

Sixty-first
Legislative Assembly
of North Dakota

HOUSE BILL NO.

Introduced by

Representative Keiser

1 A BILL for an Act to create and enact two new sections to chapter 54-17 of the North Dakota
2 Century Code, relating to an affordable housing fund; to amend and reenact sections
3 54-17-07.1 and 54-60.1-01 of the North Dakota Century Code, relating to the advisory board to
4 the industrial commission and business incentives; to create a transfer; and to provide an
5 appropriation.

6 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

7 **SECTION 1.** A new section to chapter 54-17 of the North Dakota Century Code is
8 created and enacted as follows:

9 **Affordable housing fund - Appropriation.**

- 10 1. The affordable housing fund is created as a special fund in the state treasury.
11 After a public hearing the housing finance agency shall create an annual allocation
12 plan for the distribution of the fund. At least seventy-five percent of the fund must
13 be used to benefit households with an annual income at not more than one
14 hundred percent of the area median income. At least fifty percent of the fund must
15 be used to benefit households with incomes at not more than fifty percent of the
16 area median income. The annual allocation plan must give priority to projects that
17 benefit households at not more than thirty percent of the area median income and
18 to households with special needs. The agency may collect a reasonable
19 administrative fee from the fund.
- 20 2. The agency shall adopt rules for the fund so as to address the unmet affordable
21 housing needs through loans, forgivable loans, grants, subsidies, guarantees, and
22 credit enhancements. These forms of assistance may be used solely for:
23 a. New construction, rehabilitation, or acquisition of affordable multifamily or a
24 single-family residence;

- 1 b. Gap assistance, matching funds, and accessibility improvements;
2 c. Single-family downpayment or gap assistance that does not exceed the
3 amount necessary to qualify for a loan using underwriting standards
4 acceptable for secondary market financing. To prevent the potential of
5 windfall profits, single-family downpayment or gap assistance may be subject
6 to recapture based on the level of assistance and household income; and
7 d. Rental assistance, emergency assistance, or targeted supportive services
8 designated to prevent homelessness.
- 9 3. Eligible recipients include units of local, state, and tribal government; local and
10 tribal housing authorities; community action agencies; regional planning councils;
11 and nonprofit organizations and for-profit developers of affordable housing.
12 Individuals may not receive direct assistance from the fund.
- 13 4. Any assistance that is repaid or returned is deposited in the fund and is
14 appropriated for the biennium in which it was repaid or returned.

15 **SECTION 2.** A new section to chapter 54-17 of the North Dakota Century Code is
16 created and enacted as follows:

17 **Report.** The state housing finance agency shall report to the industrial commission and
18 to the legislative council on the activities of the fund.

19 **SECTION 3. AMENDMENT.** Section 54-17-07.1 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **54-17-07.1. Advisory board - Rules.** The industrial commission shall appoint a
22 ~~six-member~~ nine-member advisory board consisting of representatives of tribal governments;
23 special needs housing advocates; housing authorities; lenders;¹ the residential real estate
24 industry, including real estate salespersons or brokers and apartment owners; builders,
25 including the mobile home and manufactured housing industry;¹ ~~and homeowners and buyers~~
26 housing consumers, and in consultation with ~~such~~ the board may adopt rules and regulations
27 for the conduct of its housing finance program which may, among other matters, establish
28 requirements for the type and purchase price of dwelling units and multifamily facilities eligible
29 to be financed, the income limits for eligible low or moderate income persons or families, the
30 interest rates and other terms of mortgage loans to be financed, requirements relating to federal

1 or private mortgage insurance or guarantees, and the general terms and conditions for the
2 issuance and security of housing revenue bonds to be issued.

3 **SECTION 4. AMENDMENT.** Section 54-60.1-01 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **54-60.1-01. Definitions.** As used in this chapter, unless the context otherwise
6 requires:

- 7 1. "Benefit date" means the date on which the recipient receives the business
8 incentive. If the business incentive involves the purchase, lease, or donation of
9 physical equipment, the benefit date is the date when the recipient puts the
10 equipment into service. If the business incentive is for improvements to property,
11 the benefit date is the earlier of either when the improvements are finished for the
12 entire project or when a business occupies the property. If a business occupies
13 the property and the business incentive grantor expects that other businesses will
14 also occupy the same property, the grantor may assign a separate benefit date for
15 each subsequent business when that subsequent business first occupies the
16 property.
- 17 2. "Business incentive" means a state or political subdivision direct cash transfer,
18 loan, or equity investment; contribution of property or infrastructure; reduction or
19 deferral of any tax or any fee; guarantee of any payment under any loan, lease, or
20 other obligation; or preferential use of government facilities given to a business. To
21 be considered a business incentive, the total assistance in all forms must be
22 valued at twenty-five thousand dollars or more committed within a year. Unless
23 specifically provided otherwise, the term does not include:
 - 24 a. Assistance that is generally available to all businesses or to a general class of
25 similar businesses, such as a line of business, size, or similar criteria.
 - 26 b. Incentives resulting from Bank of North Dakota programs unless the incentive
27 is a direct interest rate buydown or is an investment made pursuant to the
28 North Dakota alternative and venture capital investments and early-stage
29 capital funds program.
 - 30 c. Public improvements to buildings or lands owned by the state or political
31 subdivision which serve a public purpose and do not principally benefit a

