

Sixty-first
Legislative Assembly
of North Dakota

HOUSE BILL NO.

Introduced by

Representative Froelich

1 A BILL for an Act to create and enact chapter 17-06 of the North Dakota Century Code, relating
2 to creation of the North Dakota refinery authority; to amend and reenact subdivision I of
3 subsection 2 of section 28-32-01 of the North Dakota Century Code, relating to an
4 Administrative Agencies Practice Act exemption for the refinery authority; and to provide for
5 reports to the legislative council.

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

7 **SECTION 1.** Chapter 17-06 of the North Dakota Century Code is created and enacted
8 as follows:

9 **17-06-01. North Dakota refinery authority.** There is created the North Dakota
10 refinery authority, which must be governed by the industrial commission.

11 **17-06-02. Definitions.** As used in this chapter:

12 1. "Authority" means the industrial commission acting as the North Dakota refinery
13 authority.

14 2. "Commission" means the industrial commission.

15 3. "Notice of intent" means the notice a person delivers to the authority indicating
16 willingness to construct a refinery contemplated by the authority or to provide
17 services fulfilling the need for such refinery facilities.

18 4. "Project area" means the geographic area in which construction of a refinery
19 contemplated by the authority is likely to occur.

20 5. "Refinery facilities" means an oil refinery, and related structures, equipment, rights
21 of way, and works of public improvement, located within and outside this state.

22 **17-06-03. Purposes.** The purpose for which the authority is created is to diversify and
23 expand the North Dakota economy by facilitating development of the state's oil and gas
24 resources.

1 **17-06-04. Powers.** The authority has all powers necessary to carry out the purposes
2 of this chapter, including the power to:

- 3 1. Make grants or loans and to provide other forms of financial assistance as
4 necessary or appropriate for the purposes of this chapter;
- 5 2. Make and execute contracts and all other instruments necessary or convenient for
6 the performance of its powers and functions under this chapter;
- 7 3. Borrow money and issue evidences or indebtedness as provided in this chapter;
- 8 4. Receive and accept aid, grants, or contributions of money or other things of value
9 from any source, including aid, grants, or contributions from any department,
10 agency, or instrumentality of the United States, subject to the conditions upon
11 which the aid, grants, or contributions are made and consistent with this chapter;
- 12 5. Issue and sell evidences of indebtedness in an amount or amounts as the authority
13 may determine, plus costs of issuance, credit enhancement, and any reserve funds
14 required by agreements with or for the benefit of holders of the evidences of
15 indebtedness for the purposes for which the authority is created under this chapter;
- 16 6. Refund and refinance is evidences of indebtedness;
- 17 7. Make and execute interest rate exchange contracts;
- 18 8. Enter lease-sale contracts;
- 19 9. Pledge any and all revenues derived by the authority under this chapter or from a
20 refinery, service, or activity funded under this chapter to secure payment or
21 redemption of the evidences of indebtedness;
- 22 10. To the extent and for the period of time necessary for the accomplishment of the
23 purposes for which the authority was created, plan, finance, develop, acquire, own
24 in whole or in part, lease, rent, and dispose of a refinery;
- 25 11. Enter contracts to construct, maintain, and operate a refinery;
- 26 12. Consult with the public service commission, regional organizations, and any other
27 relevant state or federal authority or persons as necessary and establish
28 reasonable fees, rates, or charges for services rendered by the authority;
- 29 13. Lease, rent, and dispose of a refinery owned pursuant to this chapter;
- 30 14. Investigate, plan, prioritize, and propose a refinery location; and

1 15. Do any and all things necessary or expedient for the purposes of the authority
2 provided in this chapter.

3 **17-06-05. Authority may act.**

4 1. Before exercising its powers to construct a refinery granted to it in this chapter, the
5 authority shall publish, in a newspaper of general circulation in North Dakota and in
6 a newspaper in the project area, a notice describing the need for a refinery
7 contemplated by the authority. Persons willing to construct the refinery or furnish
8 services to satisfy the needs described in the notice have a period of one hundred
9 eighty days from the date of last publication of the notice within which to deliver to
10 the authority a notice of intent. After receipt of a notice of intent, the authority may
11 not exercise its powers to construct a refinery unless the authority finds that
12 exercising its authority would be in the public interest. In making such a finding the
13 authority shall consider factors including economic impact to the state, economic
14 feasibility, technical performance, reliability, past performance and the likelihood of
15 successful completion and ongoing operation.

