

Fifty-seventh
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1051

Introduced by

Legislative Council

(Taxation Committee)

1 A BILL for an Act to create and enact chapter 4-42, a new subsection to section 26.1-05-19, a
2 new subdivision to subsection 1 of section 57-38-01.2, a new subdivision to subsection 1 of
3 section 57-38-01.3, a new subdivision to subsection 3 of section 57-38-30.3, a new subdivision
4 to subsection 4 of section 57-38-30.3, and a new subsection to section 57-38-30.3 of the North
5 Dakota Century Code, relating to the establishment and operation of the farmers equity trust
6 fund, issuance of revenue bonds for support of the fund, investments, and income tax credits
7 for investments in bonds and deductions for interest on bonds issued for support of the fund;
8 and to provide an effective date.

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

10 **SECTION 1.** Chapter 4-42 of the North Dakota Century Code is created and enacted
11 as follows:

12 **4-42-01. Definitions.** As used in this chapter, unless the context otherwise requires:

- 13 1. "Agricultural commodity" means an agricultural crop or animal capable of being
14 raised commercially in this state.
- 15 2. "Bank" means the Bank of North Dakota.
- 16 3. "Bonds" means revenue bonds or other evidences of indebtedness issued by the
17 industrial commission under this chapter.
- 18 4. "Value-added agricultural project" means a vertically integrated enterprise
19 operated to process and market an agricultural commodity and established as a
20 legal entity with the majority of ownership interests owned by agricultural
21 commodity producers.

22 **4-42-02. Farmers equity trust fund.** The industrial commission shall establish the
23 farmers equity trust fund as a fund at the Bank of North Dakota. Moneys in the fund may be
24 used by the agricultural products utilization commission on behalf of the fund to acquire

ownership interests in value-added agricultural projects or for loans to value-added agricultural projects. A loan under this section must be secured by ownership interests in the project.

4-42-03. Industrial commission powers. The industrial commission has all powers necessary to carry out its functions under this chapter, including the power to:

1. Enter contracts or other instruments or agreements necessary or incidental to the performance of its duties and functions under this chapter including contracts, instruments, or agreements with any federal or state agency or instrumentality.
2. Sue and be sued.
3. Borrow money through the issuance and sale of bonds as provided in this chapter.
4. Invest proceeds of its bonds not needed for immediate disbursement, including any reserve funds, in investments the industrial commission determines to be prudent, subject to any agreements with the holders of bonds issued under this chapter.
5. Obtain insurance, a guarantee, or a letter of credit for payment of its bonds, including payment of premiums or other fees, from any public or private entity.
6. Consent to any modification, amendment, or other revision respecting the terms and provisions of its bonds or any legal instrument to which the industrial commission is a party, subject to any agreements with holders of bonds issued under this chapter.
7. Purchase bonds issued under this chapter out of any funds available to the commission and hold, cancel, or sell such bonds, subject to any agreements with holders of bonds issued under this chapter.

4-42-04. Agricultural products utilization commission powers. The agricultural products utilization commission has all powers necessary to carry out its functions under this chapter, including the power to:

1. Make investments in and loans to value-added agricultural projects under this chapter and charge any reasonable fees to borrowers as the commission determines to be appropriate. Preference must be given to projects that demonstrate the ability to secure insurance, guarantees, or letters of credit for repayment of investments or loans made under this chapter.

2. Prescribe and approve forms and procedures for value-added agricultural projects to apply for investments and loans under this chapter.
3. Prescribe the terms and conditions of investments and loans to be made under this chapter.
4. Establish procedures to evaluate a value-added agricultural project's relative merit, likelihood of success, and need for an investment or loan. Evaluation of relative merit must include consideration of the number of citizens of this state who would benefit from the project and the amount of benefit.
5. Establish standards for evaluation of a project's ability to secure insurance, guarantees, or letters from any public or private entity for repayment of investments or loans made under this chapter.

4-42-05. Bank of North Dakota. The industrial commission and the agricultural products utilization commission may delegate to the Bank of North Dakota and the Bank is authorized to exercise all administrative powers granted to the industrial commission and the agricultural products utilization commission under this chapter, including issuing and selling bonds and processing and reviewing applications for, and closing and servicing, investments and loans under this chapter. The Bank may not issue a letter of credit for bonds issued under this chapter.

4-42-06. Issuance and sale of bonds - Use of proceeds. The industrial commission may issue revenue bonds in such principal amounts as the industrial commission determines necessary to provide sufficient funds to carry out its powers and duties under this chapter. The proceeds must be used solely for deposit in the farmers equity trust fund and to pay costs of issuance and insurance of the bonds, pay accrued or capitalized interest or principal of the bonds, and provide any reasonably required reserve funds. The bonds must be authorized by resolution of the industrial commission and must bear the date, mature at the times, bear interest at the rates, be in the denominations, be payable from the sources, and be subject to the terms of redemption as may be provided by the resolution. The bonds may be sold at public or private sale at such times and at such prices as may be agreed to by the industrial commission. The industrial commission may provide for the refunding or refinancing of bonds under this chapter from time to time.

