

SENATE BILL NO. 2373

Introduced by

Senator Mathern

1 A BILL for an Act to create and enact a new chapter to title 30 of the North Dakota Century
2 Code, relating to investment in certified development corporation banks by state-chartered
3 banks.

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

5 **SECTION 1.** A new chapter to title 30 of the North Dakota Century Code is created and
6 enacted as follows:

7 **Organization.**

- 8 1. To the extent permitted by federal law, any three or more state-chartered banks
9 may form a certified development corporation bank by complying with the
10 conditions prescribed in this chapter and subscribing and acknowledging a
11 certificate specifying:
- 12 a. The name, the general nature of its business, and the principal place of
13 transacting its business. The name must distinguish the corporation from all
14 other corporations authorized to do business in the state, and must contain
15 the words "certified development corporation bank".
- 16 b. The period of its duration, which is perpetual.
- 17 c. The name and principal business address of each incorporator.
- 18 d. The names and addresses of those composing its board until the first election.
- 19 e. The highest amount of indebtedness or liability to which the corporation may
20 be subject.
- 21 2. The certificate may contain any other lawful provision defining the powers and
22 business of the corporation, its officers, directors, members, and stockholders.
- 23 3. One state-chartered bank may hold no more than forty-nine percent of the stock in
24 the corporation.

1 **Purposes.** This chapter is intended to allow all banks in this state the opportunity to
2 participate in a federal program for community development corporation banks and to exercise
3 rights and privileges under the federal reserve program as provided in regulations Y and H
4 adopted under the Federal Reserve Act [12 U.S.C. 221 et seq.]. The purpose of the
5 corporation is to assist, encourage, and through the cooperative efforts of the institutions and
6 corporations which from time to time become members, develop and advance the business
7 prosperity and economic welfare of this state, particularly in rural areas, to encourage and
8 assist in the location of new business and industry in this state and to rehabilitate existing
9 business and industry; to stimulate and assist in the expansion of all kinds of business activity
10 which will tend to promote the business development and maintain the economic stability of this
11 state, and provide maximum opportunities for employment; to cooperate and act in conjunction
12 with other organizations, public or private, the objects of which are the promotion and
13 advancement of industrial, commercial, agricultural, and recreational developments in this state;
14 and to furnish money and credit to approved and deserving applicants for the promotion,
15 development, and conduct of all kinds of business activity in this state, thereby establishing a
16 source of credit not otherwise readily available.

17 **Incorporation.** Upon the filing of the articles of incorporation with the secretary of state,
18 the secretary of state shall issue to the corporation over the great seal of the state a certificate
19 that the articles containing the required documents have been filed in the secretary of state's
20 office.

21 **Powers of investment corporations.** In furtherance of the purposes for which the
22 corporation is organized, and in addition to the powers conferred by the general laws relating to
23 business corporations, a corporation may:

- 24 1. Borrow money and otherwise incur indebtedness for any of the purposes of the
25 corporation and issue its bonds, debentures, notes, or other evidences of
26 indebtedness, whether secured or unsecured, therefor and secure the same by
27 mortgage, pledge, deed of trust, or other lien on its property, franchises, rights, and
28 privileges of every kind and nature or any part thereof.
- 29 2. Lend money to, and guarantee, endorse, or act as surety on the bonds, notes,
30 contracts, or other obligations of, or otherwise assist financially, any person, and