16 2. The authority may require a person giving a notice of intent to provide a bond and
17 to submit a plan for completion of the refinery or commencement of services within
18 a period of time acceptable to the authority. If no person submits an adequate plan
19 or bond as required by the authority, the authority may proceed with contracting for
20 construction of the facility described in the authority's published notice.

21 **17-06-06. Authority may participate upon request.** The authority may participate in
22 a refinery through financing, planning, joint ownership, or other arrangements at the request of
23 a person giving a notice of intent.

24 **17-06-07. Evidences of indebtedness.**

25 1. Evidences of indebtedness of the authority must be authorized by resolution of the
26 commission and may be issued in one or more series and must bear such date or
27 dates, mature at such time or times, bear interest at such rate or rates of interest
28 per year, be in such denomination or denominations, be in such form, either
29 coupon or registered, carry such conversion or registration privileges, have such
30 rank or priority, be executed in such manner, be payable from such sources in
31 such medium of payment at such place or places within or without the state, and

1 be subject to such terms of redemption, with or without premium, as such
2 resolution or resolutions may provide. Evidences of indebtedness of the authority
3 are to mature not more than forty years from the date of issue. Evidences of
4 indebtedness of the authority may be sold at such time or times and at such price
5 or prices as the authority determines.

6 2. Evidences of indebtedness and grants, loans, or other forms of financial assistance
7 issued by the authority are payable solely from:

8 a. Revenues that may be received by the authority from a refinery, services, or
9 activities funded under this chapter with the proceeds of the authority's
10 evidences of indebtedness, subject only to prior payment of the reasonable
11 and necessary expenses of operating and maintaining a refinery except
12 depreciation.

13 b. Amounts received by the authority under loans authorized under this chapter.

14 c. Revenues received by the authority under this chapter from any source other
15 than general tax revenues.

16 3. The evidences of indebtedness are not subject to taxation by the state or any of its
17 political subdivisions and do not constitute a debt of the state of North Dakota
18 within the meaning of any statutory or constitutional provision and must contain a
19 statement to that effect on their face.

20 4. The authority may establish and maintain a reserve fund for evidences of
21 indebtedness issued under this chapter. There must be deposited in the reserve
22 fund:

23 a. All moneys appropriated by the legislative assembly to the authority for the
24 purpose of the reserve fund.

25 b. All proceeds of evidences of indebtedness issued under this chapter required
26 to be deposited in the reserve fund by the terms of any contract between the
27 authority and the holders of its evidences of indebtedness or any resolution of
28 the authority.

29 c. Any lawfully available moneys of the authority which it may determine to
30 deposit in the reserve fund.

d. Any moneys from any other source made available to the authority for deposit in the reserve fund or any contractual right to the receipt of moneys by the authority for the purpose of the fund, including a letter of credit, surety bond, or similar instrument.

5. The authority must include in its biennial request to the office of the budget the amount, if any, necessary to restore any reserve fund established under this section to an amount equal to the amount required to be deposited in the fund by the terms of any contract or resolution approved by the commission.

6. Any pledge of revenue made by the commission as security for the authority's evidences of indebtedness is valid and binding from time to time when the pledge is made. The revenues or other moneys so pledged and thereafter received by the authority are immediately subject to the lien of any such pledge without any physical delivery thereof or further act, and the lien of any such pledge is valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, regardless of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be filed or recorded, except in the records of the authority.

7. The authority is authorized and empowered to obtain from any entity of the state, any department or agency of the United States of America, or any nongovernmental insurer any insurance, guaranty, or liquidity facility, or from a financial institution a letter of credit to the extent such insurance, guaranty, liquidity facility, or letter of credit now or hereafter available, as to, or for, the payment or repayment of, interest or principal, or both, or any part thereof, on any evidences of indebtedness issued by the authority pursuant to this chapter, and to enter into any agreement or contract with respect to any such insurance, guaranty, letter of credit, or liquidity facility, and pay any required fee, unless the same would impair or interfere with the ability of the authority to fulfill the terms of any agreement made with the holders of its evidences of indebtedness.

