

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2275

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 infrastructure revolving loan fund debt repayments; to amend and reenact
3 sections 6-09-49, 6-09.4-06, and 6-09.4-10, subsection 6 of section 21-03-07, and
4 sections 21-03-19, 57-15-06.6, and 57-47-02 of the North Dakota Century Code, relating to the
5 infrastructure revolving loan fund, borrowing and lending authority, reserve funds, and expanded
6 bonding authority for political subdivisions; to repeal section 61-02-78 of the North Dakota
7 Century Code, relating to a revolving loan fund for water projects; to provide a transfer; to
8 provide a continuing appropriation; to provide a bond issuance limitation; and to provide an
9 effective date.

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

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

13 **~~6-09-49. Infrastructure revolving loan fund – Continuing appropriation.~~**

- 14 1. ~~The infrastructure revolving loan fund is a special fund in the state treasury from which~~
15 ~~the Bank of North Dakota shall provide loans to political subdivisions for essential~~
16 ~~infrastructure projects. The Bank shall administer the infrastructure revolving loan~~
17 ~~fund. The maximum term of a loan made under this section is thirty years. A loan~~
18 ~~made from the fund under this section must have an interest rate that does not exceed~~
19 ~~two percent per year.~~
- 20 2. ~~For purposes of this section, "essential infrastructure projects" means capital~~
21 ~~construction projects for the following:~~
- 22 a. ~~New or replacement of existing water treatment plants;~~
- 23 b. ~~New or replacement of existing wastewater treatment plants;~~
- 24 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 **Infrastructure revolving loan fund - Bank of North Dakota - Continuing appropriation.**

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

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

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

11 4. An applicant shall issue an evidence of indebtedness as authorized by law. An
12 institution of higher education shall identify at least one funding source for the debt
13 repayment, including:

- 14 a. Tuition or fee revenue collected by the institution of higher education;
- 15 b. Distributions of state aid received by the institution of higher education under
16 chapter 15-18.2; or
- 17 c. Other sources of revenue.

18 5. In processing loan applications under this section, the Bank shall calculate the
19 maximum loan amount available to a qualified applicant. Each applicant may have up
20 to twenty-five million dollars of outstanding loans from the fund for infrastructure
21 projects under subsections 6 and 8. The Bank shall consider the ability of the applicant
22 to repay the loan when processing the application and shall issue loans only to
23 applicants that provide reasonable assurance of sufficient future income to repay the
24 loan. If an infrastructure project qualifies for funding through the state revolving fund
25 established pursuant to chapters 61-28.1 and 61-28.2, the Bank shall verify the loan
26 application only is for the portion of the project that is ineligible to receive funding from
27 the state revolving fund.

28 6. Eligible infrastructure projects for political subdivision utility and transportation projects
29 are capital construction projects to construct new infrastructure or to replace existing
30 infrastructure, which provide the fixed installations necessary for the function of a

1 political subdivision and are in the public interest. Capital construction projects exclude
2 routine maintenance and repair projects, but include the following:

3 a. Water treatment plants;

4 b. Wastewater treatment plants;

5 c. Sewer lines and water lines, including lift stations and pumping systems;

6 d. Water storage systems, including dams, water tanks, and water towers;

7 e. Storm water infrastructure, including curb and gutter construction;

8 f. Road and bridge infrastructure, including paved and unpaved roads and bridges;

9 g. Airport infrastructure;

10 h. Electricity transmission infrastructure;

11 i. Natural gas transmission infrastructure; and

12 j. Communications infrastructure.

13 7. Eligible infrastructure projects for political subdivision water projects are capital
14 construction projects to construct new infrastructure or to replace existing
15 infrastructure, which provide the fixed installations necessary for the function of a
16 political subdivision and are in the public interest. Capital construction projects exclude
17 routine maintenance and repair projects, but include the following:

18 a. Flood control;

19 b. Water supply; and

20 c. Water management.

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

26 a. Sewer lines and water lines;

27 b. Storm water infrastructure, including curb and gutter construction; and

28 c. Road infrastructure.