- 1 establish and regulate the terms with respect to any loans or financial assistance
2 and the charges for interest and service connected with the loans or assistance.
- 3 3. Purchase, receive, hold, lease, or otherwise acquire, and sell, convey, mortgage,
4 lease, pledge, or otherwise dispose of, upon the terms and conditions as the board
5 of directors determines advisable, property, together with the rights and privileges
6 incidental thereto and the use thereof, including any property acquired by the
7 corporation from time to time in the satisfaction of debts or enforcement of
8 obligations.
- 9 4. Acquire, by purchase or otherwise, the goodwill, business, rights, property, and
10 other assets, or any part thereof, that may be in furtherance of the corporate
11 purposes provided herein, and assume, undertake, guarantee, or pay the
12 obligations, debts, and liabilities of any person; acquire improved or unimproved
13 real estate for the purpose of constructing industrial plants or other business
14 establishments or for the purpose of disposing of the real estate to others for the
15 construction of industrial plants or other business establishments, and, in
16 furtherance of the corporate purposes, acquire, construct, reconstruct, maintain,
17 operate, sell, lease, or otherwise dispose of industrial plants or business
18 establishments.
- 19 5. Acquire, subscribe for, own, hold, sell, or otherwise dispose of the stock, shares,
20 membership interests, bonds, debentures, notes, or other securities and evidences
21 of interest in, or indebtedness of, any person and, while the owner or holder
22 thereof, to exercise all the rights, powers, and privileges of ownership, including the
23 right to vote.
- 24 6. Cooperate with and avail itself of the facilities of the department of economic
25 development and finance and any other similar governmental agencies; and
26 cooperate with, assist, and otherwise encourage local organizations in the various
27 communities of the state, the purpose of which are the promotion, assistance, and
28 development of the business prosperity and economic welfare of the communities
29 and of this state.

30 **Board of directors.**

- 1 1. All the corporate powers of the corporation must be exercised by a board of no
2 fewer than fifteen elected directors who must be residents of this state. The
3 number of directors and their term of office must be determined in the bylaws. If
4 any vacancy occurs in the board of directors, the remaining directors may elect a
5 person to fill the vacancy until the next annual meeting of the corporation.
- 6 2. The first board of directors shall adopt bylaws, which remain effective until
7 amended or repealed by action of the board.
- 8 3. The first annual meeting must be held at a date to be fixed by the board of
9 directors as soon as reasonably possible after a minimum of twenty-five percent of
10 the capital stock of the corporation has been paid into its treasury. The annual
11 meeting must be called in the manner provided by the bylaws.

12 **Earned surplus.** Each year, the corporation shall set apart all of its net earnings as
13 retained earnings. The corporation shall hold part of the retained earnings as a reserve for bad
14 debts. The corporation may use the rest of the retained earnings in the course of its business.
15 The amount held as a reserve for bad debts must be at least the amount recommended by the
16 firm of certified public accountants that the board of directors approves to audit the
17 corporation's financial statements. The board shall establish procedures for investing funds
18 held as a reserve for bad debts.

19 **Obligation limitation.** The total obligations of the corporation may not exceed twenty
20 times the amount of the paid-in capital and surplus, not including earned surplus.

21 **Deposit of funds - Loans.** The corporation may not deposit any of its funds in any
22 financial institution unless the institution has been designated as a depository by a vote of a
23 majority of the directors, exclusive of any director who is an officer or director of the depository
24 so designated. The corporation may not receive money on deposit. No loans may be made
25 directly or indirectly to any officer of the corporation or to any firm of which the officer is a
26 member or officer.

27 **Loans - Investment by applicant.** A person that applies for a loan or obtains money
28 from the certified development corporation bank shall invest in the stock of the corporation in an
29 amount to be fixed by the board of directors of not less than two percent nor more than five
30 percent of the funds obtained. The requirement of this section may be waived by a majority
31 vote of the board of directors for unusual circumstances or when a loan or obligation is insured

1 or guaranteed in whole or in part by the state or federal government or any agency of either.
2 The board may provide for repurchase of a borrower's stock when the loan has been repaid in
3 full.

4 **Preemptive right not authorized.** The holders of capital stock as such have no
5 preemptive or preferential right to purchase or subscribe for any part of the unissued capital
6 stock of the corporation of any class or for any new issue of stock of any class, whether now or
7 hereafter authorized or issued, or to purchase or subscribe for any bonds or other obligations,
8 whether or not convertible into stock of any class of the corporation, now or hereafter
9 authorized or issued.

10 **Notes or obligations - Legal investments.** Notwithstanding any other statute, the
11 notes or other interest-bearing obligations of a state development corporation, issued in
12 accordance with this chapter and the articles of incorporation and the bylaws of the corporation,
13 are legal investments for any bank that becomes a member of the corporation.