

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

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

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

16           **SECTION 7. APPROPRIATION - EXEMPTION.** There is appropriated out of any moneys in  
17 the corridors of commerce fund in the state treasury, not otherwise appropriated, the sum of  
18 \$100,000,000, or so much of the sum as may be necessary, to the department of transportation  
19 for eligible highway projects under the corridors of commerce program, for the biennium  
20 beginning July 1, 2019, and ending June 30, 2021. The funding provided under this section is  
21 not subject to section 54-44.1-11.

22           **SECTION 8. APPROPRIATION.** There is appropriated out of any moneys in the general  
23 fund in the state treasury, not otherwise appropriated, the sum of \$4,000,000, or so much of the  
24 sum as may be necessary, to the public finance authority for the purpose of debt service  
25 repayments associated with bonds issued to support the corridors of commerce fund, for the  
26 biennium beginning July 1, 2019, and ending June 30, 2021.