

BANKS AND BANKING

CHAPTER 80

HOUSE BILL NO. 1168

(Industry, Business and Labor Committee)
(At the request of the Department of Financial Institutions)

DEPARTMENT OF FINANCIAL INSTITUTIONS RECORD CONFIDENTIALITY

AN ACT to amend and reenact section 6-01-07.1 of the North Dakota Century Code, relating to confidentiality of department of financial institutions records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-01-07.1 of the North Dakota Century Code is amended and reenacted as follows:

6-01-07.1. Records - Confidential.

1. All facts and information obtained by the commissioner or the department in the following ways are confidential, except as provided in subsections 2 through 7:
 - a. In the course of examining financial institutions, credit unions, and other licensed entities under the supervision of the commissioner, or in the course of receiving audit reports, reports of examining committee and reports of annual meetings of stockholders and directors of such institutions and licensees. The reports of examination may be made available to the financial institution's or licensee's board of directors, or the board's specifically authorized agents or representatives, but the reports remain the property of the department.
 - b. From the federal reserve system, federal deposit insurance corporation, federal home loan bank board, national credit union administration, or any state bank or credit union supervisors or supervisors of other licensed entities of other states.
 - c. In the course of investigating an institution under the supervision of, or licensed by, the commissioner, until such investigation is complete.
 - d. In the course of a special investigation being carried out at the request of the governor or any court.
 - e. In the form or nature of an application for a charter, license, or permission which meets any of the following criteria:
 - (1) Trade secrets and commercial or financial information.

- (2) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
- (3) Information contained in the application form which is in the nature of examination report information.

Determination of what required application information falls within each category must be made by the body before which the application is brought.

2. When the commissioner is required or permitted by law to report upon or take special action regarding the affairs of any institution or licensed entity under the commissioner's supervision, the commissioner shall divulge only such information specified in subsection 1 as is necessary and sufficient for the action taken or to be taken.
3. The commissioner may furnish information to the attorney general, other state agencies, any prosecuting officials requiring the information for use in pursuit of official duties, and legislative investigations under chapter 54-03.2. Information furnished by the commissioner to any third party which is confidential in the commissioner's possession remains confidential in the possession of the third party. Information received by the commissioner from any third party which is confidential in the third party's possession remains confidential in the commissioner's possession.
4. The commissioner may furnish information and enter into sharing agreements as to matters of mutual interest to an official or examiner of the federal reserve system, federal deposit insurance corporation, federal home loan bank board, national credit union administration, office of thrift supervision, comptroller of the currency, insurance commissioner, office of the securities commissioner, or any state bank or credit union supervisors or supervisors of other licensed entities of other states.
5. The commissioner shall not be required to disclose the name of any debtor of any financial institution, credit union, or licensed entity reporting to or under the supervision of the commissioner or anything relative to the private accounts, ownership, or transactions of any such institution, or any fact obtained in the course of any examination thereof, except as herein provided.
6. This section does not limit the right of access of stockholders, shareholders, depositors, creditors, and sureties on bonds to specified department records as, and to the extent, provided by section 6-01-07.
7. The standards for confidentiality and disclosure by the commissioner set forth in this section, except the standard of the exercise of discretion, which shall only be exercised by the commissioner, apply equally to the state banking board, the state credit union board, and all department employees.

CHAPTER 81

HOUSE BILL NO. 1140

(Industry, Business and Labor Committee)

(At the request of the Department of Financial Institutions)

FINANCIAL INSTITUTION TERMS

AN ACT to amend and reenact subsection 1 of section 6-02-01 and section 6-05-02 of the North Dakota Century Code, relating to use of terms for bank, annuity, safe deposit, surety, and trust company regulation purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 6-02-01 of the North Dakota Century Code is amended and reenacted as follows:

1. No person, firm, company, copartnership, or corporation, either domestic or foreign, not organized under this chapter or authorized to take on banking powers under this section, except national banking corporations, banks organized under the laws of another state, domestic or foreign bank holding companies, their affiliates, and the Bank of North Dakota, may make use of or display in connection with its business, in signs, letterheads, advertising, or in any other way, such words as "bank", "banker", or "banking", or any other word or words of like import, nor may any person or concern do or perform anything in the nature of the business of a bank until and unless such business is regularly organized or authorized under this chapter.

SECTION 2. AMENDMENT. Section 6-05-02 of the North Dakota Century Code is amended and reenacted as follows:

6-05-02. Compliance with chapter required - Penalty for noncompliance. No person, firm, company, copartnership, or corporation, either domestic or foreign, not organized under this chapter nor subject to its provisions, except only national banking corporations, state banks authorized under this chapter, state banks or trust companies authorized to engage in trust activities under the laws of another state, their affiliates, and the Bank of North Dakota, may make use of or display in connection with its business, in signs, letterheads, advertising, or in any other way, such words as "trust", "trust company", or any other word or words of like import, nor may any person or concern do or perform anything in the nature of the business of a trust company until and unless such business is regularly organized and authorized under this chapter. If any firm or corporation organized prior to July 1, 1931, has been granted a charter permitting it to use any word, words, or title contrary to the intent of this section, and by reason of its rights under such charter, the provisions of this section may not be enforced against it during the life of such charter. However, no renewal charter may be granted to such person, firm, or corporation permitting the continuance of the use of such word, words, or title contrary to or in violation of this section. Any person, firm, or corporation which, by reason of an existing charter right under any law or statute in effect prior to July 1, 1931, may be held by the courts not to be affected by this section and which therefore refuses to comply with the provisions of this section, during the period of noncompliance, shall display, prominently and continuously in plain, legible, and clearly discernible lettering on all of its signs, stationery, circulars, and advertising, and in all of its printed or written

matter the following words and language: "NOT UNDER THE SUPERVISION OF THE STATE BANKING BOARD OR THE COMMISSIONER OF FINANCIAL INSTITUTIONS", and such language must be displayed thereon as prominently as any other matter therein. Any person, firm, company, copartnership, or corporation, domestic or foreign, violating any provision of this section, shall forfeit to the state one hundred dollars for every day or part thereof during which such violation continues. In an action brought by the commissioner or any aggrieved person, the court may issue an injunction restraining such person, firm, company, copartnership, or corporation from further using such words, terms, or phrases in violation of this section or from further transacting business in such a way or manner as to lead the public to believe that its business is in whole or in part of the nature of a trust company, or that it is under the supervision of the state banking board or the commissioner.

