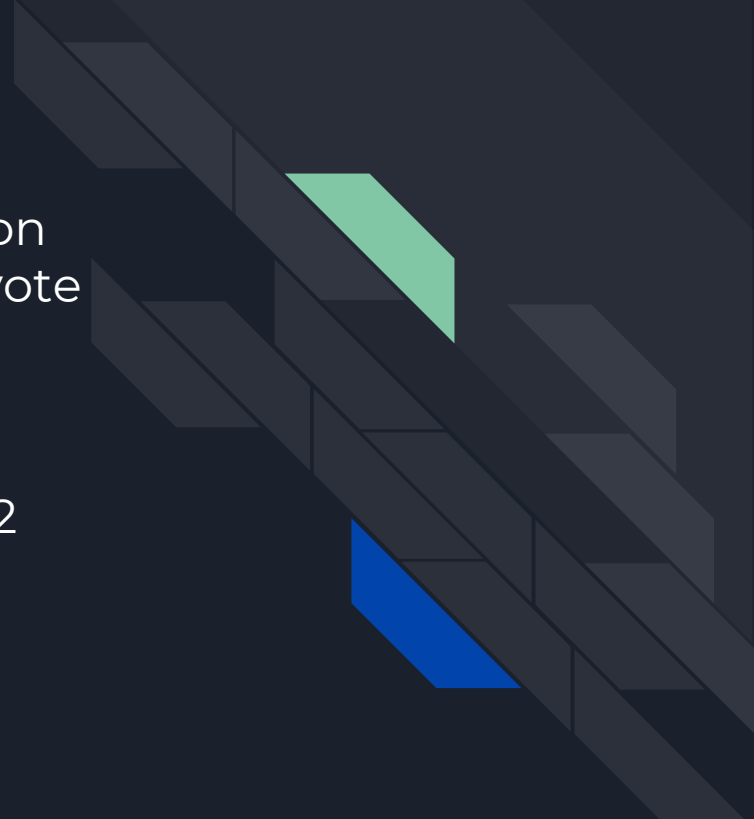
- School business manager must keep a record book and record a full and correct statement of every step or proceeding taken to authorize and issue bonds
- Must include a statement of the affirmative and negative votes cast by the electors
- NDCC chapter 21-03 contains several requirements for form and content of bonds, terms of bonds, execution of bonds, etc.
- Approval of school construction project by DPI is required if project cost is in excess of \$150,000 (NDCC 15.1-36-01)

# What Happens if Bond Referendum Fails?

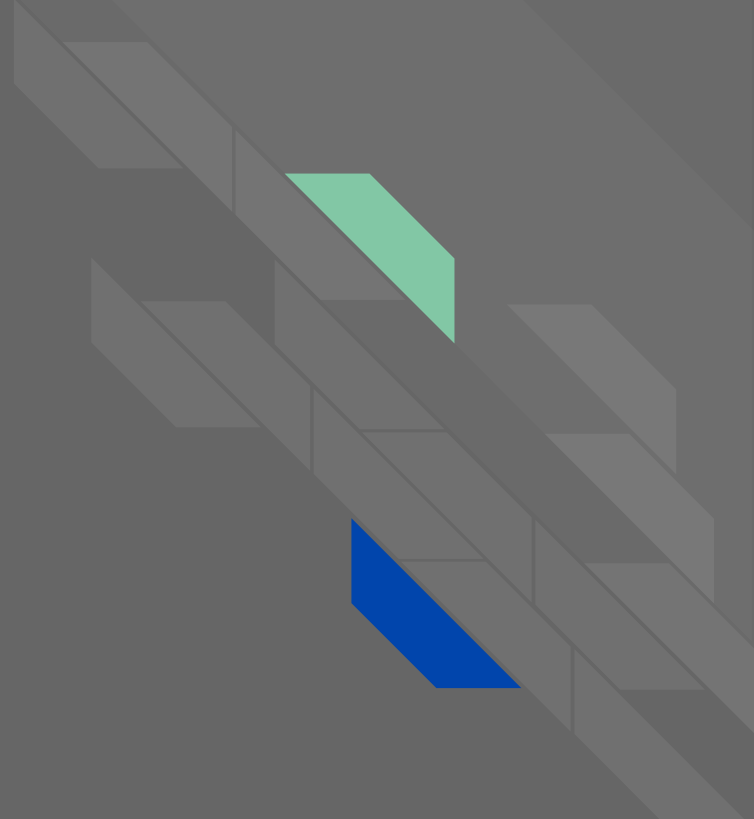
NDCC 16.1-01-11

Whenever bond issue or mill levy question fails, matter may not be submitted to a vote until a period of 3 months has expired

More than two elections on the same general matter may not be held within 12 consecutive calendar months



# Educating the Voters





# Educating Voters

- 60% threshold can be difficult to reach
- Cost of approval process
- Important to educate voters on needs of district and reason for approval of bond issuance
- Board or Construction/planning committee should make a plan how to educate voters
- Remember limits on how often matter may be submitted to voters if fails



# How to Educate Voters?

- Well in advance of submitting question, should be discussing needs of district at board meetings
- Public forums to discuss needs of district and to gauge voter interest
- Provide information on needs and project on website, newsletter, etc.
- BE CAREFUL!!



# Corrupt Practices

- NDCC 16.1-10-01: Prohibits any person from using services or property of a political subdivision for political purposes
- “Political purpose” = any activity undertaken in support of or in opposition to a political subdivision ballot measure or election or nomination of a candidate to public office
- Includes using “vote for”, “oppose”, or similar support or opposition language in any advertisement
- Factual information may be presented regarding a ballot question solely for purpose of educating voters if information does not advocate for or against





# What constitutes a corrupt practice?

- ❑ “Property” includes motor vehicles, telephones, typewriters, adding machines, postage or postage meters, funds of money, and buildings.
- ❑ “Services” includes the use of employees during regular working hours for which such employees have not taken annual or sick leave or other compensatory leave.
- ❑ Any person violating any provision in Chapter 16.1-10 of the NDCC, for which another penalty is not specifically provided, is guilty of a class A misdemeanor.



Questions?

## Next NDSBA Brunch & Learn

When: September 21, 2022 at **9 a.m. CT**

What: 10 Things a Business Manager Needs  
to Know About NDSBA

Who: NDSBA Staff

More info/  
register: [www.ndsba.org/resources/lunchlearn](http://www.ndsba.org/resources/lunchlearn)