1 **4-42-07. Agreement with bondholders.** Any resolution of the industrial commission
2 authorizing the issuance of bonds under this chapter may contain provisions or covenants,
3 which will be a contract or agreement with the bondholders, as to:

- 4 1. Setting aside reserves or sinking funds.
- 5 2. Limiting the purposes to which the proceeds from the sale of bonds may be
6 applied and pledging the proceeds to secure the payment of the bonds.
- 7 3. Limiting the issuance of additional bonds, the terms upon which additional bonds
8 may be issued and secured, and the refunding of outstanding or other bonds.
- 9 4. Vesting in a trustee the property, rights, powers, and duties in trust as the industrial
10 commission may determine and limiting or abrogating the right of bondholders to
11 appoint a trustee or limiting the rights, powers, and duties of the trustee.
- 12 5. Defining the acts, or omissions to act, which constitute a default of the obligations
13 and duties of the industrial commission to the bondholders, and providing for the
14 rights and remedies of the bondholders in the event of a default, provided that the
15 rights and remedies must be consistent with the general laws of the state and
16 other provisions of this chapter.
- 17 6. Describing any procedure by which the terms of any contract with bondholders
18 may be amended or abrogated, the amount of bonds the holders of which must
19 consent to an amendment or abrogation, and the manner in which the consent
20 may be given.
- 21 7. Setting forth any other matter, of like or different character, which in any way
22 affects the security or protection of the bondholders.

23 **4-42-08. Reserve fund.**

- 24 1. The industrial commission shall establish and maintain a reserve fund for bonds
25 issued under this chapter. There must be deposited in the reserve fund:
 - 26 a. All bond proceeds required to be deposited in the reserve fund by the terms
27 of any contract between the industrial commission and the bondholders or by
28 the terms of any resolution of the commission concerning the use of bond
29 proceeds.
 - 30 b. Any moneys from any other source made available to the industrial
31 commission for deposit in the reserve fund.

2. Moneys in the reserve fund may be used only to make payments of the principal and interest on bonds, including any premium required to be paid when bonds are redeemed prior to maturity, and sinking fund installments as they become due and payable. Moneys in the reserve fund may only be withdrawn in conformity with the terms of any contract between the industrial commission and the bondholders or any resolution of the industrial commission concerning the use of bond proceeds.

4-42-09. Issuance of bonds to renew, pay, or refund bonds. The industrial commission may issue from time to time bonds to renew or to pay bonds issued under this chapter, including interest on those bonds, and to refund any bonds issued under this chapter by the issuance of new bonds, whether the bonds to be refunded have matured or not, and to issue bonds partly to refund outstanding bonds and partly for any other purposes permitted under this chapter. The refunding bonds may be sold and the proceeds applied to the purchase, redemption, or payment of the bonds to be refunded, or exchanged for the bonds to be refunded.

4-42-10. Payment of bonds - Not obligations of state - Payment and security. Bonds issued under this chapter are not payable from nor charged upon any funds other than the revenue pledged to the payment of the bonds. The industrial commission and the Bank are not subject to any liability on bonds issued under this chapter. Bonds issued under this chapter do not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the industrial commission or the Bank, except those agricultural enterprises owned or encumbered under this chapter. The bonds may be additionally secured by a pledge of any grant, contribution, or guarantee from the federal government, the state, or any legal entity or person. Bonds issued under this chapter are not an obligation or debt of the state. Each bond issued under this chapter must contain a statement that neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal or interest on the bond.

4-42-11. Legal investments. Bonds issued under this chapter are legal investments in which all public officers or public bodies of the state and its political subdivisions and all banks organized under the laws of the state and engaged in the business of banking may invest funds.

4-42-12. Bond authorization and sale. Bonds under this chapter must be authorized by a resolution of the industrial commission and must bear the date and mature at the time the

1 resolution provides, except that a bond may not mature more than thirty years from the date of
2 its issue. Bonds must bear interest at the rate, including rate variations; be in the
3 denominations; be in the form, either coupon or registered; carry the registration privileges; be
4 executed in the manner; be payable in the medium of payment and at the place or places; and
5 be subject to the terms of redemption, including redemption prior to maturity, as the resolution
6 provides. Provisions of other state laws relating to issuance of revenue bonds do not apply to
7 bonds issued under this chapter. Bonds issued under this chapter may be sold at public or
8 private sale at the price the industrial commission determines.

