

## Supervisor's Handbook Section- District Operation: Policy Guidelines

### This sub-section contains the following topics:

- Recommended Policy Guidelines for Expenditure of Soil Conservation
- District Funds for Promotion, Education, and Recognition Activities.
- Mill Levy Authority
- Borrowing Money
- Truth in Lending Law
- Assignment of Payment

### RECOMMENDED POLICY GUIDELINES FOR EXPENDITURE OF SOIL CONSERVATION DISTRICT FUNDS FOR PROMOTION, EDUCATION, AND RECOGNITION ACTIVITIES

These recommended Policy Guidelines were developed by the North Dakota State Soil Conservation Committee in accordance with Section [4-22-26](http://www.legis.nd.gov/information/statutes/cent-code.html) ND State Century Codes website: <http://www.legis.nd.gov/information/statutes/cent-code.html> of the North Dakota Soil Conservation Districts Law.

Situation	Permissible	Non-Permissible
1. Awards		
A. Clean Tree Contest		
1. Cash Award		✓
2. Plaques, Certificates, Etc..	✓	
B. Other Educational Contest Awards		
1. Cash Award	✓	
2. Plaques, Certificates, Etc.	✓	
C. Soil Conservation Achievement Program		
1. Aerial Photo to Winner	✓	
2. District Sponsored Banquets		
a. Meal	✓	
b. District-Hosted Social Hour		✓
3. Winners Trip to Annual Meeting (actual expenses incurred)		
a. Mileage	✓	
b. Registration	✓	
c. Meals	✓	
d. Lodging	✓	
D. Service Awards		
1. Supervisors		
a. Cash Awards		✓
b. Plaques, Certificates, Gifts	✓	
2. District Employees		

a. Cash Awards		✓
b. Plaques, Certificates, Gifts (Not to exceed amount in- service award program developed for SCDs)	✓	
3. Assisting Agencies		
a. Cash Awards		✓
b. Plaques, Certificates, Gifts	✓	
2. Dues and Memberships		
<b>Situation</b>	<b>Permissible</b>	<b>Non-Permissible</b>
A. District Memberships		
1. State Association	✓	
2. NACD		
a. Quotas	✓	
b. Endowment Fund	✓	
3. Other organizations supporting soil, water and wildlife conservation	✓	
B. Individual Supervisor		✓
C. District Employees Dues (e.g., ND Districts Employees Association)		✓
3. Soil Stewardship		
A. Meals	✓	
B. Informational Materials	✓	
4. Conservation/Education Activities - examples follow, but are not limited to:		
A. Tours	✓	
B. Newsletters	✓	
C. Literature	✓	
D. Visual Aids	✓	
E. Contests	✓	
F. Camps (conservation/natural resource)	✓	
G Donations		
—Conservation Scholarship funds	✓	
—ND 4-H Foundation	✓	
—Future Farmers of America	✓	
5. Other		
A. Alcoholic Beverages		✓
B. Purchase Premium at Fair (E.G., 4-H Steer)		✓
C. Memorials (Cash)		✓
D. Flowers and Bouquets	✓	
E. Magazine Subscription	✓	
F. Salary Bonuses to Employees (e.g. Christmas Bonus)		✓
G. Season's Greetings Ad in Newspaper	✓	

H. Coffee and Cookies		
—District Meetings	✓	
—District Sponsored Educational Meetings	✓	
I. Auxiliary Members and Spouses expenses to Area, State and National Meetings		✓
J. Reimbursement to Volunteers, Auxiliary and Members for support of District Activities	✓	
<b>Situation</b>	<b>Permissible</b>	<b>Non-Permissible</b>
K. Meals for Social Functions		✓
L. Gifts (e.g., Weddings, Anniversaries, Retirement for Non-District Staff such as Extension, NRCS, FSA)		✓
M. Give Away Items Used for Conservation Promotional Purposes	✓	

