

Fifty-fifth  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2373

Introduced by

Senator Mathern

1 A BILL for an Act to create and enact a new chapter to title 30 of the North Dakota Century  
2 Code, relating to investment in community development corporations by banks.

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

4 **SECTION 1.** A new chapter to title 30 of the North Dakota Century Code is created and  
5 enacted as follows:

6 **Organization.**

- 7 1. To the extent permitted by federal law, any three or more banks may form a  
8 community development corporation by complying with the conditions prescribed  
9 in this chapter and subscribing and acknowledging a certificate specifying:
- 10 a. The name, the general nature of its business, and the principal place of  
11 transacting its business. The name must distinguish the corporation from all  
12 other corporations authorized to do business in the state, and must contain  
13 the words "community development corporation".
- 14 b. The period of its duration, which is perpetual.
- 15 c. The name and principal business address of each incorporator.
- 16 d. The names and addresses of those composing its board until the first  
17 election.
- 18 e. The highest amount of indebtedness or liability to which the corporation may  
19 be subject.
- 20 2. The certificate may contain any other lawful provision defining the powers and  
21 business of the corporation, its officers, directors, members, and stockholders.
- 22 3. One bank may hold no more than forty-nine percent of the stock in the corporation.

23 **Purposes.** This chapter is intended to allow all banks, including state-chartered banks,  
24 the right to form community development corporations, as defined by the federal office of the

1 comptroller of the currency and the federal reserve. The purpose of the corporation is to assist  
2 communities in this state in economic development, housing, the creation of jobs for low and  
3 moderate income persons, and development of community facilities. A special emphasis is to  
4 be on rural communities.

5 **Incorporation.** Upon the filing of the articles of incorporation with the secretary of  
6 state, the secretary of state shall issue to the corporation over the great seal of the state a  
7 certificate that the articles containing the required documents have been filed in the secretary of  
8 state's office.

9 **Powers of investment corporations.** In furtherance of the purposes for which the  
10 corporation is organized, and in addition to the powers conferred by the general laws relating to  
11 business corporations, a corporation may:

- 12 1. Borrow money and otherwise incur indebtedness for any of the purposes of the  
13 corporation and issue its bonds, debentures, notes, or other evidences of  
14 indebtedness, whether secured or unsecured, therefor and secure the same by  
15 mortgage, pledge, deed of trust, or other lien on its property, franchises, rights, and  
16 privileges of every kind and nature or any part thereof.
- 17 2. Lend money to, and guarantee, endorse, or act as surety on the bonds, notes,  
18 contracts, or other obligations of, or otherwise assist financially, any person, and  
19 establish and regulate the terms with respect to any loans or financial assistance  
20 and the charges for interest and service connected with the loans or assistance.
- 21 3. Purchase, receive, hold, lease, or otherwise acquire, and sell, convey, mortgage,  
22 lease, pledge, or otherwise dispose of, upon the terms and conditions as the board  
23 of directors determines advisable, property, together with the rights and privileges  
24 incidental thereto and the use thereof, including any property acquired by the  
25 corporation from time to time in the satisfaction of debts or enforcement of  
26 obligations.
- 27 4. Acquire, by purchase or otherwise, the goodwill, business, rights, property, and  
28 other assets, or any part thereof, that may be in furtherance of the corporate  
29 purposes provided herein, and assume, undertake, guarantee, or pay the  
30 obligations, debts, and liabilities of any person; acquire improved or unimproved  
31 real estate for the purpose of constructing industrial plants or other business

1 establishments or for the purpose of disposing of the real estate to others for the  
2 construction of industrial plants or other business establishments, and, in  
3 furtherance of the corporate purposes, acquire, construct, reconstruct, maintain,  
4 operate, sell, lease, or otherwise dispose of industrial plants or business  
5 establishments.

6 5. Acquire, subscribe for, own, hold, sell, or otherwise dispose of the stock, shares,  
7 membership interests, bonds, debentures, notes, or other securities and evidences  
8 of interest in, or indebtedness of, any person and, while the owner or holder  
9 thereof, to exercise all the rights, powers, and privileges of ownership, including  
10 the right to vote.

11 6. Cooperate with and avail itself of the facilities of the department of economic  
12 development and finance and any other similar governmental agencies; and  
13 cooperate with, assist, and otherwise encourage local organizations in the various  
14 communities of the state, the purpose of which are the promotion, assistance, and  
15 development of the business prosperity and economic welfare of the communities  
16 and of this state.

17 **Board of directors.**

18 1. All the corporate powers of the corporation must be exercised by a board of no  
19 fewer than fifteen elected directors who must be residents of this state. The  
20 number of directors and their term of office must be determined in the bylaws. If  
21 any vacancy occurs in the board of directors, the remaining directors may elect a  
22 person to fill the vacancy until the next annual meeting of the corporation.

23 2. The first board of directors shall adopt bylaws, which remain effective until  
24 amended or repealed by action of the board.

25 3. The first annual meeting must be held at a date to be fixed by the board of  
26 directors as soon as reasonably possible after a minimum of twenty-five percent of  
27 the capital stock of the corporation has been paid into its treasury. The annual  
28 meeting must be called in the manner provided by the bylaws.

29 **Earned surplus.** Each year, the corporation shall set apart all of its net earnings as  
30 retained earnings. The corporation shall hold part of the retained earnings as a reserve for bad  
31 debts. The corporation may use the rest of the retained earnings in the course of its business.

1 The amount held as a reserve for bad debts must be at least the amount recommended by the  
2 firm of certified public accountants that the board of directors approves to audit the  
3 corporation's financial statements. The board shall establish procedures for investing funds  
4 held as a reserve for bad debts.

5 **Obligation limitation.** The total obligations of the corporation may not exceed twenty  
6 times the amount of the paid-in capital and surplus, not including earned surplus.

7 **Deposit of funds - Loans.** The corporation may not deposit any of its funds in any  
8 financial institution unless the institution has been designated as a depository by a vote of a  
9 majority of the directors, exclusive of any director who is an officer or director of the depository  
10 so designated. The corporation may not receive money on deposit. No loans may be made  
11 directly or indirectly to any officer of the corporation or to any firm of which the officer is a  
12 member or officer.

13 **Preemptive right not authorized.** The holders of capital stock as such have no  
14 preemptive or preferential right to purchase or subscribe for any part of the unissued capital  
15 stock of the corporation of any class or for any new issue of stock of any class, whether now or  
16 hereafter authorized or issued, or to purchase or subscribe for any bonds or other obligations,  
17 whether or not convertible into stock of any class of the corporation, now or hereafter  
18 authorized or issued.

19 **Notes or obligations - Legal investments.** Notwithstanding any other statute, the  
20 notes or other interest-bearing obligations of a state development corporation, issued in  
21 accordance with this chapter and the articles of incorporation and the bylaws of the corporation,  
22 are legal investments for any bank that becomes a member of the corporation.