Approved March 28, 2005

Filed March 28, 2005

CHAPTER 82**SENATE BILL NO. 2175**

(Senators Krebsbach, J. Lee)
(Representatives Rennerfeldt, Ruby)

**REAL ESTATE APPRAISALS FOR REAL ESTATE
LOANS**

AN ACT to amend and reenact section 6-03-05 of the North Dakota Century Code, relating to real estate appraisal requirements for real estate loans by banks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-03-05 of the North Dakota Century Code is amended and reenacted as follows:

6-03-05. Loans on real estate - Regulation - Limitation. Before any real estate loan of more than two hundred fifty thousand dollars is made, an appraisal must be conducted by a licensed or certified appraiser if required by the federal Financial Reform, Recovery, and Enforcement Act of 1989 [Pub. L. 101-73; 103 Stat. 512; 12 U.S.C. 3332 et seq.] ~~or, if not so required, by an individual or appraisal committee who is independent of the transaction; except no appraisal or formal valuation is required for a real estate loan of one hundred thousand dollars or less.~~ The selected appraiser or appraisal committee shall appraise both the land and the improvements thereon, if any, and shall report to the board of directors or its loan committee, in writing, the results of the appraisal together with any other facts relating to such proposed loan and proposed security as will best enable the board or its loan committee to determine if the loan shall be granted. Such written report must be made a permanent record in the bank's files and must be made available to the commissioner. A bank must obtain an appropriate evaluation of real property collateral for transactions that do not require an appraisal by a licensed or certified appraiser. The commissioner may require an appraisal by a licensed or certified appraiser when necessary to address safety and soundness concerns. Any real estate loan made must conform to loan-to-value limits as established by rule by the state banking board under chapter 28-32.

Approved March 21, 2005

Filed March 21, 2005

CHAPTER 83

HOUSE BILL NO. 1164

(Industry, Business and Labor Committee)

(At the request of the Department of Financial Institutions)

BANK FACILITIES, INVESTMENTS, AND LOANS

AN ACT to amend and reenact sections 6-03-13.3, 6-03-38, and 6-03-59 of the North Dakota Century Code, relating to approval of banking facilities, investment by banks, and loan limitation to one borrower or concern.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-03-13.3 of the North Dakota Century Code is amended and reenacted as follows:

6-03-13.3. Facts considered for approval. Whenever any bank desires to maintain and operate a facility separate and apart from its banking house, pursuant to section 6-03-13.1, or to move a facility previously established to another location, it shall apply to the state banking board commissioner or the comptroller of the currency, as the case may be, for such authority and provide the board commissioner with such relevant information as the board commissioner may reasonably request. In determining whether or not to approve the application for such facility, the banking board commissioner shall take into consideration the following facts:

1. The convenience, needs, and welfare of the people of the community and area served.
2. The financial strength of the bank in relation to the cost of establishing and maintaining such separate facility.
3. Whether other banks will be seriously injured by the approval of the application.

When considering an application for relocating an existing facility to another location within the same corporate city limits, the state banking board commissioner may consider only subsection 2 as a factor for approval.

Upon approval by the state banking board of a merger application under section 6-03-11, the former main office and facilities of the banking institutions being merged will become facilities of the surviving banking institution and the banking institution is not required to file an application under this section.

If the commissioner's decision with respect to an application is unfavorable, the applicant bank may appeal the decision to the state banking board by filing a notice of appeal with the commissioner within twenty days after the commissioner has notified the applicant bank of the decision.

If an interested party files a protest with respect to an application, the matter will be referred to and decided by the state banking board.

SECTION 2. AMENDMENT. Section 6-03-38 of the North Dakota Century Code is amended and reenacted as follows:

6-03-38. Assets not to be used in other business - Exceptions - Penalty.

No bank, except as otherwise authorized in this title, may employ its money or other assets as principal, directly or indirectly, in trade or commerce, nor may it employ or invest any of its assets or funds in the stock of any corporation, limited liability company, bank, partnership, firm, or association. However, a state bank may, to the extent that banks subject to the laws of the federal government are permitted to do so, purchase shares of stocks, or any other type of securities offered by small business investment companies organized and licensed under Public Law No. 85-699, known as the Small Business Investment Company Act of 1958 [72 Stat. 689; 15 U.S.C. 661 et seq.], and the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.], and any amendments thereto, or chapter 10-30, but in no event may any state bank hold securities of small business investment companies in an amount ~~aggregating more than two~~ determined by the state banking board, but in no event more than ten percent of the bank's capital and surplus, nor. Further, ~~no bank may invest its assets or funds in speculative margins of stock, bonds, grain, provisions, produce, or other commodities, except that it is lawful for a bank to make advances for grain or other products in store or in transit to market, and to~~ A bank may invest in subsidiary organizations, when the activities of such organizations are incidental or complementary to the bank's activities, with the specific approval of the state banking board for each such subsidiary. The state banking board has the same power to make rules for the subsidiary organizations, and to examine its records and affairs, as it has for other financial corporations under section 6-01-04. If the state banking board determines that such investments would be detrimental to the interests of a bank's depositors, it may direct the bank to divest itself of such subsidiary investments. In addition, the state banking board has power to authorize state banks to engage directly or indirectly in any activity in which such banks could engage were they operated as national banks at the time such authority is granted, notwithstanding any restriction elsewhere contained in this code. Any officer, director, or employee of any bank who invests or uses its funds contrary to this title is guilty of a class A misdemeanor.

SECTION 3. AMENDMENT. Section 6-03-59 of the North Dakota Century Code is amended and reenacted as follows:

6-03-59. Loan limitation to one borrower or concern. The total direct, indirect, or contingent liability of any borrower to any state banking association shall not exceed at any time twenty-five percent of the ~~unimpaired capital and surplus of such association~~ association's common stock, surplus, and undivided profits as of the most recent report of condition and income. For the purpose of this section the total liability of a borrower includes the liabilities of any separate borrowers for which the repayment of separate loans or extensions of credit is substantially from the same source. ~~The discount of bills of exchange drawn in good faith against actual existing values; loans secured by bills of lading drawn against produce in transit; and loans secured by bonded warehouse receipts or elevator storage tickets covering produce actually in storage shall not be considered as money borrowed if all paper relating to such transactions is made payable to, and such paper and the security therefor remains in the possession and control of the association until the advance or~~

debt is paid. An association may discount commercial or business paper actually owned by the person negotiating it without such discounting being deemed an addition to any loan made to the negotiator.

Approved March 31, 2005

Filed March 31, 2005

CHAPTER 84

SENATE BILL NO. 2124

(Industry, Business and Labor Committee)

(At the request of the Department of Financial Institutions)

FINANCIAL INSTITUTION LOANS

AN ACT to amend and reenact subsection 1 of section 6-05-08 of the North Dakota Century Code, relating to the powers of annuity, safe deposit, surety, and trust companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 6-05-08 of the North Dakota Century Code is amended and reenacted as follows:

1. Acquire, lease, purchase, own, hold, use, improve, mortgage, sell, and convey such real estate and personal property as may be necessary for the convenient transaction of its business. It may acquire real estate by foreclosure or upon compromise or settlement of prior mortgages held by it either as absolute owner or as trustee, and may dispose of the same. No part of the capital, deposits, trust funds, or property owned or held by it, in trust or otherwise, may be invested in real estate except as herein authorized, unless the investment is made under and by virtue of a particular contract, or instrument, or order, judgment, or decree of court, which confers a special power or authority so to do, and then only with, or to the extent of, the moneys or funds thereby provided and belonging to such particular trust. Such corporation is authorized ~~to loan money and~~ to purchase notes, bonds, mortgages, and other evidences of indebtedness, and other securities, subject to the limitations imposed upon banking associations as to investments, and to convert the same into cash and other securities.

