

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2268

Introduced by

Senators Patten, Bekkedahl, Wardner

Representatives Kempenich, Lefor, Zubke

1 A BILL for an Act to create and enact a new subdivision to subsection 5 of section 6-09.4-03, a
2 new section to chapter 6-09.4, and a new section to chapter 24-01 of the North Dakota Century
3 Code, relating to public finance authority definitions, debt service repayments, and a corridors of
4 commerce program and fund; to amend and reenact sections 6-09.4-06 and 6-09.4-10 of the
5 North Dakota Century Code, relating to borrowing and lending authority and reserve funds; to
6 provide a bond issuance limitation; and to provide an appropriation.

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

8 **SECTION 1.** A new subdivision to subsection 5 of section 6-09.4-03 of the North Dakota
9 Century Code is created and enacted as follows:

10 The department of transportation for purposes of the corridors of commerce
11 program.

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

14 **6-09.4-06. Lending and borrowing powers generally.**

15 1. The public finance authority may lend money to political subdivisions or other
16 contracting parties through the purchase or holding of municipal securities which, in
17 the opinion of the attorney general, are properly eligible for purchase or holding by the
18 public finance authority under this chapter or chapter 40-57 and for purposes of the
19 public finance authority's capital financing program the principal amount of any one
20 issue does not exceed five hundred thousand dollars. However, the public finance
21 authority may lend money to political subdivisions through the purchase of securities
22 issued by the political subdivisions through the capital financing program without
23 regard to the principal amount of the bonds issued, if the industrial commission
24 approves a resolution that authorizes the public finance authority to purchase the

1 securities. The capital financing program authorizing resolution must state that the
2 industrial commission has determined that private bond markets will not be responsive
3 to the needs of the issuing political subdivision concerning the securities or, if it
4 appears that the securities can be sold through private bond markets without the
5 involvement of the public finance authority, the authorizing resolution must state
6 reasons for the public finance authority's involvement in the bond issue. The public
7 finance authority may hold such municipal securities for any length of time it finds to
8 be necessary. The public finance authority, for the purposes authorized by this chapter
9 or chapter 40-57, may issue its bonds payable solely from the revenues available to
10 the public finance authority which are authorized or pledged for payment of public
11 finance authority obligations, and to otherwise assist political subdivisions or other
12 contracting parties as provided in this chapter or chapter 40-57.

13 2. The public finance authority may lend money to the Bank of North Dakota under terms
14 and conditions requiring the Bank to use the proceeds to make loans for agricultural
15 improvements that qualify for assistance under the revolving loan fund program
16 established by chapter 61-28.2.

17 3. The public finance authority may lend or transfer money to the department of
18 transportation under the terms and conditions requiring the department to use the
19 proceeds for the corridors of commerce program. Bonds issued for this purpose are
20 payable in each biennium solely from amounts the legislative assembly may
21 appropriate for debt service for a biennium or from a reserve fund established for the
22 bonds. This section may not be construed to require the state to appropriate funds
23 sufficient to make debt service payments with respect to the bonds or replenish a
24 related reserve fund. The bonds are not a debt of the department of transportation or
25 the state, and the full faith, credit, and taxing powers of the state are not pledged to
26 the payment of the bonds. Upon the date appropriated funds and reserves are no
27 longer sufficient to pay debt service on bonds, the obligation of the public finance
28 authority, with respect to the bonds, terminates and the bonds are no longer
29 outstanding. In addition to providing funds for transfers to the department of
30 transportation, the public finance authority may use the bond proceeds to pay the
31 costs of issuance of the bonds and establish a reserve fund for the bonds.

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

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

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

19 **6-09.4-10. Reserve fund.**

20 1. The public finance authority shall establish and maintain a reserve fund in which there
21 must be deposited all moneys appropriated by the state for the purpose of the fund, all
22 proceeds of bonds required to be deposited therein by terms of any contract between
23 the public finance authority and its bondholders or any resolution of the public finance
24 authority with respect to the proceeds of bonds, any other moneys or funds of the
25 public finance authority which it determines to deposit therein, any contractual right to
26 the receipt of moneys by the public finance authority for the purpose of the fund,
27 including a letter of credit or similar instrument, and any other moneys made available
28 to the public finance authority only for the purposes of the fund from any other source
29 or sources. Moneys in the reserve fund must be held and applied solely to the
30 payment of the interest on and the principal of bonds and sinking fund payments as
31 the same become due and payable and for the retirement of bonds, including payment

