

CHAPTER 15.1-36 SCHOOL CONSTRUCTION

15.1-36-01. School construction projects - Approval.

1. Notwithstanding the powers and duties of school boards provided by law, the superintendent of public instruction shall approve the construction, purchase, repair, improvement, modernization, or renovation of any public school building or facility before commencement of the project if the cost of the project, as estimated by the school board, is in excess of one hundred fifty thousand dollars.
2. The superintendent of public instruction may not approve a project unless the school district proposing the project:
 - a. Demonstrates the need for the project and the educational utility of the project or demonstrates potential utilization of the project by a future reorganized school district;
 - b.
 - (1) Demonstrates that the student population has been stable or has increased during the preceding five school years and is expected to be stable or to increase during the ensuing five school years; or
 - (2) Demonstrates by clear and convincing evidence that, despite a declining student population, there are no feasible alternatives to the proposed project; and
 - c. Demonstrates the capacity to pay for the project under rules adopted by the superintendent of public instruction pursuant to chapter 28-32.
3.
 - a. If the superintendent of public instruction denies the project, the school board may appeal the superintendent's decision to the state board of public school education. In considering the appeal, the state board shall review:
 - (1) The need for the project;
 - (2) The educational utility of the project;
 - (3) The potential use of the project by a future reorganized school district;
 - (4) The capacity of the district to pay for the project; and
 - (5) Any other objective factors relative to the appeal.
 - b. The decision of the state board is final.
4. This section is applicable to any construction, purchase, repair, improvement, renovation, or modernization.
5. For purposes of this chapter, "facility" includes a public school parking lot, public school athletic complex, or any other improvement to real property owned by the school district.

15.1-36-02. Coal development trust fund - Board of university and school lands - School construction projects - Unanticipated construction projects and emergency repairs - Loans. (Effective through June 30, 2024) (Retroactive application - [See note](#))

1. Up to sixty million dollars from the coal development trust fund is available to the board of university and school lands for loans under this section.
2. To be eligible for a loan under this section, the school district must demonstrate a need based on an unanticipated construction project, an unanticipated replacement project, an emergency repair, or a legislatively defined condition, and the board of a school district shall:
 - a. Obtain the approval of the superintendent of public instruction for the construction project under section 15.1-36-01; and
 - b. Submit to the superintendent of public instruction an application containing all information deemed necessary by the superintendent, including potential alternative sources or methods of financing the construction project.
3. The superintendent of public instruction shall consider each loan application in the order the application received approval under section 15.1-36-01.
4. If the superintendent of public instruction approves the loan, the board of university and school lands shall issue a loan from the coal development trust fund.
 - a. For a loan made under this subsection:

- (1) The minimum loan amount is two hundred fifty thousand dollars and the maximum loan amount for which a school district may qualify is five million dollars;
 - (2) The term of the loan is twenty years, unless the board of the school district requests a shorter term in the written loan application; and
 - (3) The interest rate of the loan may not exceed two percent per year.
- b. During the 2023-25 biennium, a loan including additional expenses due to unanticipated construction inflation is an allowable condition under subsection 2. For a loan made under this subsection which includes additional expenses due to unanticipated construction inflation:
 - (1) The unanticipated construction inflation must have occurred for a construction project bid after January 1, 2021, and before June 30, 2024;
 - (2) The maximum loan amount for which a school district may qualify is five million dollars;
 - (3) The interest rate on the loan may not exceed two percent per year;
 - (4) The term of the loan is twenty years, unless the board of the school district requests a shorter term in the written loan application; and
 - (5) The school district may pledge revenues derived from its general fund levy authority or other sources of revenue authorized by law.
5.
 - a. If a school district seeking a loan under this section received an allocation of the oil and gas gross production tax during the previous fiscal year in accordance with chapter 57-51, the board of the district shall provide to the board of university and school lands, and to the state treasurer, its evidence of indebtedness indicating the loan originated under this section.
 - b. If the evidence of indebtedness is payable solely from the school district's allocation of the oil and gas gross production tax in accordance with section 57-51-15, the loan does not constitute a general obligation of the school district and may not be considered a debt of the district.
 - c. If a loan made to a school district is payable solely from the district's allocation of the oil and gas gross production tax in accordance with section 57-51-15, the terms of the loan must require the state treasurer withhold the dollar amount or percentage specified in the loan agreement, from each of the district's oil and gas gross production tax allocations, in order to repay the principal and interest of the evidence of indebtedness. The state treasurer shall deposit the amount withheld into the fund from which the loan originated.
 - d. Any evidence of indebtedness executed by the board of a school district under this subsection is a negotiable instrument and not subject to taxation by the state or any political subdivision of the state.
6. For purposes of this section, a "construction project" means the purchase, lease, erection, or improvement of any structure or facility by a school board, provided the acquisition or activity is within a school board's authority.

