

Introduced by

Senators Wardner, Cook, Robinson

Representatives Lefor, Nathe, Porter

1 A BILL for an Act to create and enact section 6-09.4-28 of the North Dakota Century Code,
2 relating to the essential infrastructure revolving loan fund debt repayments; to amend and
3 reenact section 6-09-49, subdivision c of subsection 5 of section 6-09.4-03, and sections
4 6-09.4-06 and 6-09.4-10 of the North Dakota Century Code, relating to the essential
5 infrastructure revolving loan fund, public finance agency definitions, borrowing and lending
6 authority, and reserve funds; to repeal section 61-02-78 of the North Dakota Century Code,
7 relating to a revolving loan fund for water projects; to provide a transfer; to provide a continuing
8 appropriation; to provide a bond issuance limitation; and to provide an effective date.

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

10 **SECTION 1. AMENDMENT.** Section 6-09-49 of the North Dakota Century Code is amended
11 and reenacted as follows:

12 **6-09-49. Infrastructure revolving loan fund -- Continuing appropriation.**

13 1. ~~The infrastructure revolving loan fund is a special fund in the state treasury from which~~
14 ~~the Bank of North Dakota shall provide loans to political subdivisions for essential~~
15 ~~infrastructure projects. The Bank shall administer the infrastructure revolving loan~~
16 ~~fund. The maximum term of a loan made under this section is thirty years. A loan~~
17 ~~made from the fund under this section must have an interest rate that does not exceed~~
18 ~~two percent per year.~~

19 2. For purposes of this section, "essential infrastructure projects" means capital
20 construction projects for the following:

- 21 a. New or replacement of existing water treatment plants;
22 b. New or replacement of existing wastewater treatment plants;
23 c. New or replacement of existing sewer lines and water lines; and

- 1 d. ~~New or replacement of existing storm water and transportation infrastructure,~~
2 ~~including curb and gutter construction.~~
- 3 ~~3. In processing political subdivision loan applications under this section, the Bank shall~~
4 ~~calculate the maximum loan amount for which a qualified applicant may qualify, not to~~
5 ~~exceed fifteen million dollars per loan. The Bank shall consider the applicant's ability to~~
6 ~~repay the loan when processing the application and shall issue loans only to~~
7 ~~applicants that provide reasonable assurance of sufficient future income to repay the~~
8 ~~loan.~~
- 9 4. ~~The Bank shall deposit in the infrastructure revolving loan fund all payments of interest~~
10 ~~and principal paid under loans made from the infrastructure revolving loan fund. The~~
11 ~~Bank may use a portion of the interest paid on the outstanding loans as a servicing fee~~
12 ~~to pay for administrative costs which may not exceed one-half of one percent of the~~
13 ~~amount of the interest payment. All moneys transferred to the fund, interest upon~~
14 ~~moneys in the fund, and payments to the fund of principal and interest are~~
15 ~~appropriated to the Bank on a continuing basis for administrative costs and for loan~~
16 ~~disbursement according to this section.~~
- 17 5. ~~The Bank may adopt policies and establish guidelines to administer this loan program~~
18 ~~in accordance with the provisions of this section and to supplement and leverage the~~
19 ~~funds in the infrastructure revolving loan fund. Additionally, the Bank may adopt~~
20 ~~policies allowing participation by local financial institutions.~~

21 **Essential infrastructure revolving loan fund - Bank of North Dakota - Counties, cities,**
22 **and institutions of higher education - Continuing appropriation.**

- 23 1. The essential infrastructure revolving loan fund is a special fund in the state treasury
24 administered by the Bank of North Dakota. The Bank shall use moneys in the fund to
25 provide loans to counties and cities for eligible infrastructure projects pursuant to
26 subsections 6 and 7 and to provide loans to institutions of higher education for eligible
27 infrastructure projects pursuant to subsection 8.
- 28 2. The Bank may adopt policies and establish guidelines to administer the loan program
29 in accordance with this section, including policies to supplement and leverage the
30 moneys in the fund and policies to allow participation by local financial institutions. A
31 loan made from the fund must have an interest rate that does not exceed two percent

1 per year. The maximum term of a loan for an infrastructure project under
2 subsections 6 and 8 is thirty years, and the maximum term of a loan for an
3 infrastructure project under subsection 7 is forty years.

4 3. All principal and interest payments received on loans made from the essential
5 infrastructure revolving loan fund must be deposited into the fund. The Bank may use
6 a portion of the interest paid on the outstanding loans as a servicing fee to pay
7 administrative costs, which may not exceed one-half of one percent of the amount of
8 the interest payment. All moneys transferred to the fund, interest upon moneys in the
9 fund, and payments to the fund of principal and interest are appropriated to the Bank
10 on a continuing basis for administrative costs and for loan disbursement according to
11 this section.