## MILL LEVY AUTHORITY

**N.D.C.C. 4-22-26 (17)** Century Code Website: <http://www.legis.nd.gov/information/statutes/cent-code.html>

The 1983 Legislative Assembly granted the Supervisors of North Dakota Soil Conservation Districts the authority to levy a tax, **not exceeding two mill**, for the payment of the expenses of the district, including mileage and other expenses of the supervisors, and technical, administrative, clerical, and other operating expenses. This authority is provided in the North Dakota Soil Conservation Districts Law, Section 4-22-26, North Dakota Century Code, with an effective date of January 1, 1983. The supervisors wishing to exercise their taxing authority shall: (1.) complete the district's budget and adopt the annual tax levy. (See Analysis of Revenue and Expenses - Schedule B, SFN 3851) 2.) **No later than July 1 of each year**, provide one certified copy of the levy as adopted to the county auditor of each county in the district. (See Annual Budget - Schedule A, Certificate of Levy, SFN 3850 and Annual Budget - Schedule C, Insurance Reserve Fund/Payment of Judgment, SFN 50443). Schedules A, B and C are available from the office of the State Soil Conservation Committee upon request.

Upon filing a certified copy of the levy, the county auditor of each county in the district will extend the levy upon the tax list of the county for the current year against each description of real property lying both within the county and the district in the same manner and with the same effect as other taxes are extended. The county treasurer collects all taxes and turns the funds over to the soil conservation district on a monthly basis. According to a February 21, 1992, Attorney General opinion, "Soil conservation districts are taxing districts because they are authorized to levy taxes under North Dakota Century Code ([N.D.C.C.\) Section 4-22-26\(17\).](#)"

**N.D.C.C. § 57-02-01 (9)** says, "Municipality" or "taxing district" means a county, city, township, school district, water conservation or flood control district, Garrison Diversion Conservancy District, county park district, joint county park district, irrigation district, park district, rural fire protection district, **or any other subdivision of the state empowered to levy taxes**. Therefore, soil conservation districts are also subject to Title 57 because they are subdivisions of the state and have the authority to levy taxes.

[N.D.C.C. § 57-15-31](#) provides the formula for determination of a levy. This determination is made by considering the estimated expenditures for the current fiscal year and the required reserve fund. Id. The municipality may only levy for what is actually needed for the fiscal year. Id. This process eliminates municipalities from creating a big “nest egg.”

[N.D.C.C. § 57-15-27](#) provides that a municipality authorized to levy taxes may include in its budget an interim fund. The interim fund is to be carried over to meet any requirements of the next fiscal year that may become due prior to the receipt of taxes in that fiscal year. Id. The interim fund cannot be in excess of what may be reasonably required to finance the municipality for the first nine months of the next fiscal year. Id. The **interim fund** cannot exceed three fourths of the current appropriation for all purposes other than debt retirement and appropriations from bond sources. Id.

[Ch. 57-15](#) entitled “**Tax Levies and Limitations.**” [N.D.C.C. § 57-15-02](#) provides for the determination of rate: *Determination of rate.* The tax rate of all taxes, except taxes the rate of which is fixed by law, must be calculated and fixed by the county auditor within the limitations prescribed by statute. If any municipality levies a greater amount than the prescribed maximum legal rate of levy will produce, the county auditor shall extend only such amount of tax as the prescribed maximum legal rate of levy will produce. The rate must be based and computed on the taxable valuation of taxable property in the municipality or district levying the tax. The rate of all taxes must be calculated by the county auditor in mills, tenths, and hundredths of mills.

The county auditor can limit the soil conservation district mill levy request and will only extend the amount of levy as allowed pursuant to title 57. The county auditor will not extend any levy in excess of the allowable levy which is the difference between the sum of the estimated expenditures, and interim fund needs and debt retirement and the sum of the projected revenues and cash balances. Allowance may be made for a permanent delinquency or loss in tax collection not to exceed five percent of the levy ([57-15-31](#)).

The 1997 Legislature let stand the provision enacted in 1995 that, beginning with taxable year 1997, a soil conservation district may elect to levy the amount levied in dollars in the base year with no percentage increase. Any levy under this section must be specifically approved by the governing body of the soil conservation district.

### **Additional Mills**

Whenever the supervisors of a soil conservation district deem it advisable to raise funds by taxation in excess of two mill, for any purpose for which the supervisors of a district are authorized to expend moneys raised by taxes, the levy first must be approved by a majority vote of the qualified electors in the district.