8. After issuance, all evidences of indebtedness of the authority are conclusively presumed to be fully authorized and issued under the laws of the state, and any

person or governmental unit is estopped from questioning their authorization, sale, issuance, execution, or delivery by the authority.

9. When the authority has issued evidences of indebtedness and pledged the revenues of the refinery for the payment thereof as herein provided, the authority shall operate and maintain the refinery and shall impose and collect fees and charges for the services furnished by the refinery, including those furnished to the authority itself, in the amounts and at the rates as are fully sufficient at all times to:
- a. Pay the expenses of operating and maintaining the refinery;
 - b. Provide a debt service fund sufficient to assure the prompt payment of principal and interest on the evidences of indebtedness at maturity; and
 - c. Provide a reasonable fund for contingencies as may be required by the resolution authorizing the evidences of indebtedness.

17-06-08. Bonds as legal investments. The bonds of the authority are legal investments which may be used as collateral for public funds of the state, insurance companies, banks, credit unions, investment companies, trustees, and other fiduciaries which may properly and legally invest funds in their control or belonging to them in bonds of the authority. The state investment board may invest in bonds of the authority in an amount specified by the state investment board.

17-06-09. Disposal of refinery.

1. Before becoming an owner or partial owner of a refinery, the authority shall develop a plan identifying:
 - a. The public purposes of the authority's ownership;
 - b. Conditions that would make the authority's ownership no longer necessary for accomplishing those public purposes; and
 - c. A plan to divest the authority's ownership interest as soon as economically prudent once those conditions occur.
2. For a refinery that is leased to another entity by the authority, at the end of the lease, absent default by the lessee, the authority shall convey its interest in the refinery to the lessee.

3. For a refinery that is owned by the authority without a lessee, the authority shall divest itself of ownership as soon as economically prudent in accordance with the divestiture plan developed pursuant to subsection 1.

17-06-10. Exemption from property taxes. A refinery built under this chapter is exempt from property taxes for a period determined by the authority not to exceed the first five taxable years of operation.

17-06-11. Reporting requirements. The authority shall delivery a written report on its activities to the legislative council each biennium. Notwithstanding chapter 54-60.1, the authority shall provide an annual report to the industrial commission detailing activities and expenditures incurred during the preceding year.

17-06-12. Access to authority records - Confidentiality.

1. Materials and data submitted to, or made or received by, the authority, to the extent that the authority determines the materials or data consist of trade secrets or commercial, financial, or proprietary information of individuals or entities applying to or contracting with the authority or receiving authority services under this chapter are subject to section 44-04-18.4.

2. A person or entity must file a request with the authority to have material designated as confidential under subsection 1. A request to have material designated as confidential is exempt as defined in section 44-04-17.1. The request must contain any information required by the authority and must include at least:

a. A general description of the nature of the information sought to be protected.

b. An explanation of why the information derives independent economic value, actual or potential, from not being generally known to other persons.

c. An explanation of why the information is not readily ascertainable by proper means by other persons.

d. A general description of any person or entity that may obtain economic value from disclosure or use of the information and how the person or entity may obtain this value.

e. A description of the efforts used to maintain the secrecy of the information.

3. The information submitted under subsection 2 is confidential. The authority shall examine the request and determine whether the information is relevant to the

1 matter at hand and is a trade secret under the definition in section 47-25.1-01 or
2 44-04-18.4. If the authority determines the information is either not relevant or not
3 a trade secret, the authority shall notify the requester and the requester may ask
4 for the return of the information and request within ten days of the notice. If no
5 return is sought, the information and request are a public record.

6 **SECTION 2. AMENDMENT.** Subdivision I of subsection 2 of section 28-32-01 of the
7 North Dakota Century Code is amended and reenacted as follows:

- 8 I. The industrial commission with respect to the activities of the Bank of North
9 Dakota, North Dakota housing finance agency, public finance authority, North
10 Dakota mill and elevator association, North Dakota farm finance agency, the
11 North Dakota transmission authority, ~~and~~ the North Dakota pipeline authority,
12 and the North Dakota refinery authority.