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Sixty-sixth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2275

Introduced by

Senators Wardner, Cook, Robinson

Representatives Lefor, Nathe, Porter

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

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

~~a.~~ ~~New or replacement of existing water treatment plants;~~

~~b.~~ ~~New or replacement of existing wastewater treatment plants;~~

~~c.~~ ~~New or replacement of existing sewer lines and water lines; and~~

~~d. New or replacement of existing storm water and transportation infrastructure, including curb and gutter construction.~~

~~3. In processing political subdivision loan applications under this section, the Bank shall calculate the maximum loan amount for which a qualified applicant may qualify, not to exceed fifteen million dollars per loan. The Bank shall consider the applicant's ability to repay the loan when processing the application and shall issue loans only to applicants that provide reasonable assurance of sufficient future income to repay the loan.~~

~~4. The Bank shall deposit in the infrastructure revolving loan fund all payments of interest and principal paid under loans made from the infrastructure revolving loan fund. The Bank may use a portion of the interest paid on the outstanding loans as a servicing fee to pay for administrative costs which may not exceed one-half of one percent of the amount of the interest payment. All moneys transferred to the fund, interest upon moneys in the fund, and payments to the fund of principal and interest are appropriated to the Bank on a continuing basis for administrative costs and for loan disbursement according to this section.~~

~~5. The Bank may adopt policies and establish guidelines to administer this loan program in accordance with the provisions of this section and to supplement and leverage the funds in the infrastructure revolving loan fund. Additionally, the Bank may adopt policies allowing participation by local financial institutions.~~

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

1. The essential infrastructure revolving loan fund is a special fund in the state treasury administered by the Bank of North Dakota. The Bank shall use moneys in the fund to provide loans to counties and cities for eligible infrastructure projects pursuant to subsections 6 and 7 and to provide loans to institutions of higher education for eligible infrastructure projects pursuant to subsection 8.

2. The Bank may adopt policies and establish guidelines to administer the loan program in accordance with this section, including policies to supplement and leverage the moneys in the fund and policies to allow participation by local financial institutions. A loan made from the fund must have an interest rate that does not exceed two percent

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

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

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

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

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

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

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

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

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

b. An applicant must identify at least one funding source for the debt repayment including:

(1) Distributions received by the county or city from the state aid distribution fund under section 57-39.2-26.1;

(2) Distributions received by the county or city from oil and gas gross production tax revenues under section 57-51-15;

(3) Taxes levied by the county or city subject to the maximum levy limit amounts under chapter 57-15, provided the taxes are irrepealable pursuant to section 21-03-15;

(4) Tuition or fee revenue collected by the institution of higher education;

(5) Distributions of state aid received by the institution of higher education under chapter 15-18.2; or

(6) Other sources of revenue; and

c. An applicant must submit a completed loan application to the Bank.

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

6. Eligible infrastructure projects for county and city utility and transportation projects are capital construction projects to construct new infrastructure or to replace existing infrastructure, which provide the fixed installations necessary for the function of a county or city and are in the public interest. Capital construction projects exclude routine maintenance and repair projects, but include the following:

a. Water treatment plants;

b. Wastewater treatment plants;

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

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

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

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

g. Airport infrastructure;

h. Electricity transmission infrastructure;

i. Natural gas transmission infrastructure; and

j. Communications infrastructure.

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

a. Flood control;

b. Water supply; and

c. Water management.

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

a. Sewer lines and water lines;

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

c. Road infrastructure.

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

c. The Bank of North Dakota for the following purposes ~~of the~~:

(1) The revolving loan fund program established ~~by~~under chapter 61-28.2; and

(2) The essential infrastructure revolving loan fund established under section 6-09-49.

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

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

1. The public finance authority may lend money to political subdivisions or other contracting parties through the purchase or holding of municipal securities which, in the opinion of the attorney general, are properly eligible for purchase or holding by the public finance authority under this chapter or chapter 40-57 and for purposes of the public finance authority's capital financing program the principal amount of any one issue does not exceed five hundred thousand dollars. However, the public finance authority may lend money to political subdivisions through the purchase of securities issued by the political subdivisions through the capital financing program without regard to the principal amount of the bonds issued, if the industrial commission approves a resolution that authorizes the public finance authority to purchase the securities. The capital financing program authorizing resolution must state that the industrial commission has determined that private bond markets will not be responsive to the needs of the issuing political subdivision concerning the securities or, if it appears that the securities can be sold through private bond markets without the involvement of the public finance authority, the authorizing resolution must state reasons for the public finance authority's involvement in the bond issue. The public finance authority may hold such municipal securities for any length of time it finds to be necessary. The public finance authority, for the purposes authorized by this chapter or chapter 40-57, may issue its bonds payable solely from the revenues available to the public finance authority which are authorized or pledged for payment of public finance authority obligations, and to otherwise assist political subdivisions or other contracting parties as provided in this chapter or chapter 40-57.
2. The public finance authority may lend money to the Bank of North Dakota ~~under~~as follows:
   a. Under terms and conditions requiring the Bank to use the proceeds to make loans for agricultural improvements that qualify for assistance under the revolving loan fund program established ~~by~~under chapter 61-28.2; and

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

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

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

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

6-09.4-10. Reserve fund.

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

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

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

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

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

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

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

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

   a. Under section 6-09.4-06;

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

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

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

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

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

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

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

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

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

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