### **Additional Tax Levy Authorities**

#### **Political Subdivision definition:**

[N.D.C.C. § 32-12.1-02 \(5\)](#) “**Political Subdivision**”:

(a) Includes all counties, townships, park districts, school districts, cities, and any other units of local government which are created either by statute or by the Constitution of North Dakota for local government or other public purposes, except no new units of government or political subdivisions are created or authorized by this chapter.

[N.D.C.C. § 57-15-28.1](#) ----- items 1 through 5 apply to soil conservation districts.

**[57-15-28.1](#) Exceptions to tax levy limitations in political subdivisions.** The tax levy limitations specified by law do not apply to the following mill levies, expressed in mills per dollar of taxable valuation of property in the political subdivision. For purposes of this section, “political subdivision” has the same meaning as in section [32-12.1-02](#).

1. A political subdivision levying a tax for the control of pests in accordance with section [4-33-11](#), may levy a tax not exceeding one mill.
2. A political subdivision, except a school district, levying a tax for an insurance reserve fund, according to section [32-12.1-08](#) may levy a tax not exceeding five mills.
3. A political subdivision, except a school district, levying a tax for the payment of a judgment, in accordance with section [32.12.1-11](#), may levy a tax not exceeding five mills.
4. A political subdivision levying a tax for railroad purposes, in accordance with section [49-17.2-21](#), may levy a tax not exceeding four mills.
5. A political subdivision, except a school district, levying a tax for old-age and survivors’ insurance according to section [52-09-08](#), for social security, or for an employee retirement program established by the governing body, or for any combination of those purposes, may levy a tax not exceeding thirty mills.

Additionally, tax levy limitations do not apply to taxes levied pursuant to any statute which expressly provides that the taxes authorized to be levied therein are not subject to mill levy limitations provided by law.

### **Regional Railroad Authorities and Plant Pest Control**

(The following information was provided in a memorandum from the State Soil Conservation Committee’s legal counsel).

[Chapter 49-17.2 of the N.D.C.C.](#) Authorizes the creation of regional railroad authorities and describes their powers. These authorities are created upon agreement of the governing bodies of “two or more political subdivisions” and upon the approval of 60% of the electors of the subdivisions. [N.D.C.C. §49-17.2-02](#). Taxes may be levied to support regional railroad authorities.

Although chapter [49-17.2](#) says that political subdivisions may form regional railroad authorities, a fair question is whether this applies to all political subdivisions. Soil conservation districts were established to prevent soil erosion and to conserve soil. [N.D.C.C. § 4-22-26](#). They were not established to operate railroads. The two functions are so dissimilar that it is questionable whether the legislature truly had in mind such a political subdivision as a soil conservation district when it enacted chapter [49-17.2](#).

Taxes collected by a regional railroad authority under section [49-17.2-21](#) must be used to support railroad operations. The taxes are to be “expended by the authority as provided in this chapter.” [N.D.C.C. § 49-17.2-24](#). There is no authority in chapter 49-17.2 to spend money for soil conservation purposes. Furthermore, it is a general principle that taxes collected for a particular purpose cannot be transferred to other taxing authorities or other funds to be spent for purposes other than for which the taxes were collected.

Thus, if a soil conservation district is looking at chapter [49-17.2](#) as a source of additional funding, it will be disappointed because it will not be able to use [49-17.2](#) taxes to carry out its soil conservation work.

Taxes levied under chapter [49-17.2](#) are paid to the railroad authority. [N.D.C.C. § 49-17.2-21](#). Furthermore, it does not make sense for a district to participate in the creation of a regional railroad authority. Doing so will distract it from its business of conserving soil with the likely result that less soil conservation rather than more will be accomplished.

The same reasoning applies to chapter [4-33](#). This chapter is entitled “Plant Pests” and provides political subdivisions with taxing authority. [N.D.C.C. § 4-33-11](#). Assuming soil conservation districts were intended to be included as one of the political subdivisions able to tax under chapter [4-33](#), the money collected may be used only for controlling and preventing the spread of plant pests. In addition, time spent carrying out the duties imposed by chapter [4-33](#) will divert districts’ time and attention from their primary mission. Therefore, not only will controlling plant pests not give more money, it will consume some of their limited time.