Coal development trust fund - Board of university and school lands - School construction projects - Unanticipated construction projects and emergency repairs - Loans. (Effective after June 30, 2024)

1. Up to sixty million dollars from the coal development trust fund is available to the board of university and school lands for loans under this section.
2. To be eligible for a loan under this section, the school district must demonstrate a need based on an unanticipated construction project, an unanticipated replacement project, an emergency repair, or a legislatively defined condition, and the board of a school district shall:
 - a. Obtain the approval of the superintendent of public instruction for the construction project under section 15.1-36-01; and
 - b. Submit to the superintendent of public instruction an application containing all information deemed necessary by the superintendent, including potential alternative sources or methods of financing the construction project.

3. The superintendent of public instruction shall consider each loan application in the order the application received approval under section 15.1-36-01.
4. If the superintendent of public instruction approves the loan, the board of university and school lands shall issue a loan from the coal development trust fund.
For a loan made under this section:
 - a. The minimum loan amount is two hundred fifty thousand dollars and the maximum loan amount for which a school district may qualify is five million dollars;
 - b. The term of the loan is twenty years, unless the board of the school district requests a shorter term in the written loan application; and
 - c. The interest rate of the loan may not exceed two percent per year.
5.
 - a. If a school district seeking a loan under this section received an allocation of the oil and gas gross production tax during the previous fiscal year in accordance with chapter 57-51, the board of the district shall provide to the board of university and school lands, and to the state treasurer, its evidence of indebtedness indicating the loan originated under this section.
 - b. If the evidence of indebtedness is payable solely from the school district's allocation of the oil and gas gross production tax in accordance with section 57-51-15, the loan does not constitute a general obligation of the school district and may not be considered a debt of the district.
 - c. If a loan made to a school district is payable solely from the district's allocation of the oil and gas gross production tax in accordance with section 57-51-15, the terms of the loan must require the state treasurer withhold the dollar amount or percentage specified in the loan agreement, from each of the district's oil and gas gross production tax allocations, in order to repay the principal and interest of the evidence of indebtedness. The state treasurer shall deposit the amount withheld into the fund from which the loan originated.
 - d. Any evidence of indebtedness executed by the board of a school district under this subsection is a negotiable instrument and not subject to taxation by the state or any political subdivision of the state.
6. For purposes of this section, a "construction project" means the purchase, lease, erection, or improvement of any structure or facility by a school board, provided the acquisition or activity is within a school board's authority.

15.1-36-02.1. School construction projects - Reorganized districts - Interest subsidy.

Repealed by S.L. 2017, ch. 368, § 9.

15.1-36-03. School construction project loans - Management by Bank of North Dakota.

Repealed by S.L. 2017, ch. 368, § 9.

15.1-36-04. Evidences of indebtedness. (Retroactive application - [See note](#))

Except as otherwise provided in this chapter, the board of a school district may issue and sell evidences of indebtedness under chapter 21-02 or 21-03 to finance the construction or improvement of a project approved under this chapter. The principal amount of the loan and the evidences of indebtedness to repay the loan may not exceed the loan amount for which the district is eligible under this chapter. Evidences of indebtedness issued under this chapter or chapter 21-03 constitute a general obligation of the school district.

15.1-36-05. Construction of public school building - Violations - Penalty.

1. A person is guilty of an infraction if the person:
 - a. Draws plans or specifications for the construction of a public school building or facility in violation of this chapter;
 - b. Superintends the construction of a public school building or facility in violation of this chapter;

- c. Constructs a public school building or facility in violation of this chapter; or
 - d. Violates any other provision of this chapter.
2. A member of a school board is guilty of an infraction if the member concurred in a violation of this chapter by the board.

15.1-36-06. School construction loans - Bank of North Dakota.

Repealed by S.L. 2017, ch. 368, § 10.

15.1-36-07. School construction loans - Bank of North Dakota.