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

1 **6-09.4-06. Lending and borrowing powers generally.**

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

24 2. The public finance authority may lend or transfer money to the Bank of North Dakota
25 underas follows:
26 a. Under terms and conditions requiring the Bank to use the proceeds to make
27 loans for agricultural improvements that qualify for assistance under the revolving
28 loan fund program established byunder chapter 61-28.2; and
29 b. Under terms and conditions requiring the Bank to use the proceeds to make
30 loans for infrastructure projects that qualify for assistance under the infrastructure
31 revolving loan fund established under section 6-09-49. Bonds issued for this

1 purpose are payable in each biennium solely from amounts the legislative
2 assembly may appropriate for debt service for any biennium or from a reserve
3 fund established for the bonds. This section may not be construed to require the
4 state to appropriate funds sufficient to make debt service payments with respect
5 to the bonds or replenish a related reserve fund. The bonds are not a debt of the
6 department of transportation or the state, and the full faith, credit, and taxing
7 powers of the state are not pledged to the payment of the bonds. The obligation
8 of the public finance authority with respect to the bonds must terminate and the
9 bonds are no longer outstanding as of the date appropriated funds and reserves
10 are not sufficient to pay debt service on the bonds. In addition to providing funds
11 for transfers to the department of transportation, the public finance authority may
12 use the bond proceeds to pay the costs of issuance of the bonds and establish a
13 reserve fund for the bonds.

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

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

30 **SECTION 3. AMENDMENT.** Section 6-09.4-10 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **6-09.4-10. Reserve fund.**

2 1. The public finance authority shall establish and maintain a reserve fund in which there
3 must be deposited all moneys appropriated by the state for the purpose of the fund, all
4 proceeds of bonds required to be deposited therein by terms of any contract between
5 the public finance authority and its bondholders or any resolution of the public finance
6 authority with respect to the proceeds of bonds, any other moneys or funds of the
7 public finance authority which it determines to deposit therein, any contractual right to
8 the receipt of moneys by the public finance authority for the purpose of the fund,
9 including a letter of credit or similar instrument, and any other moneys made available
10 to the public finance authority only for the purposes of the fund from any other source
11 or sources. Moneys in the reserve fund must be held and applied solely to the
12 payment of the interest on and the principal of bonds and sinking fund payments as
13 the same become due and payable and for the retirement of bonds, including payment
14 of any redemption premium required to be paid when any bonds are redeemed or
15 retired prior to maturity. Moneys in the reserve fund may not be withdrawn therefrom if
16 the withdrawal would reduce the amount in the reserve fund to an amount less than
17 the required debt service reserve, except for payment of interest then due and payable
18 on bonds and the principal of bonds then maturing and payable and sinking fund
19 payments and for the retirement of bonds in accordance with the terms of any contract
20 between the public finance authority and its bondholders and for the payments on
21 account of which interest or principal or sinking fund payments or retirement of bonds,
22 other moneys of the public finance authority are not then available in accordance with
23 the terms of the contract. The required debt service reserve must be an aggregate
24 amount equal to at least the largest amount of money required by the terms of all
25 contracts between the public finance authority and its bondholders to be raised in the
26 then current or any succeeding calendar year for the payment of interest on and
27 maturing principal of outstanding bonds, and sinking fund payments required by the
28 terms of any contracts to sinking funds established for the payment or redemption of
29 the bonds.

30 2. If the establishment of the reserve fund for an issue or the maintenance of an existing
31 reserve fund at a required level under this section would necessitate the investment of

1 all or any portion of a new reserve fund or all or any portion of an existing reserve fund
2 at a restricted yield, because to not restrict the yield may cause the bonds to be
3 taxable under the Internal Revenue Code, then at the discretion of the public finance
4 authority no reserve fund need be established prior to the issuance of bonds or the
5 reserve fund need not be funded to the levels required by other subsections of this
6 section or an existing reserve fund may be reduced.

7 3. No bonds may be issued by the public finance authority unless there is in the reserve
8 fund the required debt service reserve for all bonds then issued and outstanding and
9 the bonds to be issued. Nothing in this chapter prevents or precludes the public
10 finance authority from satisfying the foregoing requirement by depositing so much of
11 the proceeds of the bonds to be issued, upon their issuance, as is needed to achieve
12 the required debt service reserve. The public finance authority may at any time issue
13 its bonds or notes for the purpose of providing any amount necessary to increase the
14 amount in the reserve fund to the required debt service reserve, or to meet such
15 higher or additional reserve as may be fixed by the public finance authority with
16 respect to such fund.