### **Insurance Reserve Fund\***

Soil conservation districts may create their own insurance reserve fund for insurance purposes. [N.D.C.C. § 32-12.1-08](#). **Political Subdivision insurance reserve fund — Tax levy.**

1. A political subdivision, other than a school district, may establish and maintain an insurance reserve fund for insurance purposes, and all political subdivisions including school districts may included in the annual tax levy of the political subdivision such amounts as are determined by the governing body to be necessary for the purposes and uses of the insurance reserve fund. Except in the case of a school district, the tax levy authorized by this section shall not exceed the limitation in section [57-15-28.1](#). If a political subdivision has no annual tax levy, the political subdivision may appropriate from any unexpended balance in its general fund such amounts as the governing body of the political subdivision shall deem necessary for the purposes and uses of the insurance reserve fund.

2. Except in the case of a school district, the fund established pursuant to this section shall be kept separate and apart from all other funds and shall be used only for the payment of claims against the political subdivision which have been settled or compromised, judgments rendered against the political subdivision for injuries arising out of risks established by this chapter, or costs incurred in the defense of claims. Payments by a school district for the same purposes shall be made out of the district’s general fund as established in section [57-15-14.2](#).

Funds from an insurance reserve fund could be deposited to return interest. However, the interest earned by investing the insurance reserve fund should stay with the insurance reserve fund. The fund and interest from the fund cannot be used for other district operations. To levy a tax to create an Insurance Reserve Fund, complete form SFN 50443 (Annual Budget-Schedule C, Insurance Reserve Fund/Payment of Judgment) and file it with the County Auditor(s) no later than July 1 of each year.

**The 5-mill levy authority to create an insurance reserve fund granted under section [32-12.1-08](#) may also be used to pay the premium for liability insurance for the district.**

There are various forms of liability insurance. The two most commonly carried by districts are general liability for premises and operations and public official’s errors and omissions. Complete form SFN 50443 (Annual Budget-Schedule C, Insurance Reserve Fund/Payment of Judgment) and file it with the County Auditor(s) no later than July 1 of each year.

### **Payment of a Judgment\***

[N.D.C.C. § 32-12.1-11](#). **Judgment against political subdivisions — Additional tax levy.** If a final judgment is obtained against any political subdivision, except a school district, the governing body of

the political subdivision may by resolution provide for the levy and collection of an annual tax upon all the taxable property within the political subdivision for the payment of such judgment. The amount levied under this section for the payment of a judgment against a political subdivision shall not exceed the limitation set forth in section [57-15-28.1](#).

Complete form SFN 50443 (Annual Budget-Schedule C, Insurance Reserve Fund/Payment of Judgment) for districts wishing to exercise the 5-mill levy taxing authority to pay for a judgment(s) against the district. Provide the completed form to the county auditor(s) no later than July 1 of each year.

#### **Payment of a Compromised Amount of a Judgment\***

[N.D.C.C. § 32-12.1-12](#). **Compromise of judgments against political subdivisions - Tax levy to pay reduced judgment — Tax limitations not applicable.** If a final judgment for the payment of money is entered against a political subdivision and the political subdivision is compelled to pay the judgment by a tax upon all the taxable property in the political subdivision, the governing body, by a resolution adopted by the affirmative vote of two-thirds of its members, may enter into an agreement in the name of the political subdivision with the holder of the judgment for a compromise by a payment of a sum less than the amount of the judgment. If the amount agreed to be paid in compromise of the judgment is at least twenty-five percent less than the unpaid amount of the judgment, the governing body may provide for and levy the tax necessary to pay the reduced judgment in accordance with the terms of the compromise agreement. Limitations upon taxes which may be levied by political subdivisions for the payment of judgments shall not be applicable to taxes levied under this section.

#### **Payment of Bond Principal and Interest of a Compromised Amount of a Judgment\***

[N.D.C.C. § 32-12.1-14](#). **Levy of tax to pay principal and interest of bonds — Duty of county auditor.** At the time of the issuance of bonds to be used to compromise a judgment, and before the delivery thereof, the governing body of the political subdivision, by a recorded resolution, shall levy a direct, annual, and irrevocable tax sufficient in amount to pay the principal and interest of the bonds as they severally mature. A copy of the resolution shall be certified to and filed with the county auditor. The county auditor thereupon and annually thereafter shall spread the annual tax provided in the resolution upon the tax list and shall deliver the list to the county treasurer, who shall collect the tax in the manner provided for the collection of other taxes.