Approved March 9, 2005

Filed March 9, 2005

CHAPTER 85

HOUSE BILL NO. 1340

(Representatives Dosch, Charging, Kasper)
(Senators Dever, Espegard)

SUBSIDIARY TRUST COMPANY LOCATIONS

AN ACT to amend and reenact section 6-05.1-04 of the North Dakota Century Code, relating to locations for multiple offices of a subsidiary trust company.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-05.1-04 of the North Dakota Century Code is amended and reenacted as follows:

6-05.1-04. Trust offices of subsidiary trust companies. A subsidiary trust company may have a trust office at any one or more locations in this state in the same building in which the main office of any affiliated bank is located, but not elsewhere. However, that portion of the home office of a subsidiary trust company, which does not function as and is not held out as an on-premises direct customer contact center or business development office, may be located anywhere within the corporate city limits in which the main office of any affiliated bank is located establish and maintain for itself and its subsidiary entities one or more offices or places of business within this state, throughout the United States, in foreign countries, or in dependencies or insular possessions of the United States. The regulatory process by which a subsidiary trust company obtains authority to establish and maintain offices in addition to a main office must be the same as the process that applies to a trust company under chapter 6-05.

Approved March 9, 2005

Filed March 9, 2005

CHAPTER 86

HOUSE BILL NO. 1163

(Industry, Business and Labor Committee)
(At the request of the Department of Financial Institutions)

CREDIT UNIONS

AN ACT to create and enact a new subsection to section 6-01-17.1 of the North Dakota Century Code, relating to a fee for an application to merge by two or more credit unions; to amend and reenact subdivision g of subsection 1 of section 6-01-04.3, sections 6-06-05, 6-06-06.1, 6-06-08, 6-06-12, 6-06-13, 6-06-13.1, 6-06-14, 6-06-19, 6-06-20, 6-06-21, 6-06-26, and 6-08-15, and subsection 2 of section 6-08-16 of the North Dakota Century Code, relating to the use of the phrases credit union and corporate central credit union, the issuance of certificates of deposit, reports by credit unions, interest rate determinations, credit union board membership, credit union organization, credit union volunteers, credit union credit committee meetings, credit union loan and borrowing limitations, credit union committee loans, credit union reserve funds, credit union dividends, slander against financial institutions, and compliance with clearinghouse rules; and to repeal sections 6-06-21.1 and 6-06-39 of the North Dakota Century Code, relating to credit union reserve funds and share scaledowns.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision g of subsection 1 of section 6-01-04.3 of the North Dakota Century Code is amended and reenacted as follows:

- g. Violations of loan limitations under subsection ~~7~~ 1 of section 6-06-12;

SECTION 2. A new subsection to section 6-01-17.1 of the North Dakota Century Code is created and enacted as follows:

Application by two or more credit unions to merge, a fee of three hundred dollars.

SECTION 3. AMENDMENT. Section 6-06-05 of the North Dakota Century Code is amended and reenacted as follows:

6-06-05. Use of credit union and corporate central credit union restricted - Forfeiture. It is unlawful for any person, association, copartnership, or corporation, domestic or foreign, except corporations organized in accordance with the provisions of this chapter, to use the words "credit union", "corporate central credit union", or "central credit union" in their name or title, and any person, association, copartnership, or corporation violating this section shall forfeit to the state one hundred dollars for every day, or part thereof, during which such violation continues. The commissioner may recover such forfeited sums in a civil action, and shall deposit any sums recovered or collected with the state treasurer. Only one "corporate central credit union" or "central credit union" may be organized under this chapter, and no other credit union may use the term "corporate central" or "central" as part of its name. The North Dakota credit union league, any chapter, affiliate, or subsidiary of this league, and any political action committee formed by credit unions

organized under this chapter or federal law or a political action committee formed by the North Dakota credit union league are specifically exempt from this restriction.

SECTION 4. AMENDMENT. Section 6-06-06.1 of the North Dakota Century Code is amended and reenacted as follows:

6-06-06.1. Issuance of certificates of deposit - Penalty. Certificates of deposit, as defined in section 41-03-04, may only be issued in this state by credit unions authorized to issue certificates of deposit, and which are organized to do business in this state under this chapter or under the Federal Credit Union Act, and whose accounts are insured by the national credit union administration, except that the requirement for insurance of accounts for ~~the North Dakota~~ any "corporate central credit union" or "central credit union" may be waived under section 6-06-40, or as authorized under sections 6-03-02.2 and 7-02-08.1. Any person violating this section is subject to a civil penalty not to exceed five thousand dollars.

SECTION 5. AMENDMENT. Section 6-06-08 of the North Dakota Century Code is amended and reenacted as follows:

6-06-08. State credit union board to supervise credit unions - Reports - Examinations - Fees.

1. Credit unions and the permanent loan funds of credit unions, if any, are under the supervision of the commissioner. Credit unions shall report to the commissioner when called by the commissioner, and at least ~~twice~~ four times each year. The commissioner shall prescribe the forms for the reports. The reports must be received by the commissioner within thirty days of the call. At the discretion of the commissioner, a call may be complied with by submission of a ~~photocopy~~ copy of the call report ~~submitted to the national credit union administration, or a printout retrieved from computer facilities in~~ e-mailed directly to the department of financial institutions ~~and connected to those of the national credit union administration.~~ The commissioner may call for special reports from any credit union whenever in the commissioner's judgment it is necessary to obtain complete knowledge of the condition of the credit union. Every credit union that fails to make and transmit any report required in pursuance of this section shall forfeit and pay to the state a penalty of two hundred dollars for delinquency. The commissioner may waive the penalty for reports filed late, not exceeding three business days beyond the due date required by this section.
2. Credit unions must be examined at least once each twenty-four months by the commissioner. In lieu of the examinations herein required, the commissioner may accept any examination made or obtained by the national credit union administration, and may in the commissioner's discretion conduct a joint examination with the national credit union administration.
3. If it is determined through an examination or otherwise that the credit union is violating the provisions of this chapter, or is insolvent, the state credit union board may serve notice on the credit union of its intention to revoke the charter. If such violations continue for a period of fifteen days after such notice, the board may revoke the charter and take possession of the business and property of such credit union, and shall maintain possession then until such time as it permits the reinstatement of the charter and the continuation of business by the credit union, or

until its affairs finally are liquidated. The board may take similar action if any required report remains in arrears for more than fifteen days.