12 4. Notwithstanding any other provision of law, the eligibility requirements for a loan under
13 this section are as follows:

14 a. An applicant must receive authorization for the loan based on one of the
15 following:

16 (1) If the repayment of the loan requires an increase in taxes levied by the
17 county or city, the county or city must receive authorization for the loan by a
18 majority vote of the qualified voters voting upon the authorization at a
19 general or special election after publishing the following in the official
20 newspaper of the county or city:

21 (a) The notice of the election to authorize evidence of indebtedness
22 pursuant to section 21-03-12; and

23 (b) Information regarding the proposed estimated additional millage and
24 the dollar increase per thousand dollars of taxable valuation pursuant
25 to section 21-03-13;

26 (2) The board of county commissioners or governing body of the city must
27 approve a resolution to authorize the loan; or

28 (3) The governing body of the institution of higher education must approve a
29 resolution to authorize the loan, and the state board of higher education
30 must approve the infrastructure project; and

- 1 b. An applicant must identify at least one funding source for the debt repayment
2 including:
3 (1) Distributions received by the county or city from the state aid distribution
4 fund under section 57-39.2-26.1;
5 (2) Distributions received by the county or city from oil and gas gross
6 production tax revenues under section 57-51-15;
7 (3) Taxes levied by the county or city subject to the maximum levy limit amounts
8 under chapter 57-15, provided the taxes are irrepealable pursuant to section
9 21-03-15;
10 (4) Tuition or fee revenue collected by the institution of higher education;
11 (5) Distributions of state aid received by the institution of higher education
12 under chapter 15-18.2; or
13 (6) Other sources of revenue; and
14 c. An applicant must submit a completed loan application to the Bank.
15 5. In processing loan applications under this section, the Bank shall calculate the
16 maximum loan amount available to a qualified applicant. Each applicant may have up
17 to twenty-five million dollars of outstanding loans from the fund for infrastructure
18 projects under subsections 6 and 8. The Bank shall consider the ability of the applicant
19 to repay the loan when processing the application and shall issue loans only to
20 applicants that provide reasonable assurance of sufficient future income to repay the
21 loan. If an infrastructure project qualifies for funding through the state revolving fund
22 established pursuant to chapters 61-28.1 and 61-28.2, the Bank shall verify the loan
23 application only is for the portion of the project that is ineligible to receive funding from
24 the state revolving fund.
25 6. Eligible infrastructure projects for county and city utility and transportation projects are
26 capital construction projects to construct new infrastructure or to replace existing
27 infrastructure, which provide the fixed installations necessary for the function of a
28 county or city and are in the public interest. Capital construction projects exclude
29 routine maintenance and repair projects, but include the following:
30 a. Water treatment plants;
31 b. Wastewater treatment plants;

- 1 c. Sewer lines and water lines, including lift stations and pumping systems;
- 2 d. Water storage systems, including dams, water tanks, and water towers;
- 3 e. Storm water infrastructure, including curb and gutter construction;
- 4 f. Road and bridge infrastructure, including paved and unpaved roads and bridges;
- 5 g. Airport infrastructure;
- 6 h. Electricity transmission infrastructure;
- 7 i. Natural gas transmission infrastructure; and
- 8 j. Communications infrastructure.

9 7. Eligible infrastructure projects for county and city water projects are capital
10 construction projects to construct new infrastructure or to replace existing
11 infrastructure, which provide the fixed installations necessary for the function of a
12 county or city and are in the public interest. Capital construction projects exclude
13 routine maintenance and repair projects, but include the following:

- 14 a. Flood control;
- 15 b. Water supply; and
- 16 c. Water management.

17 8. Eligible infrastructure projects for institutions of higher education are capital
18 construction projects to construct new infrastructure or to replace existing
19 infrastructure, which provide the fixed installations necessary for the function of the
20 institution and are in the public interest. Capital construction projects exclude routine
21 maintenance and repair projects, but include the following:

- 22 a. Sewer lines and water lines;
- 23 b. Storm water infrastructure, including curb and gutter construction; and
- 24 c. Road infrastructure.

25 **SECTION 2. AMENDMENT.** Subdivision c of subsection 5 of section 6-09.4-03 of the North
26 Dakota Century Code is amended and reenacted as follows:

- 27 c. The Bank of North Dakota for the following purposes ~~of the~~:
 - 28 (1) The revolving loan fund program established by~~under~~ chapter 61-28.2; and
 - 29 (2) The essential infrastructure revolving loan fund established under section
30 6-09-49.