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

25 5. If the maturity of a series of bonds of the public finance authority is three years or less
26 from the date of issuance of the bonds, the public finance authority may determine that
27 no reserve fund need be established for that respective series of bonds. If such a
28 determination is made, holders of that respective series of bonds may have no interest
29 in or claim on existing reserve funds established for the security of the holders of
30 previously issued public finance authority bonds, and may have no interest in or claim

1 on reserve funds established for the holders of subsequent issues of bonds of the
2 public finance authority.

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

5 a. Under section 6-09.4-06:

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

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

8 **SECTION 4.** Section 6-09.4-28 of the North Dakota Century Code is created and enacted
9 as follows:

10 **6-09.4-28. Debt service requirements - Infrastructure revolving loan fund - Legacy**
11 **fund earnings.**

12 Each biennium, the public finance authority shall request from the legislative assembly an
13 appropriation from the general fund to meet the debt service requirements for evidences of
14 indebtedness issued by the authority to support the infrastructure revolving loan fund.

15 **SECTION 5. AMENDMENT.** Subsection 6 of section 21-03-07 of the North Dakota Century
16 Code is amended and reenacted as follows:

17 6. The governing body of any county may also by resolution adopted by a two-thirds vote
18 dedicate the tax levy authorized by section 57-15-06.6 and subsection 5 of
19 section 57-15-06.7 and may authorize and issue general obligation bonds to be paid
20 by the dedicated levy for the ~~purpose of providing funds for the purchase, construction,~~
21 ~~reconstruction, or repair of regional or county correction centers, or parks and~~
22 ~~recreational facilities~~ purposes identified under section 57-15-06.6 and subsection 5 of
23 section 57-15-06.7; provided, that the initial resolution authorizing the tax levy
24 dedication and general obligation bonds must be published in the official newspaper,
25 and any owner of taxable property within the county may, within sixty days after
26 publication, file with the county auditor a protest against the adoption of the resolution.
27 Protests must be in writing and must describe the property which is the subject of the
28 protest. If the governing body finds such protests to have been signed by the owners
29 of taxable property having an assessed valuation equal to five percent or more of the
30 assessed valuation of all taxable property within the county, as theretofore last finally
31 equalized, all further proceedings under the initial resolution are barred.

1 **SECTION 6. AMENDMENT.** Section 21-03-19 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **21-03-19. Bonds - Terms.**

4 Bonds issued under this chapter must be authorized by resolution, bear such date or dates,
5 be in such denomination or denominations, be in such form, be subject to redemption with or
6 without premium, and be subject to such other terms or conditions as in the judgment of the
7 municipality are in the public interest of the municipality, and must provide that the last
8 installment of principal falls due not more than twenty years from the date of the bonds or not
9 more than thirty years for bonds sold to the entities under section 21-03-30. The requirements
10 of this section apply to each new issue of bonds, or if so determined by the governing body, to
11 the bonds of a new issue combined with all of the outstanding bonds of one or more designated
12 issues of bonds previously issued and similarly payable from taxes or other sources of
13 revenues, or both, as the case may be.

14 **SECTION 7. AMENDMENT.** Section 57-15-06.6 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **57-15-06.6. County capital projects levy.**

17 1. The board of county commissioners of each county may levy an annual tax not
18 exceeding ten mills plus any voter-approved additional levy as provided in
19 subsection 8 of section 57-15-06.7 for the purpose of the following capital projects:

- 20 ~~1.~~ a. Constructing and equipping and maintaining structural and mechanical
21 components of regional or county corrections centers or for the purpose of
22 contracting for corrections center space capacity from another public or private
23 entity.
- 24 ~~2.~~ b. Acquiring real estate as a site for public parks and construction and equipping
25 and maintaining structural and mechanical components of recreational facilities
26 under section 11-28-06.
- 27 ~~3.~~ c. Acquiring real estate as a site for county buildings and operations and
28 constructing and equipping and maintaining structural and mechanical
29 components of county buildings and property.