4. Every state credit union, including ~~North Dakota central~~ any "corporate central" or "corporate" credit union, placed under the jurisdiction and control of the state credit union board and the commissioner by the provisions of this title shall pay a yearly assessment. This assessment is to be determined by the state credit union board as necessary to fund that portion of the department's budget relating to the regulation of state-chartered credit unions. The assessment must be paid to the state treasurer within thirty days of each June thirtieth. Credit unions that have not been examined by the commissioner or the state credit union board for three years prior to any assessment date are not required to pay the assessment. The state treasurer shall report the payments of fees to the commissioner, and if any credit union is delinquent more than twenty days in making payment, the board may make an order suspending the functions of the delinquent credit union until payment of the amount due. The commissioner may assess a penalty of five dollars for each day that the penalty is delinquent. The examination fee for ~~North Dakota central~~ any "corporate central" or "corporate" credit union shall be charged by the department at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the examination. All fees and penalties under this section must be paid to the state treasurer and deposited in the financial institutions regulatory fund.

SECTION 6. AMENDMENT. Section 6-06-12 of the North Dakota Century Code is amended and reenacted as follows:

6-06-12. Directors - Duties and powers - Loan limitations.

1. The directors shall have general management of the credit union, and it is their duty particularly:
 - 4- a. To act on applications for membership, unless a membership officer is appointed.
 - 2- b. To determine interest rates on loans and deposits or designate a representative to determine these rates.
 - 3- c. To fix, subject to the approval of the commissioner, the amount of surety bond which must be required of all officers and employees handling money.
 - 4- d. To declare dividends.
 - 5- e. To transmit to the members recommendations for changes in the bylaws.
 - 6- f. To fill vacancies on the board of directors and on the credit committee who shall serve until their successors are chosen and qualified.
 - 7- g. To determine the maximum individual shareholdings and the maximum aggregate liability to the credit union of any one borrower but such maximum aggregate liability allowed by

the board may not exceed the amounts listed in the following schedule:

Total Assets	Loan Limit
0 to 70,000	10% with a limit of 5,000
70,001 to 100,000	6,000 limit
100,001 to 200,000	8,000 limit
200,001 to 300,000	10,000 limit
300,001 to 400,000	12,000 limit
400,001 to 500,000	14,000 limit
over 500,000	3% of assets

For purposes of this subsection, the aggregate liability of one borrower to a credit union includes the total direct, indirect, and contingent liabilities of the borrower, and the liabilities of separate borrowers for which the repayment of separate loans or extensions of credit is substantially from the same source. The aggregate liability of any one borrower to the credit union does not include any loan or portion of a loan guaranteed by the government, to the extent of the guarantee, nor any loan secured by shares in the credit union, to the extent of the security.

In all cases a credit union is allowed to loan up to and including two hundred dollars to any individual regardless of the amount of total assets in said credit union. Provided, that the foregoing provisions do not apply to the North Dakota central credit union.

- ~~8.~~ h. To supervise and control investments other than loans to members.
- ~~9.~~ i. To establish a schedule of fines for delinquency in the payment of principal or interest, which the board shall impose at its discretion.
- ~~10.~~ 2. The board may appoint membership officers authorized to approve applications for membership under such conditions as the board may prescribe; except that such membership officers so authorized shall submit to the board at each monthly meeting a list of approved or pending applications for membership received since the previous monthly meeting, together with such other related information as the bylaws or the board may require.
- 3. No immediate family member of the president, general manager, or chief executive officer of the credit union may serve on the board of directors of the credit union.
- 4. A majority of the board of directors of a credit union may not be immediate family members of each other.

SECTION 7. AMENDMENT. Section 6-06-13 of the North Dakota Century Code is amended and reenacted as follows:

6-06-13. Officers - Elections - Duties. At their organization meeting and within thirty days following each annual meeting of the members, the directors shall elect from their own number an executive officer, who may be designated as chairman of the board or president; a vice chairman of the board or one or more vice presidents; a treasurer; and a secretary. The treasurer and the secretary may be the

same individual. The persons so elected are the executive officers of the corporation. The terms of the officers must be one year, or until their successors are chosen and have duly qualified. The duties of the officers must be prescribed in the bylaws. The board of directors may employ an officer in charge of operations whose title must be ~~either~~ president or chief executive officer, general manager, or ~~both~~ any combination thereof; or, in lieu thereof, the board of directors may designate the treasurer or an assistant treasurer to act as general manager and be in active charge of the affairs of the credit union.

SECTION 8. AMENDMENT. Section 6-06-13.1 of the North Dakota Century Code is amended and reenacted as follows:

6-06-13.1. Credit union volunteers - Immunity. A person who serves as a volunteer, including a director, credit committee member, or supervisory committee member, of a federal or state-chartered credit union is immune from civil liability for any act or omission resulting in damage or injury if at the time of the act or omission all of the following are met:

1. The volunteer was acting in good faith and in the scope of that person's official duties as a volunteer of the credit union.
2. The act or omission did not constitute willful misconduct or gross negligence on the part of the volunteer.
3. The volunteer did not receive or expect to receive reimbursement for or payment of expenses in excess of ~~two~~ five thousand dollars per year for expenses actually incurred as a result of providing services as a volunteer of the credit union and did not receive or expect to receive compensation or anything in lieu of compensation as payment for services provided as a volunteer of the credit union.

This section does not grant immunity to any person causing damage as the result of the negligent operation of a motor vehicle.

SECTION 9. AMENDMENT. Section 6-06-14 of the North Dakota Century Code is amended and reenacted as follows:

6-06-14. Loans - How made - Security - Meetings and duties of credit committee - Preferential loans. The credit committee has general supervision over all loans to members, and shall meet as often as may be necessary to perform its duties and at least once each month, except the foregoing provisions regarding monthly meetings do not apply to ~~the North Dakota central~~ any "corporate central" or "corporate" credit union. Notice must be given to each member of the committee before any meeting is held. All applications for a loan must be made on a form approved by the committee and must set forth the purpose for which the loan is desired, the security, if any, which is offered, and such other data as the committee may require. The maximum aggregate loans that may be made to a member or a group of members relying on a single income source without adequate security is ~~two thousand five hundred dollars or one percent of the credit union's total share and deposit accounts, whichever is the higher, but not to exceed fifty thousand dollars~~ subject to limits approved in loan policy by the board of directors of the credit union. Security under this section includes an assignment of shares or deposits, an endorsement made on the note by a responsible person, and such other security as the committee in its discretion may deem adequate. No loan may be made unless it is approved by a majority of the entire committee; except that the credit committee may appoint and delegate to one or more loan officers the power to approve loans

up to the limit established by the credit committee, or in excess of the limit if the excess is fully secured by unpledged shares. An individual may not disburse funds of the credit union for any loan that has been approved by that individual in that individual's capacity as a loan officer. Not more than one member of the credit committee may be appointed as a loan officer. Every loan by a credit union to its directors, officers, managers, and committee members must be made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other persons and must be in strict conformity with the credit union's rules and regulations.