- 1 single business or defined group of businesses at the time the improvements
2 are made.
- 3 d. Assistance provided for the sole purpose of renovating old or decaying
4 building stock or bringing such building stock up to code and assistance
5 provided for designated historic preservation districts, provided that the
6 assistance does not exceed seventy-five percent of the total cost.
- 7 e. Assistance to provide job-readiness and training services if the sole purpose
8 of the assistance is to provide those services.
- 9 f. Assistance for housing.
- 10 g. Assistance for pollution control or abatement.
- 11 h. Assistance for energy conservation.
- 12 i. Tax reductions resulting from conformity with federal tax law.
- 13 j. Benefits derived from regulation.
- 14 k. Indirect benefits derived from assistance to educational institutions.
- 15 l. Assistance for a collaboration between a North Dakota institution of higher
16 education and a business.
- 17 m. Redevelopment if the recipient's investment in the purchase of the site and in
18 site preparation is seventy percent or more of the assessor's current year's
19 estimated market value.
- 20 n. General changes in tax increment financing law and other general tax law
21 changes of a principally technical nature.
- 22 o. Federal assistance provided through the state or a political subdivision until
23 the assistance has been repaid to, and reinvested by, the state or political
24 subdivision.
- 25 p. Federal or state assistance for the lignite research, development, and
26 marketing program under chapter 54-17.5.
- 27 q. Federal or state assistance for the oil and gas research, development, and
28 marketing program under chapter 54-17.6.
- 29 r. Assistance from the state housing finance agency through affordable housing
30 funds.
- 31 3. "Compensation" means the value of an employee's:

- 1 a. Earnings, including wages, salary, bonus, and commissions; and
- 2 b. Benefits, including:
 - 3 (1) Health, disability, life, and retirement benefits or insurance premium
 - 4 paid by the employer;
 - 5 (2) An employee's share of payroll taxes paid by the employer; and
 - 6 (3) Other fringe benefits such as housing allowance and transportation
 - 7 expenses.
- 8 4. "Department" means the department of commerce.
- 9 5. "Grantor" means the state or any political subdivision that directly or indirectly
- 10 grants a business incentive to a recipient.
- 11 6. "Political subdivision" means a unit of local government in this state which has
- 12 direct or indirect authority to grant a business incentive. The term includes any
- 13 authority, agency, special district, or entity created by, authorized by, under the
- 14 jurisdiction of, or contracting with a political subdivision.
- 15 7. "Public purpose" includes assisting community development, increasing the tax
- 16 base, directly creating employment opportunities, or indirectly creating employment
- 17 opportunities through increased economic activity. Job retention is only a public
- 18 purpose in cases in which job loss is specific and demonstrable.
- 19 8. "Recipient" means any individual or business entity that receives a business
- 20 incentive.
- 21 9. "State" means any North Dakota state government agency that has the authority to
- 22 directly or indirectly award business incentives.

23 **SECTION 5. BANK OF NORTH DAKOTA TRANSFERS TO STATE GENERAL**

24 **FUND.** During the biennium beginning July 1, 2009, and ending June 30, 2011, the industrial
25 commission shall transfer to the state general fund \$10,000,000 from the current earnings and
26 accumulated undivided profits of the Bank of North Dakota. The moneys must be transferred in
27 the amount and at the times requested by the office of management and budget. Transfers
28 authorized may be made only to the extent that the transfer does not reduce the Bank's capital
29 structure below \$175,000,000.

30 **SECTION 6. APPROPRIATION.** Upon becoming available under section 4 of this Act,
31 there is appropriated out of any moneys in the general fund in the state treasury, not otherwise

- 1 appropriated, the sum of \$10,000,000, or so much of the sum as may be necessary, to the
- 2 affordable housing fund for the purpose of funding housing needs as provided in section 1 of
- 3 this Act, for the biennium beginning July 1, 2009, and ending June 30, 2011.