- 1 4. d. Acquiring real estate as a site for county fair buildings and operations and
2 constructing and equipping and maintaining structural and mechanical
3 components of county fair buildings and property as provided in section 4-02-26.
- 4 5. e. Acquiring and developing real estate, capital improvements, buildings, pavement,
5 equipment, and debt service associated with financing for county supported
6 airports or airport authorities.
- 7 6. f. Expenditures for the cost of leasing as an alternative means of financing for any
8 of the purposes for which expenditures are authorized under subsections 1
9 through 5.
- 10 g. Improvement of the county road system, including the acquisition of land,
11 construction of new paved and unpaved roads and bridges, replacement of
12 existing paved and unpaved roads and bridges, and maintenance and repair of
13 existing paved and unpaved roads and bridges.
- 14 2. Any voter-approved levy for the purposes specified in this section approved by the
15 electors before January 1, 2015, remains effective through 2024 or the period of time
16 for which it was approved by the electors, whichever is less, under the provisions of
17 law in effect at the time it was approved. After January 1, 2015, approval or
18 reauthorization by electors of increased levy authority under this section may not be
19 effective for more than ten taxable years.

20 **SECTION 8. AMENDMENT.** Section 57-47-02 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **57-47-02. County authorized to borrow - Term - Interest rate.**

23 Whenever in the judgment of the board of county commissioners all taxes authorized to be
24 levied in any one year for general or special county purposes are insufficient to carry on the
25 primary governmental functions, or to pay the mandatory obligations imposed by law upon a
26 county, then such a county may borrow money in such an amount as the board shall determine
27 to be necessary to meet the deficiencies existing in its general or special funds, or to carry on
28 primary governmental functions, and to pay mandatory obligations. For the purpose of
29 borrowing, a county may issue evidences of indebtedness, which must consist of an agreement
30 by the county to pay a stated sum on a specified date, or on or before a specified date, not
31 more than ~~five~~twenty years in the future, together with interest thereon at a rate or rates

1 resulting in an average annual net interest cost not to exceed twelve percent per annum if sold
2 privately, or with no interest rate ceiling if sold at a public sale or to the state of North Dakota or
3 any of its agencies or instrumentalities. A public sale must comply with the procedures set out in
4 chapter 21-03. There is no requirement for an advertisement for bids if an evidence of
5 indebtedness is sold privately or to the state of North Dakota or any of its agencies or
6 instrumentalities.

7 **SECTION 9. REPEAL.** Section 61-02-78 of the North Dakota Century Code is repealed.

8 **SECTION 10. TRANSFER INFRASTRUCTURE REVOLVING LOAN FUND FOR WATER**
9 **PROJECTS TO INFRASTRUCTURE REVOLVING LOAN FUND.** The Bank of North Dakota
10 shall transfer any outstanding loans from the infrastructure revolving loan fund under section
11 61-02-78 to the infrastructure revolving loan fund during the biennium beginning July 1, 2019,
12 and ending June 30, 2021.

13 **SECTION 11. PUBLIC FINANCE AUTHORITY - BOND ISSUANCE LIMITATION.** Pursuant
14 to the bonding authority under section 6-09.4-06, the public finance authority may issue up to
15 \$500,000,000 of evidences of indebtedness, but not in an amount that would cause the
16 repayments to exceed \$55,000,000 per biennium, for the purpose of supporting the
17 infrastructure revolving loan fund during the biennium beginning July 1, 2019, and ending
18 June 30, 2021. The term of any evidences of indebtedness issued under this section may not
19 exceed thirty years.

20 **SECTION 12. APPROPRIATION - BANK OF NORTH DAKOTA - LINE OF CREDIT.** The
21 Bank of North Dakota may extend a line of credit, not to exceed \$100,000,000, to the
22 infrastructure revolving loan fund established under section 6-09-49. The Bank may access the
23 line of credit, to the extent necessary, the sum of which is appropriated, for the purpose of
24 financing loans under the infrastructure revolving loan fund prior to a bond issuance by the
25 public finance authority, for the biennium beginning July 1, 2019, and ending June 30, 2021. The
26 interest rate associated with the line of credit must be the same as the prevailing interest rate
27 charged by the Bank to North Dakota governmental entities. The Bank shall repay the line of
28 credit from bond proceeds associated with the bonds issued by the public finance authority to
29 support the infrastructure revolving loan fund.

30 **SECTION 13. APPROPRIATION.** There is appropriated out of any moneys in the general
31 fund in the state treasury, not otherwise appropriated, the sum of \$26,000,000, or so much of

1 the sum as may be necessary, to the public finance authority for the purpose of debt service
2 repayments associated with bonds issued to support the infrastructure revolving loan fund, for
3 the biennium beginning July 1, 2019, and ending June 30, 2021.

4 **SECTION 14. EFFECTIVE DATE.** Section 9 of this Act becomes effective July 1, 2021.