SECTION 10. AMENDMENT. Section 6-06-19 of the North Dakota Century Code is amended and reenacted as follows:

6-06-19. Authority to borrow - Limitation - Exception. A credit union may borrow money from any source, but the total borrowings may not exceed twenty-five percent of the credit union's assets unless the commissioner authorizes a larger amount. The board or commissioner may suspend or restrict the borrowing powers of a credit union. The limitation on borrowing does not apply to a corporate central credit union which is limited to borrowing up to five times the corporate central credit union's capital, surplus, and reserve fund. For purposes of this section, capital, surplus, and reserve fund for a corporate central credit union includes statutory or regulatory reserves, reserves established for contingencies or any other purposes, undivided earnings, all sums on deposit by other credit unions which are ~~permanent membership capital base funds share deposits~~ as defined by the bylaws of the corporate central credit union, or any other funds being held by the corporate central credit union for the purpose of maintaining a capital base. A credit union must provide within one week written notification to the commissioner of the amount, terms, and source of all borrowings under this section. Written notification is not required if the borrowings are provided by the corporate central credit union and that information is available to the commissioner through electronic inquiry.

SECTION 11. AMENDMENT. Section 6-06-20 of the North Dakota Century Code is amended and reenacted as follows:

6-06-20. Borrowings of directors and committee members limited - Repayment of loans. A director or member of any committee may not borrow from the credit union in which the director or member holds office more than ~~twenty one hundred~~ twenty one thousand dollars plus pledged shares and deposits less any loan balance therein, unless the application is approved by three-fourths of the other members of the board of directors. The director or member may guarantee or endorse paper for other borrowers. A borrower may repay the borrower's loan in whole or in part on any day that the office of the credit union is open for business.

SECTION 12. AMENDMENT. Section 6-06-21 of the North Dakota Century Code is amended and reenacted as follows:

6-06-21. Reserve fund. Every credit union, including corporate central credit unions, shall maintain a ~~reserve fund in accordance with the rules of the national credit union administration to be used as a reserve against bad loans and other losses. This fund may not be distributed except upon prior approval of the state credit union board~~ an allowance for loan and lease loss account in accordance with generally accepted accounting principles and rules of the national credit union administration. If it is found through an examination that the allowance for loan and lease loss account is not sufficient in disclosing the exposure to loan losses, then the credit union will increase the allowance for loan and lease loss account within thirty days as directed by the commissioner.

SECTION 13. AMENDMENT. Section 6-06-26 of the North Dakota Century Code is amended and reenacted as follows:

6-06-26. Dividends. A credit union, upon action by its union's board of directors, may declare and pay a dividend to be paid from the remaining on shares from current or accumulated net earnings, or both, in the absence of sufficient net earnings, as authorized by the board or commissioner. The board of directors shall establish the dividend and the dividend period. The members may fix the maximum rate of dividends to be paid. The dividends must be paid from the net earnings of the credit union, after establishing a special reserve for delinquent loans as required by the board or commissioner. A credit union, upon action of its board of directors, may authorize an interest refund to members of record at the close of business the last day of any dividend period in proportion to the interest paid during that dividend period. Interest refunds may be made to borrowers only after provision has been made for a special reserve for delinquent loans if required by the board or commissioner but only after providing for required reserves, accrued and unpaid expenses, and established loan and lease losses. A credit union may pay a dividend on partial or full shares and may pay the dividend at differing levels and at differing intervals based on the type of share accounts owned by a member, the liquidation priority of share accounts, and the balances of a member's share accounts. A credit union may determine the rate and amount of a dividend before the end of the dividend period involved. A credit union, upon action of its board of directors, may authorize an interest refund to members of record at the close of business the last day of any dividend period in proportion to the interest paid during that dividend period. A credit union shall not pay a dividend if payment would result in the insolvency of the credit union.

SECTION 14. AMENDMENT. Section 6-08-15 of the North Dakota Century Code is amended and reenacted as follows:

6-08-15. Slander or libel of bank or credit union - Safe deposit, annuity, surety, or trust company - Aiding or abetting - Penalty - Liability for damages. Any person who willfully and maliciously makes, circulates, or transmits to another or to others, any false statement, rumor, or suggestion, written, printed, or by word of mouth, which directly or by inference is derogatory to the financial condition, or which affects the solvency or financial standing, of any state or national bank, of any state or federal credit union, or of any annuity, safe deposit, surety, or trust company authorized to do business in this state, or who counsels, aids, procures, or induces another to start, transmit, or circulate any such false statement or rumor, is guilty of a class A misdemeanor, and in addition thereto is liable in damages to such association, or corporation, or the receiver thereof, to be recovered in a civil action brought for that purpose.

SECTION 15. AMENDMENT. Subsection 2 of section 6-08-16 of the North Dakota Century Code is amended and reenacted as follows:

2. The grade of an offense under this section may be determined by individual or aggregate totals of insufficient funds checks, drafts, electronic funds transfer authorizations, or orders. The person is also liable for collection fees or costs, not in excess of twenty-five dollars, which are recoverable by the holder, or its agent or representative, of the check, draft, electronic funds transfer authorization, or order. If the holder of the check, draft, electronic funds transfer authorization, or order or the holder's agent or representative uses the automated clearinghouse network to collect the collection fees or costs, that person shall comply with the network's rules and requirements. A collection

agency shall reimburse the original holder of the check, draft, electronic funds transfer authorization, or order any additional charges assessed by the depository bank of the check, draft, electronic funds transfer authorization, or order not in excess of two dollars if recovered by the collection agency. If the person does not pay the instrument in full and any collection fees or costs not in excess of twenty-five dollars within ten days from receipt of the notice of dishonor provided for in subsection 4, a civil penalty is also recoverable by civil action by the holder, or its agent or representative, of the check, draft, electronic funds transfer authorization, or order. The civil penalty consists of payment to the holder, or its agent or representative, of the instrument of the lesser of two hundred dollars or three times the amount of the instrument. The court may order an individual convicted under this section to undergo an evaluation by a licensed gaming, alcohol, or drug addiction counselor.

SECTION 16. REPEAL. Sections 6-06-21.1 and 6-06-39 of the North Dakota Century Code are repealed.

Approved April 11, 2005
Filed April 12, 2005

CHAPTER 87

SENATE BILL NO. 2263

(Senators Espeguard, Holmberg, Schobinger, Tollefson)
(Representatives Dietrich, Nottestad)

CREDIT UNION MEMBERSHIP

AN ACT to amend and reenact section 6-06-07 of the North Dakota Century Code, relating to the field of membership of state-chartered credit unions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-06-07 of the North Dakota Century Code is amended and reenacted as follows:

6-06-07. Membership in credit union.

1. The membership of a credit union consists of the incorporators and such other persons as may be elected to membership. Each member shall subscribe to and pay the initial installment on at least one share in the credit union, and pay the entrance fee as provided by the bylaws of the credit union. Organizations, incorporated or otherwise, composed principally of the same general group as the credit union membership may be members ~~therein~~ of the credit union.
2. Credit union membership is limited to groups having a common bond of occupation or association or to groups residing within a well-defined rural or urban district geographic area that does not extend beyond a seventy-five mile [120.70 kilometer] radius of the home office of the credit union. Except as provided by this section, an office of a credit union that has a field of membership defined by geography may not be located more than seventy-five miles [120.70 kilometers] from the credit union main office. The restrictions on location and field of membership under this section do not apply to a credit union office location or field of membership approved by the board before January 1, 2005. In the event of a merger between credit unions with different geographic fields of membership, the surviving credit union may expand the field of membership to include the geographic field of membership of the merged credit union. After December 31, 2004, a credit union may not establish and operate a new branch office that is outside the credit union's field of membership. A branch office may not expand the geographic field of membership of a credit union.
3. The board shall adopt a procedure whereby through which all interested persons, including banking institutions and credit unions, are afforded reasonable opportunity to submit data, views, or arguments, orally or in writing; to obtain a hearing; and to intervene as a party to a proceeding concerning a proposed application for a credit union to expand its the credit union's field of membership.