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

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

25 3. No bonds may be issued by the public finance authority unless there is in the reserve
26 fund the required debt service reserve for all bonds then issued and outstanding and
27 the bonds to be issued. Nothing in this chapter prevents or precludes the public
28 finance authority from satisfying the foregoing requirement by depositing so much of
29 the proceeds of the bonds to be issued, upon their issuance, as is needed to achieve
30 the required debt service reserve. The public finance authority may at any time issue
31 its bonds or notes for the purpose of providing any amount necessary to increase the

1 amount in the reserve fund to the required debt service reserve, or to meet such
2 higher or additional reserve as may be fixed by the public finance authority with
3 respect to such fund.

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

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

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

22 a. Under section 6-09.4-06;

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

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

25 **SECTION 4.** A new section to chapter 6-09.4 of the North Dakota Century Code is created
26 and enacted as follows:

27 **Debt service requirements - Corridors of commerce program.**

28 Each biennium, the public finance authority shall request from the legislative assembly an
29 appropriation from the general fund to meet the debt service requirements for evidences of
30 indebtedness issued by the authority for the corridors of commerce program.

1 **SECTION 5.** A new section to chapter 24-01 of the North Dakota Century Code is created
2 and enacted as follows:

3 **Corridors of commerce program - Corridors of commerce fund.**

- 4 1. The department shall administer a corridors of commerce program for constructing,
5 reconstructing, improving, and maintaining highways that improve freight
6 transportation and facilitate commerce.
- 7 2. The corridors of commerce fund is a special fund in the state treasury administered by
8 the department. Pursuant to legislative appropriations, the department shall use
9 moneys in the fund for eligible highway projects in accordance with provisions of this
10 section.
- 11 3. To be eligible for funding under this section:
- 12 a. Any construction work associated with the project must begin within three years
13 after the department selects the project for funding, unless the department grants
14 an exemption; and
- 15 b. The highway project must meet at least one of the following criteria:
- 16 (1) The project is a segment of highway with the following characteristics:
- 17 (a) The existing segment is not a divided highway;
- 18 (b) At least one end of the segment connects to an expressway or
19 freeway; and
- 20 (c) The segment will connect to a proposed or existing interchange;
- 21 (2) The project will ease the movement of freight traffic;
- 22 (3) The project will improve safety on the highway;
- 23 (4) The project will allow oversized or overweight vehicles to use the highway
24 after completion;
- 25 (5) The project will provide increased connectivity between areas of significant
26 commerce; or
- 27 (6) The highway is or will be designated as national high priority corridor of
28 connectivity.
- 29 4. When evaluating eligible projects for funding under this section, the department shall
30 score each eligible project, make the scores available to the public, and consider:
- 31 a. The return on investment;

- 1 b. Measurable improvements in commerce and economic competitiveness;
- 2 c. Efficiency in traffic flow based on average daily traffic counts, commercial vehicle
- 3 miles traveled, and travel times;
- 4 d. Safety improvements;
- 5 e. Connections to regional trade centers or other modes of transportation; and
- 6 f. Community support for the project.
- 7 5. The funding provided to an eligible highway project may be used to plan, construct,
- 8 replace, improve, or maintain the highway.

9 **SECTION 6. PUBLIC FINANCE AUTHORITY - BOND ISSUANCE LIMITATION.** Pursuant
10 to the bonding authority under section 6-09.4-06, the public finance authority may issue up to
11 \$100,000,000 of evidences of indebtedness, but not in an amount that would cause the
12 repayments to exceed \$16,000,000 per biennium, for the purpose of the corridors of commerce
13 program during the biennium beginning July 1, 2019, and ending June 30, 2021. The term of
14 any evidences of indebtedness issued under this section may not exceed thirty years.

15 **SECTION 7. APPROPRIATION.** There is appropriated out of any moneys in the corridors of
16 commerce fund in the state treasury, not otherwise appropriated, the sum of \$100,000,000, or
17 so much of the sum as may be necessary, to the department of transportation for eligible
18 highway projects under the corridors of commerce program, for the biennium beginning July 1,
19 2019, and ending June 30, 2021.