FIRST ENGROSSMENT

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:
- 10The department of transportation for purposes of the corridors of commerce11program.
- SECTION 2. AMENDMENT. Section 6-09.4-06 of the North Dakota Century Code is
 amended and reenacted as follows:

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

15 The public finance authority may lend money to political subdivisions or other 1. 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

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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 <u>3.</u> 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 <u>costs of issuance of the bonds and establish a reserve fund for the bonds.</u>

1 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:

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6-09.4-10. Reserve fund.

20 The public finance authority shall establish and maintain a reserve fund in which there 1. 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.
- 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 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 <u>6.</u> The industrial commission may determine that this section is inapplicable in whole or
 21 in part for bonds issued <u>under sectionas follows:</u>
- 22 <u>a.</u> <u>Under section 6-09.4-06;</u>
- 23 b. <u>Under section</u> 6-09.4-24; or under
- 24

c. <u>Under</u> the public finance authority's state revolving fund program.

SECTION 4. A new section to chapter 6-09.4 of the North Dakota Century Code is created
 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:

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3	<u>Cc</u>	orri	ridors of commerce program - Corridors of commerce fund.						
4	<u>1.</u>		The department shall administer a corridors of commerce program for constructing.						
5			reco	onstru	ucting,	improving, and maintaining highways that improve freight			
6			transportation and facilitate commerce.						
7	<u>2.</u>		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	<u>3.</u>		To be eligible for funding under this section:						
12			<u>a.</u>	<u>Any</u>	<u>const</u>	ruction work associated with the project must begin within three years			
13				<u>afte</u>	r the c	lepartment selects the project for funding, unless the department grants			
14				<u>an e</u>	exemp	tion; and			
15			<u>b.</u>	<u>The</u>	highv	vay project must meet at least one of the following criteria:			
16				<u>(1)</u>	The	project is a segment of highway with the following characteristics:			
17					<u>(a)</u>	The existing segment is not a divided highway;			
18					<u>(b)</u>	At least one end of the segment connects to an expressway or			
19						freeway; and			
20					<u>(c)</u>	The segment will connect to a proposed or existing interchange;			
21				<u>(2)</u>	The	project will ease the movement of freight traffic;			
22				<u>(3)</u>	The	project will improve safety on the highway;			
23				<u>(4)</u>	The	project will allow oversized or overweight vehicles to use the highway			
24					<u>after</u>	completion:			
25				<u>(5)</u>	The	project will provide increased connectivity between areas of significant			
26					<u>com</u>	merce; or			
27				<u>(6)</u>	The	highway is or will be designated as national high priority corridor of			
28					<u>conr</u>	ectivity.			
29	<u>4.</u>	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			<u>a.</u>	<u>The</u>	returr	n on investment;			

	<u>b.</u>	Measurable improvements in commerce and economic competitiveness;						
	<u>C.</u>	Efficiency in traffic flow based on average daily traffic counts, commercial vehicle						
		miles traveled, and travel times;						
	<u>d.</u>	Safety improvements:						
	<u>e.</u>	Connections to regional trade centers or other modes of transportation; and						
	<u>f.</u>	Community support for the project.						
<u>5.</u>	<u>The</u>	funding provided to an eligible highway project may be used to plan, construct,						
	replace, improve, or maintain the highway.							
SECTION 6. 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								
\$100,000,000 of evidences of indebtedness, but not in an amount that would cause the								
repayments to exceed \$16,000,000 per biennium, for the purpose of the corridors of commerce								
program 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 thirty years.								
SEC	стю	N 7. APPROPRIATION. There is appropriated out of any moneys in the corridors of						
commer	rce fu	nd in the state treasury, not otherwise appropriated, the sum of \$100,000,000, or						
so much	n of tł	ne sum as may be necessary, to the department of transportation for eligible						
highway projects under the corridors of commerce program, for the biennium beginning July 1,								
2019, ai	nd er	ding June 30, 2021.						
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