Approved March 16, 2005

Filed March 17, 2005

CHAPTER 88**HOUSE BILL NO. 1150**

(Industry, Business and Labor Committee)
(At the request of the Industrial Commission)

**BANK OF NORTH DAKOTA RECORD
CONFIDENTIALITY**

AN ACT to create and enact a new subdivision to subsection 7 of section 6-08.1-02 of the North Dakota Century Code, relating to confidentiality of Bank of North Dakota customer records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁵⁵ **SECTION 1.** A new subdivision to subsection 7 of section 6-08.1-02 of the North Dakota Century Code is created and enacted as follows:

The program under which any financing or security referenced in subdivision a was made.

Approved March 4, 2005

Filed March 4, 2005

⁵⁵ Section 6-08.1-02 was also amended by section 1 of House Bill No. 1203, chapter 537.

CHAPTER 89

SENATE BILL NO. 2074

(Industry, Business and Labor Committee)
(At the request of the Municipal Bond Bank)

PUBLIC FINANCE AUTHORITY

AN ACT to create and enact three new sections to chapter 6-09.4 of the North Dakota Century Code, relating to changing the name of the municipal bond bank to the public finance authority and authorizing the authority to issue bonds on behalf of other state bonding entities; and to amend and reenact sections 6-09.4-01, 6-09.4-03, 6-09.4-04, 6-09.4-05, 6-09.4-05.1, 6-09.4-06, 6-09.4-07, 6-09.4-08, 6-09.4-09, 6-09.4-10, 6-09.4-11, 6-09.4-12, 6-09.4-14, 6-09.4-15, 6-09.4-16, 6-09.4-17, 6-09.4-18, 6-09.4-19, 6-09.4-20, 6-09.4-21, 6-09.4-22, 6-09.4-23, 21-02-11, and 21-03-30, subsection 7 of section 26.1-05-19, subdivision 1 of subsection 2 of section 28-32-01, subsection 9 of section 40-33.3-06, sections 54-01-27 and 54-17-36, subsection 1 of section 61-28.1-12, and subsections 2 and 3 of section 61-28.2-01 of the North Dakota Century Code, relating to changing the name of the municipal bond bank to the public finance authority and to use of the reserve fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09.4-01 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-01. Title. This chapter must be known as the "North Dakota ~~Municipal Bond Bank~~ Public Finance Authority Act".

⁵⁶ **SECTION 2. AMENDMENT.** Section 6-09.4-03 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-03. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. ~~"Bond bank" means the North Dakota municipal bond bank created by section 6-09.4-04.~~
2. "Bondholder" or "holder" or any similar term when used with reference to a bond of the ~~bond bank~~ public finance authority means any person who is the bearer of any outstanding bond of the ~~bond bank~~ public finance authority.
3. 2. "Bonds" or "bond" means evidences of indebtedness of the ~~bond bank~~ public finance authority issued pursuant to this chapter.

⁵⁶ Section 6-09.4-03 was also amended by section 2 of Senate Bill No. 2276, chapter 90.

4. 3. "Fully marketable form" means a municipal security duly executed and accompanied by an approving legal opinion of a counsel whose opinions are generally accepted by the ~~bond bank~~ public finance authority or other purchasers of municipal securities.
5. 4. "Municipal security" means an evidence of indebtedness issued by a political subdivision, but does not include an evidence of indebtedness issued pursuant to chapter 40-57 other than an evidence of indebtedness that qualifies as an "exempt facility bond" as defined under 26 U.S.C. 142(a) (4), (5), or (6) [Pub. L. 99-514; 100 Stat. 2606], as amended, and regulations promulgated and officially proposed to be promulgated thereunder, issued to provide one of the following:
- a. A facility for the furnishing of water.
 - b. A wastewater facility.
 - c. A nonpoint source pollution control facility.
6. 5. "Political subdivision" means:
- a. A local governmental unit created by statute or by the Constitution of North Dakota for local governmental or other public purposes.
 - b. The state department of health, or any other state agency or authority, or any member-owned association or publicly owned and nonprofit corporation:
 - (1) Operating any public water system that is subject to chapter 61-28.1.
 - (2) Operating any facility, system, or other related activity that is eligible for financial assistance under chapter 61-28.2.
 - c. The Bank of North Dakota, for purposes of the revolving loan fund program established by chapter 61-28.2.
 - d. The state water commission, for purposes of the revolving loan fund program established by chapter 61-28.1.
6. "Public finance authority" means the public finance authority created by section 6-09.4-04.
7. "Required debt service reserve" means the amount required to be on deposit in the reserve fund.
8. "Reserve fund" means the ~~North Dakota municipal bond bank~~ public finance authority reserve fund or funds created as provided in section 6-09.4-10.
9. "Revenues" means any or all fees, charges, moneys, profits, payments of principal of or interest on municipal securities, investment income, revenues, appropriations, and all other income derived or to be derived by the ~~bond bank~~ public finance authority under this chapter.

SECTION 3. AMENDMENT. Section 6-09.4-04 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-04. Creation of bond bank public finance authority. A bond bank public finance authority is hereby established under the operation, management, and control of the industrial commission to be known as the "North Dakota municipal bond bank public finance authority". The bond bank public finance authority is constituted as an instrumentality of the state exercising public and governmental functions, and the exercise by the bond bank public finance authority of the powers conferred by this chapter must be deemed and held to be an essential governmental function of the state.

SECTION 4. AMENDMENT. Section 6-09.4-05 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-05. Participation voluntary - Agreement to participate. Participation by a political subdivision is entirely voluntary and no political subdivision may be required to sell its bond issues to the bond bank public finance authority. Notwithstanding any other state law applicable to the issuance of bonds, a political subdivision desiring to participate in the bond bank public finance authority may enter into an agreement with the bond bank public finance authority for the purchase by the bond bank public finance authority of a bond issue or issues of the political subdivision, including the purchase by the bond bank public finance authority of an issue or issues of refunding bonds, which refunding bonds may be required by the agreement to be issued at a rate or rates of interest higher or lower than that of the bond issue or issues to be refunded.

SECTION 5. AMENDMENT. Section 6-09.4-05.1 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-05.1. Administrative agreements with state agencies. The bond bank public finance authority and any state agency authorized by state or federal law to make an allocation of bonds or bonding authority or to make loans, or to issue bonds to obtain funds for the purpose of making loans, to political subdivisions may enter into an administrative agreement, which may authorize the bond bank public finance authority to administer the loan or bond program for the state agency. The agreement may delegate to the bond bank public finance authority the authority to make loans, or to issue bonds to obtain funds for the purpose of making loans, to political subdivisions.