9 **4-42-13. Bond issuance and validity.** Bonds issued under the authority of this
10 chapter must be executed by a member of the industrial commission or by facsimile signature
11 and the manual signature of an authenticating agent. Any bond bearing the signature of a
12 member of the industrial commission in office on the date of execution is valid and binding for
13 all purposes for which it was issued. After issuance, all bonds issued under this chapter are
14 conclusively presumed to be fully authorized and issued under the laws of the state and any
15 person or entity is estopped from questioning their authorization, issuance, execution, sale, or
16 delivery by the industrial commission.

17 **4-42-14. Farmers equity trust fund investment tax credit.** If a taxpayer makes a
18 qualified investment in bonds issued under this chapter for the farmers equity trust fund, the
19 taxpayer is entitled to a credit against state income tax liability as determined under section
20 57-38-29, 57-38-30, or 57-38-30.3. The amount of the credit to which a taxpayer is entitled is
21 twenty percent of the amount invested during the taxable year by the taxpayer in bonds issued
22 under this chapter, subject to the following:

- 23 1. In any taxable year, a taxpayer may claim no more than fifty percent of the credit
24 under this section which is attributable to qualified investments in a single taxable
25 year. The aggregate amount of credits under this section for any taxable year may
26 not exceed fifty percent of the taxpayer's tax liability as otherwise determined
27 under chapter 57-38.
- 28 2. Any amount of credit under this section not allowed because of the limitations of
29 this section may be carried forward for up to one taxable year after the taxable
30 year in which the investment was made.

1 3. A partnership or other passthrough entity that invests in bonds issued under this
2 chapter for the farmers equity trust fund must be considered to be the taxpayer for
3 purposes of the investment limitations in this section and the amount of the credit
4 allowed with respect to an investment in the farmers equity trust fund must be
5 determined at the partnership or passthrough entity level. The amount of the total
6 credit determined at the partnership or passthrough entity level must be allowed to
7 the partners or shareholders in proportion to their respective interests in the
8 partnership or passthrough entity.

9 4. A qualified investment must be at risk in bonds issued under this chapter for the
10 farmers equity trust fund. A qualified investment must be in the form of a purchase
11 of bonds issued under this chapter. An investment for which a credit is received
12 under this section must remain in the form of bond obligations for at least three
13 years.

14 5. The tax credit under this section accrues to the taxpayer for the taxable year in
15 which full consideration for bonds issued under this chapter was received by the
16 industrial commission.

17 **4-42-15. Tax credit procedure and reporting.** To receive the tax credit provided by
18 this chapter, a taxpayer must claim the credit on the taxpayer's annual state income tax return
19 in the manner prescribed by the tax commissioner.

20 **4-42-16. Rules and administration.** The tax commissioner shall administer the
21 provisions of this chapter which relate to the income tax credits and deductions allowed under
22 this chapter and has the same powers as provided under section 57-38-56 for purposes of this
23 chapter. The industrial commission shall administer the provisions of this chapter which relate
24 to bonds issued under this chapter and the commission may adopt rules for that purpose in
25 accordance with chapter 28-32. The agricultural products utilization commission shall
26 administer the provisions of this chapter which relate to investments or loans from the farmers
27 equity trust fund and may adopt rules for that purpose in accordance with chapter 28-32.

28 **SECTION 2.** A new subsection to section 26.1-05-19 of the 1999 Supplement to the
29 North Dakota Century Code is created and enacted as follows:

30 Bonds issued under chapter 4-42.

1 **SECTION 3.** A new subdivision to subsection 1 of section 57-38-01.2 of the 1999
2 Supplement to the North Dakota Century Code is created and enacted as follows:

3 Reduced by the amount of any interest received by the taxpayer during the
4 taxable year on bonds issued under chapter 4-42 to the extent that interest
5 was included in the taxpayer's federal taxable income.

6 **SECTION 4.** A new subdivision to subsection 1 of section 57-38-01.3 of the 1999
7 Supplement to the North Dakota Century Code is created and enacted as follows:

8 Reduced by the amount of any interest received by the corporation during the
9 taxable year on bonds issued under chapter 4-42 to the extent that interest
10 was included in the corporation's federal taxable income.

11 **SECTION 5.** A new subdivision to subsection 3 of section 57-38-30.3 of the 1999
12 Supplement to the North Dakota Century Code is created and enacted as follows:

13 Interest income from bonds issued under chapter 4-42.

14 **SECTION 6.** A new subdivision to subsection 4 of section 57-38-30.3 of the 1999
15 Supplement to the North Dakota Century Code is created and enacted as follows:

16 Interest income from bonds issued under chapter 4-42.

17 **SECTION 7.** A new subsection to section 57-38-30.3 of the 1999 Supplement to the
18 North Dakota Century Code is created and enacted as follows:

19 An individual, estate, or trust is entitled to a credit against the tax determined under
20 this section for farmers equity trust fund investments as determined under section
21 4-42-14.

22 **SECTION 8. EFFECTIVE DATE.** Sections 2 through 7 of this Act are effective for
23 taxable years beginning after December 31, 2000.