1 **SECTION 3. AMENDMENT.** Section 6-09.4-06 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **6-09.4-06. Lending and borrowing powers generally.**

4 1. The public finance authority may lend money to political subdivisions or other
5 contracting parties through the purchase or holding of municipal securities which, in
6 the opinion of the attorney general, are properly eligible for purchase or holding by the
7 public finance authority under this chapter or chapter 40-57 and for purposes of the
8 public finance authority's capital financing program the principal amount of any one
9 issue does not exceed five hundred thousand dollars. However, the public finance
10 authority may lend money to political subdivisions through the purchase of securities
11 issued by the political subdivisions through the capital financing program without
12 regard to the principal amount of the bonds issued, if the industrial commission
13 approves a resolution that authorizes the public finance authority to purchase the
14 securities. The capital financing program authorizing resolution must state that the
15 industrial commission has determined that private bond markets will not be responsive
16 to the needs of the issuing political subdivision concerning the securities or, if it
17 appears that the securities can be sold through private bond markets without the
18 involvement of the public finance authority, the authorizing resolution must state
19 reasons for the public finance authority's involvement in the bond issue. The public
20 finance authority may hold such municipal securities for any length of time it finds to
21 be necessary. The public finance authority, for the purposes authorized by this chapter
22 or chapter 40-57, may issue its bonds payable solely from the revenues available to
23 the public finance authority which are authorized or pledged for payment of public
24 finance authority obligations, and to otherwise assist political subdivisions or other
25 contracting parties as provided in this chapter or chapter 40-57.

26 2. The public finance authority may lend money to the Bank of North Dakota ~~under~~
27 as follows:

28 a. Under terms and conditions requiring the Bank to use the proceeds to make
29 loans for agricultural improvements that qualify for assistance under the revolving
30 loan fund program established ~~by~~under chapter 61-28.2; and

1 b. Under terms and conditions requiring the Bank to use the proceeds to make
2 loans for infrastructure projects that qualify for assistance under the essential
3 infrastructure revolving loan fund established under section 6-09-49.

4 3. Bonds of the public finance authority issued under this chapter or chapter 40-57 are
5 not in any way a debt or liability of the state and do not constitute a loan of the credit of
6 the state or create any debt or debts, liability or liabilities, on behalf of the state, or
7 constitute a pledge of the faith and credit of the state, but all such bonds are payable
8 solely from revenues pledged or available for their payment as authorized in this
9 chapter. Each bond must contain on its face a statement to the effect that the public
10 finance authority is obligated to pay such principal or interest, and redemption
11 premium, if any, and that neither the faith and credit nor the taxing power of the state
12 is pledged to the payment of the principal of or the interest on such bonds. Specific
13 funds pledged to fulfill the public finance authority's obligations are obligations of the
14 public finance authority.

15 4. All expenses incurred in carrying out the purposes of this chapter or chapter 40-57 are
16 payable solely from revenues or funds provided or to be provided under this chapter or
17 chapter 40-57 and nothing in this chapter may be construed to authorize the public
18 finance authority to incur any indebtedness or liability on behalf of or payable by the
19 state.

20 **SECTION 4. AMENDMENT.** Section 6-09.4-10 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **6-09.4-10. Reserve fund.**

23 1. The public finance authority shall establish and maintain a reserve fund in which there
24 must be deposited all moneys appropriated by the state for the purpose of the fund, all
25 proceeds of bonds required to be deposited therein by terms of any contract between
26 the public finance authority and its bondholders or any resolution of the public finance
27 authority with respect to the proceeds of bonds, any other moneys or funds of the
28 public finance authority which it determines to deposit therein, any contractual right to
29 the receipt of moneys by the public finance authority for the purpose of the fund,
30 including a letter of credit or similar instrument, and any other moneys made available
31 to the public finance authority only for the purposes of the fund from any other source

1 or sources. Moneys in the reserve fund must be held and applied solely to the
2 payment of the interest on and the principal of bonds and sinking fund payments as
3 the same become due and payable and for the retirement of bonds, including payment
4 of any redemption premium required to be paid when any bonds are redeemed or
5 retired prior to maturity. Moneys in the reserve fund may not be withdrawn therefrom if
6 the withdrawal would reduce the amount in the reserve fund to an amount less than
7 the required debt service reserve, except for payment of interest then due and payable
8 on bonds and the principal of bonds then maturing and payable and sinking fund
9 payments and for the retirement of bonds in accordance with the terms of any contract
10 between the public finance authority and its bondholders and for the payments on
11 account of which interest or principal or sinking fund payments or retirement of bonds,
12 other moneys of the public finance authority are not then available in accordance with
13 the terms of the contract. The required debt service reserve must be an aggregate
14 amount equal to at least the largest amount of money required by the terms of all
15 contracts between the public finance authority and its bondholders to be raised in the
16 then current or any succeeding calendar year for the payment of interest on and
17 maturing principal of outstanding bonds, and sinking fund payments required by the
18 terms of any contracts to sinking funds established for the payment or redemption of
19 the bonds.