⁵⁷ **SECTION 6. AMENDMENT.** Section 6-09.4-06 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-06. Lending and borrowing powers generally. The bond bank public finance authority may lend money to political subdivisions through the purchase and holding of municipal securities which, in the opinion of the attorney general, are properly eligible for purchase by the bond bank public finance authority under this chapter and for which the principal amount of any one issue does not exceed two hundred thousand dollars. However, the bond bank public finance authority may lend money to political subdivisions, through the purchase and holding

⁵⁷ Section 6-09.4-06 was also amended by section 3 of Senate Bill No. 2276, chapter 90.

of securities issued by the political subdivisions without regard to the principal amount of the bonds issued, if the industrial commission approves a resolution that authorizes the bond bank public finance authority to purchase and hold the securities. The authorizing resolution must state that the industrial commission has determined that private bond markets will not be responsive to the needs of the issuing political subdivision concerning the securities or, if it appears that the securities can be sold through private bond markets without the involvement of the bond bank public finance authority, the authorizing resolution must state reasons for the bond bank's public finance authority's involvement in the bond issue. The bond bank public finance authority may hold such municipal securities for any length of time it finds to be necessary. The bond bank public finance authority, for the purposes authorized by this chapter, may issue its bonds payable solely from the revenues available to the bond bank public finance authority which are authorized or pledged for payment of bond bank public finance authority obligations, and to otherwise assist political subdivisions as provided in this chapter.

The bond bank public finance authority may lend money to the Bank of North Dakota under terms and conditions requiring the Bank to use the proceeds to make loans for agricultural improvements that qualify for assistance under the revolving loan fund program established by chapter 61-28.2.

Bonds of the bond bank public finance authority issued under this chapter are not in any way a debt or liability of the state and do not constitute a loan of the credit of the state or create any debt or debts, liability or liabilities, on behalf of the state, or constitute a pledge of the faith and credit of the state, but all such bonds are payable solely from revenues pledged or available for their payment as authorized in this chapter. Each bond must contain on its face a statement to the effect that the bond bank public finance authority is obligated to pay such principal or interest, and redemption premium, if any, and that neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or the interest on such bonds. Specific funds pledged to fulfill the bond bank's public finance authority's obligations are obligations of the bond bank public finance authority.

All expenses incurred in carrying out the purposes of this chapter are payable solely from revenues or funds provided or to be provided under this chapter and nothing in this chapter may be construed to authorize the bond bank public finance authority to incur any indebtedness or liability on behalf of or payable by the state.

⁵⁸ **SECTION 7. AMENDMENT.** Section 6-09.4-07 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-07. Powers. The bond bank public finance authority has the following powers:

1. To sue and be sued.
2. To make and enforce bylaws, rules, and regulations for the conduct of its affairs and business and for use of its services.

⁵⁸ Section 6-09.4-07 was also amended by section 4 of Senate Bill No. 2276, chapter 90.

3. To acquire, hold, use, and dispose of its income, revenue, funds, and moneys in accordance with law, this chapter, or legislative appropriations.
4. To acquire, rent, lease, hold, use, and dispose of other personal property for its purposes.
5. To borrow money and to issue its negotiable bonds or notes and to provide for and secure the payment thereof and to provide for the rights of the holders thereof, and to purchase, hold, and dispose of any of its bonds.
6. To fix and revise from time to time and charge and collect fees and charges for the use of its services or facilities.
7. To do and perform any acts and things authorized by this chapter under, through, or by means of its officers, agents, or employees or by contracts with any person, firm, or corporation.
8. To make, enter into, and enforce all contracts or agreements necessary, convenient, or desirable for the purposes of the ~~bond bank~~ public finance authority or pertaining to any loan to a political subdivision or any purchase or sale of municipal securities or other investments or to the performance of its duties and execution or carrying out of any of its powers under this chapter.
9. To purchase or hold municipal securities of political subdivisions at such prices and in such manner as the ~~bond bank~~ public finance authority shall deem advisable, and to sell municipal securities acquired or held by it at such prices without relation to cost and in such manner as the ~~bond bank~~ public finance authority deems advisable.
10. To invest any funds or moneys of the ~~bond bank~~ public finance authority not then required for loan to political subdivisions and for the purchase of municipal securities in the same manner as permitted for investment of funds belonging to the state or the Bank of North Dakota.
11. To fix and prescribe any form of application or procedure to be required of a political subdivision for the purpose of any loan or the purchase of its municipal securities, and to fix the terms and conditions of any such loan or purchase and to enter into agreements with political subdivisions with respect to any such loan or purchase.
12. To consider the need, desirability, or eligibility of such loan, the ability of such political subdivision to secure borrowed money from other sources and the costs thereof, and the particular public improvement or purpose to be financed by the municipal securities to be purchased by the ~~bond bank~~ public finance authority.
13. To impose and collect charges from a political subdivision for its costs and services in review or consideration of any proposed loan to a political subdivision or purchase of municipal securities of such political subdivision, and to impose and collect charges therefor whether or not such loan has been made or such municipal securities have been purchased.

14. To fix and establish any and all terms and provisions with respect to any purchase of municipal securities by the ~~bond bank~~ public finance authority, including dates and maturities of such bonds, provisions as to redemption or payment prior to maturity, and any and all other matters which in connection therewith are necessary, desirable, or advisable in the judgment of the ~~bond bank~~ public finance authority.
15. To procure insurance against any losses in connection with its property, operations, or assets in such amounts and from such insurers as it deems desirable to pay the premiums on such insurance.
16. To the extent permitted under its contracts with the holders of bonds of the ~~bond bank~~ public finance authority, to consent to any modification with respect to rates of interest, time, and payment of any installment of principal or interest, security, or any other term of bond, contract, or agreement of any kind to which the ~~bond bank~~ public finance authority is a party.
17. To do all acts and things necessary, convenient, or desirable to carry out the powers expressly granted or necessarily implied in this chapter.
18. To do and perform any act and thing authorized by section 54-01-27 or 54-17-36 under, through, or by means of its officers, agents, or employees or by contracts with any person to assist the state, or any agency or institution of the state, in making, entering, and enforcing all contracts or agreements necessary, convenient, or desirable for the purposes of leasing all or part of, or an undivided or other interest in, property.

SECTION 8. AMENDMENT. Section 6-09.4-08 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-08. Bonds of the ~~bond bank~~ public finance authority. Bonds of the ~~bond bank~~ public finance authority must be authorized by resolution of the industrial commission and may be issued in one or more series and must bear such date or dates, mature at such time or times, bear interest at such rate or rates of interest per year, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable from such sources in such medium of payment at such place or places within or without the state, and be subject to such terms of redemption, with or without premium, as such resolution or resolutions may provide. Bonds of the ~~bond bank~~ public finance authority, issued to provide funds to a municipal pipeline authority, are to mature not more than thirty years from the date of issue. Bonds of the ~~bond bank~~ public finance authority may be sold at public or private sale at such time or times and at such price or prices as the ~~bond bank~~ public finance authority determines.