\*Additional information available in liability section.

#### **BORROWING MONEY**

[N.D.C.C. 4-22-26\(13\)](#) The 1965 Legislature amended the law making it legal for the soil conservation districts to borrow money and to secure loans. They may pledge their assets or their anticipated income depending on the requirements of the lending institution.

[N.D.C.C. 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.

(Please see the remaining sections of Chapter [21-02](#) and [6-09.4](#) of the N.D.C.C. for further information.) Website: <http://www.legis.nd.gov/information/statutes/cent-code.html>

## **TRUTH IN LENDING LAW**

An opinion was secured from the Attorney General's office relative to the proper procedures a soil conservation district should follow in their collection policy to conform to the federal regulations, and the forms required for a district to use for charging interest on their unpaid bills.

If districts charge interest on over-due accounts, districts **must** execute a contract conforming to the federal truth in lending regulations. Soil Conservation Districts should follow [N.D.C.C. 47-14-09](#).

**[47-14-09](#). Usury - Definition - Maximum Contract Rate - Prohibition.** Except as otherwise provided by the laws of this state, no person, partnership, limited partnership, trust, association, corporation, or other form of business entity, either directly or indirectly, shall take or receive, or agree to take or receive, in money, goods, or things in action, or in any other way, any greater sum or greater value for the loan or forbearance of money, goods, or things in action than five and one-half percent per annum higher than the current cost of money as reflected by the average rate of interest payable on United States treasury bills maturing in six months in effect for North Dakota for the six months immediately prior to the month in which the transaction occurs, as computed and declared on the last day of each month by the state banking commissioner, but that in any event the maximum allowable interest rate ceiling shall not be less than seven percent, and in the computation of interest the same shall not be compounded; provided, however, that a minimum interest charge of fifteen dollars may be made. No contract shall provide for the payment of interest on interest overdue, but this section shall not apply to a contract to pay interest at a lawful rate on interest that is overdue at the time such contract is made. Any violation of this section shall be deemed usury.

Soil conservation districts have two alternative methods available to determine the interest rate charged on accounts as follows:

- a. As indicated in [47-14-09](#), the rate is set by the state banking commissioner the last week of each month for the following month's transactions. For example, if trees were planted in May, the district would utilize the interest rate set for May that was determined during the last week of April. This rate would stay with that transaction until paid. **Under this method your interest rates for new transactions would change monthly.** The rate may be obtained by contacting the Banking and Financial Institution's office at **(701) 328-9933** or the State Soil Conservation Committee (SSCC).
- b. Using a fixed rate that your district believes will remain below the rate set by the banking commissioner.

There are three basic agreements with two methods of charging interest in the agreement forms section. The SSCC would encourage a district to select just one method of assessing interest. You may then offer one or all three of the basic agreements with the one method of assessing interest.

The policy the district chooses to charge interest needs to be included on orders, plans and delivery and billing statements. All statements should be signed by the customer.



Soil conservation districts can develop other agreements to meet individual needs, but should include the basic information contained in the agreements in the Agreements/Forms section. They should be reviewed by the SSCC as indicated in [N.D.C.C. 4-22-06\(4\)](#).

If an individual has gone through bankruptcy and their debts were discharged, a soil conservation district must provide service to the individual the same as they would for their other clients. A soil conservation district can set policy not to provide service to an individual who is delinquent on their debts.

### **ASSIGNMENT OF PAYMENT**

Assignment of Payment is one alternative to securing payment of funds from a district cooperator for services rendered. [N.D.C.C. § 4-22-26](#) states: 15. As a condition to the extending of any benefits under this chapter to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, [a district may] require contributions in money, services, materials, or otherwise.

This subsection allows districts to receive a Farm Services Agency (FSA) Assignment of Payment from the cooperator as payment. The district cannot require an Assignment of Payment, but it can require some or all of the payment by the cooperator prior to providing goods and services; an assignment may be one of those options.

The FSA utilizes forms CCC-36 (Assignment of Payment) and CCC-37 (Joint Payment Authorization) to assign payments. They are available at your local FSA office. FSA will continue to administer the contracts for the conservation incentive programs provided through USDA.