Repealed by S.L. 2017, ch. 368, § 9.

15.1-36-08. School construction assistance revolving loan fund - Bank of North Dakota - School construction projects - Continuing appropriation.

1. The school construction assistance revolving loan fund is a special revolving loan fund administered by the Bank of North Dakota. The fund consists of all moneys appropriated or transferred to the fund by the legislative assembly, all interest or other earnings of the fund, and all repayments of loans made from the fund.
2. Moneys in the fund, interest upon the moneys in the fund, and payments to the fund of principal and interest are appropriated to the Bank of North Dakota on a continuing basis for the purpose of providing low-interest school construction loans and for paying administrative costs, in accordance with this section.
3. To be eligible for a loan under this section, the board of a school district shall:
 - a. Propose a new construction or remodeling project with a cost of at least one million dollars and an expected utilization of at least thirty years;
 - b. Obtain the approval of the superintendent of public instruction for the project under section 15.1-36-01;
 - c. (1) Publish in the official newspaper of the district the information regarding the proposed estimated additional millage and the dollar increase per one thousand dollars of taxable valuation in accordance with section 21-03-13 along with the notice of the election in accordance with section 21-03-12 or along with the initial resolution in accordance with subsection 7 of section 21-03-07; and
(2) Post the information on the school district's website before the date of the election or during the protest period in accordance with chapter 21-03;
 - d. Receive authorization for a bond issue in accordance with chapter 21-03; and
 - e. Submit a completed application to the Bank of North Dakota.
4. The superintendent of public instruction shall review loan applications based on a prioritization system that includes a review of all applications filed during the twelve-month period preceding April first and gives consideration to:
 - a. Student occupancy and academic needs in the district;
 - b. The age of existing structures to be replaced or remodeled;
 - c. Building design proposals that are based on safety and vulnerability assessments;
 - d. Community support;
 - e. Cost; and
 - f. Any other criteria established by the superintendent of public instruction, after consultation with an interim committee appointed by the legislative management.
5. If the superintendent of public instruction approves the loan, the Bank of North Dakota shall issue a loan from the school construction assistance revolving loan fund. For a loan made under this section:
 - a. If the school construction project totals less than seventy-five million dollars, the maximum loan amount for which a school district may qualify is fifteen million dollars. However, if a school district's unobligated general fund balance on the preceding June thirtieth exceeds the limitation under section 15.1-27-35.3, the

- loan amount under this section may not exceed eighty percent of the project's cost up to a maximum loan amount of twelve million dollars;
- b. If the school construction project totals seventy-five million dollars or more, the maximum loan amount for which a school district may qualify is thirty million dollars. However, if a school district's unobligated general fund balance on the preceding June thirtieth exceeds the limitation under section 15.1-27-35.3, the loan amount under this section may not exceed eighty percent of the project's cost up to a maximum loan amount of twenty-four million dollars;
 - c. The term of the loan is twenty years, unless the board of the school district requests a shorter term in the written loan application; and
 - d. The interest rate of the loan may not exceed two percent per year.
 - e. A district with a school construction loan secured on the open bond market may apply to refinance the loan when callable with the school construction assistance revolving loan fund under this subsection.
 - f. A district that qualifies for a loan under subdivision a, which was approved for a loan of up to ten million dollars for a construction project bid after January 1, 2021, and before June 30, 2024, may apply for a loan in an amount equal to the difference between fifteen million dollars and the amount of the approved loan. Districts qualifying under this subdivision may submit an application for additional funding to the superintendent of public instruction before August 1, 2023.
 - g. A district that qualifies for a loan under subdivision b, which was approved for a loan of up to ten million dollars for a construction project bid after January 1, 2021, and before June 30, 2024, may apply for a loan in an amount equal to the difference between thirty million dollars and the amount of the approved loan. Districts qualifying under this subdivision may submit an application for additional funding to the superintendent of public instruction before August 1, 2023.
6. The Bank may adopt policies and establish guidelines to administer this loan program in accordance with this section. The Bank of North Dakota may use a portion of the interest paid on the outstanding loans as a servicing fee to pay for administration costs which may not exceed one-half of one percent of the amount of the interest payment. The Bank of North Dakota shall deposit principal and interest payments made by school districts for loans under this section in the school construction assistance revolving loan fund. The fund must be audited annually pursuant to section 6-09-29, and the cost of the audit must be paid from the fund.