20 2. If the establishment of the reserve fund for an issue or the maintenance of an existing
21 reserve fund at a required level under this section would necessitate the investment of
22 all or any portion of a new reserve fund or all or any portion of an existing reserve fund
23 at a restricted yield, because to not restrict the yield may cause the bonds to be
24 taxable under the Internal Revenue Code, then at the discretion of the public finance
25 authority no reserve fund need be established prior to the issuance of bonds or the
26 reserve fund need not be funded to the levels required by other subsections of this
27 section or an existing reserve fund may be reduced.

28 3. No bonds may be issued by the public finance authority unless there is in the reserve
29 fund the required debt service reserve for all bonds then issued and outstanding and
30 the bonds to be issued. Nothing in this chapter prevents or precludes the public
31 finance authority from satisfying the foregoing requirement by depositing so much of

1 the proceeds of the bonds to be issued, upon their issuance, as is needed to achieve
2 the required debt service reserve. The public finance authority may at any time issue
3 its bonds or notes for the purpose of providing any amount necessary to increase the
4 amount in the reserve fund to the required debt service reserve, or to meet such
5 higher or additional reserve as may be fixed by the public finance authority with
6 respect to such fund.

7 4. In order to assure the maintenance of the required debt service reserve, there shall be
8 appropriated by the legislative assembly and paid to the public finance authority for
9 deposit in the reserve fund, such sum, if any, as shall be certified by the industrial
10 commission as necessary to restore the reserve fund to an amount equal to the
11 required debt service reserve. However, the commission may approve a resolution for
12 the issuance of bonds, as provided by section 6-09.4-06, which states in substance
13 that this subsection is not applicable to the required debt service reserve for bonds
14 issued under that resolution.

15 5. If the maturity of a series of bonds of the public finance authority is three years or less
16 from the date of issuance of the bonds, the public finance authority may determine that
17 no reserve fund need be established for that respective series of bonds. If such a
18 determination is made, holders of that respective series of bonds may have no interest
19 in or claim on existing reserve funds established for the security of the holders of
20 previously issued public finance authority bonds, and may have no interest in or claim
21 on reserve funds established for the holders of subsequent issues of bonds of the
22 public finance authority.

23 6. The industrial commission may determine ~~that~~ this section is inapplicable in whole or
24 in part for bonds issued ~~under section~~ as follows:

25 a. Under section 6-09.4-06;

26 b. Under section 6-09.4-24; or under

27 c. Under the public finance authority's state revolving fund program.

28 **SECTION 5.** Section 6-09.4-28 of the North Dakota Century Code is created and enacted
29 as follows:

1 **6-09.4-28. Debt service requirements - Essential infrastructure revolving loan fund -**
2 **Legacy fund earnings.**

3 Each biennium, the public finance authority shall request from the legislative assembly an
4 appropriation from the general fund of moneys derived from the earnings of the legacy fund, as
5 defined under section 21-10-12, to meet the debt service requirements for evidences of
6 indebtedness issued by the authority to support the essential infrastructure revolving loan fund.

7 **SECTION 6. REPEAL.** Section 61-02-78 of the North Dakota Century Code is repealed.

8 **SECTION 7. TRANSFER INFRASTRUCTURE REVOLVING LOAN FUND TO**
9 **ESSENTIAL INFRASTRUCTURE REVOLVING LOAN FUND.** The Bank of North Dakota shall
10 transfer the fund balance and any outstanding loans issued from the infrastructure revolving
11 loan fund under section 6-09-49, as in effect on June 30, 2019, to the essential infrastructure
12 revolving loan fund during the biennium beginning July 1, 2019, and ending June 30, 2021.

13 **SECTION 8. TRANSFER INFRASTRUCTURE REVOLVING LOAN FUND TO ESSENTIAL**
14 **INFRASTRUCTURE REVOLVING LOAN FUND.** The Bank of North Dakota shall transfer any
15 outstanding loans from the infrastructure revolving loan fund under section 61-02-78 to the
16 essential infrastructure revolving loan fund during the biennium beginning July 1, 2019, and
17 ending June 30, 2021.

18 **SECTION 9. PUBLIC FINANCE AUTHORITY - BOND ISSUANCE LIMITATION.** Pursuant
19 to the bonding authority under section 6-09.4-06, the public finance authority may issue up to
20 \$500,000,000 of evidences of indebtedness, but not in an amount that would cause the
21 repayments to exceed \$55,000,000 per biennium, for the purpose of supporting the essential
22 infrastructure revolving loan fund during the biennium beginning July 1, 2019, and ending
23 June 30, 2021. The term of any evidences of indebtedness issued under this section may not
24 exceed twenty years.

25 **SECTION 10. EFFECTIVE DATE.** Section 6 of this Act becomes effective July 1, 2021.