⁵⁹ **SECTION 9. AMENDMENT.** Section 6-09.4-09 of the North Dakota Century Code is amended and reenacted as follows:

⁵⁹ Section 6-09.4-09 was also amended by section 5 of Senate Bill No. 2276, chapter 90.

6-09.4-09. Pledges. Any pledge of revenue made by the industrial commission as security for ~~bond bank~~ public finance authority bonds is valid and binding from time to time when the pledge is made. The industrial commission may also pledge assets of the Bank of North Dakota as security for ~~bond bank~~ public finance authority bonds. The revenues or other moneys so pledged and thereafter received by the ~~bond bank~~ public finance authority are immediately subject to the lien of 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 ~~bond bank~~ public finance 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 ~~bond bank~~ public finance authority.

SECTION 10. AMENDMENT. Section 6-09.4-10 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-10. Reserve fund.

1. The ~~bond bank~~ public finance authority shall establish and maintain a reserve fund in which there must be deposited all moneys appropriated by the state for the purpose of the fund, all proceeds of bonds required to be deposited therein by terms of any contract between the ~~bond bank~~ public finance authority and its bondholders or any resolution of the ~~bond bank~~ public finance authority with respect to the proceeds of bonds, any other moneys or funds of the ~~bond bank~~ public finance authority which it determines to deposit therein, any contractual right to the receipt of moneys by the ~~bond bank~~ public finance authority for the purpose of the fund, including a letter of credit or similar instrument, and any other moneys made available to the ~~bond bank~~ public finance authority only for the purposes of the fund from any other source or sources. Moneys in the reserve fund must be held and applied solely to the payment of the interest on and the principal of bonds and sinking fund payments as the same become due and payable and for the retirement of bonds, including payment of any redemption premium required to be paid when any bonds are redeemed or retired prior to maturity. Moneys in the reserve fund may not be withdrawn therefrom if the withdrawal would reduce the amount in the reserve fund to an amount less than the required debt service reserve, except for payment of interest then due and payable on bonds and the principal of bonds then maturing and payable and sinking fund payments and for the retirement of bonds in accordance with the terms of any contract between the ~~bond bank~~ public finance authority and its bondholders and for the payments on account of which interest or principal or sinking fund payments or retirement of bonds, other moneys of the ~~bond bank~~ public finance authority are not then available in accordance with the terms of the contract. The required debt service reserve must be an aggregate amount equal to at least the largest amount of money required by the terms of all contracts between the ~~bond bank~~ public finance authority and its bondholders to be raised in the then current or any succeeding calendar year for the payment of interest on and maturing principal of outstanding bonds, and sinking fund payments required by the terms of any contracts to sinking funds established for the payment or redemption of the bonds.
2. If the establishment of the reserve fund for an issue or the maintenance of an existing reserve fund at a required level under this section would

necessitate the investment of all or any portion of a new reserve fund or all or any portion of an existing reserve fund at a restricted yield, because to not restrict the yield may cause the bonds to be taxable under the Internal Revenue Code, then at the discretion of the ~~bond bank~~ public finance authority no reserve fund need be established prior to the issuance of bonds or the reserve fund need not be funded to the levels required by other subsections of this section or an existing reserve fund may be reduced.

3. No bonds may be issued by the ~~bond bank~~ public finance authority unless there is in the reserve fund the required debt service reserve for all bonds then issued and outstanding and the bonds to be issued. Nothing in this chapter prevents or precludes the ~~bond bank~~ public finance authority from satisfying the foregoing requirement by depositing so much of the proceeds of the bonds to be issued, upon their issuance, as is needed to achieve the required debt service reserve. The ~~bond bank~~ public finance authority may at any time issue its bonds or notes for the purpose of providing any amount necessary to increase the amount in the reserve fund to the required debt service reserve, or to meet such higher or additional reserve as may be fixed by the ~~bond bank~~ public finance authority with respect to such fund.
4. In order to assure the maintenance of the required debt service reserve, there shall be appropriated by the legislative assembly and paid to the ~~bond bank~~ public finance authority for deposit in the reserve fund, such sum, if any, as shall be certified by the industrial commission as necessary to restore the reserve fund to an amount equal to the required debt service reserve. However, the commission may approve a resolution for the issuance of bonds, as provided by section 6-09.4-06, which states in substance that this subsection is not applicable to the required debt service reserve for bonds issued under that resolution.
5. If the maturity of a series of bonds of the ~~bond bank~~ public finance authority is three years or less from the date of issuance of the bonds, the ~~bond bank~~ public finance authority may determine that no reserve fund need be established for that respective series of bonds. If such a determination is made, holders of that respective series of bonds may have no interest in or claim on existing reserve funds established for the security of the holders of previously issued ~~bond bank~~ public finance authority bonds, and may have no interest in or claim on reserve funds established for the holders of subsequent issues of bonds of the ~~bond bank~~ public finance authority.

The industrial commission may determine that this section is inapplicable in whole or in part for bonds issued under section 23 of this Act.

SECTION 11. AMENDMENT. Section 6-09.4-11 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-11. Additional reserves and funds. The ~~bond bank~~ public finance authority may establish such additional and further reserves or such other funds or accounts as may be, in its discretion, necessary, desirable, or convenient to further the accomplishment of the purposes of the ~~bond bank~~ public finance authority to comply with the provisions of any agreement made by or any resolution of the ~~bond bank~~ public finance authority.

SECTION 12. AMENDMENT. Section 6-09.4-12 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-12. Participation by ~~bond bank~~ public finance authority in bonds held by bank Bank of North Dakota. The ~~bond bank~~ public finance authority may issue its bonds from time to time in an amount sufficient to purchase municipal securities held by the Bank of North Dakota at a price established by mutual agreement between the ~~bond bank~~ public finance authority and the Bank of North Dakota.

SECTION 13. AMENDMENT. Section 6-09.4-14 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-14. Purchase of bonds of ~~bond bank~~ public finance authority. The ~~bond bank~~ public finance authority has the power to purchase bonds of the ~~bond bank~~ public finance authority out of any funds or money of the ~~bond bank~~ public finance authority available therefor. The ~~bond bank~~ public finance authority may hold, cancel, or resell such bonds or notes subject to and in accordance with agreements with holders of its bonds.

SECTION 14. AMENDMENT. Section 6-09.4-15 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-15. Bonds as legal investments and security. Notwithstanding any restrictions contained in any other law, the state and all public officers, boards, and agencies, and political subdivisions and agencies thereof, all national banking associations, state banks, trust companies, savings banks and institutions, savings and loan associations, investment companies, and other persons carrying on a banking business, and all executors, administrators, guardians, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds issued by the ~~bond bank~~ public finance authority pursuant to this chapter, and the bonds are authorized security for any and all public deposits.

SECTION 15. AMENDMENT. Section 6-09.4-16 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-16. Tax exemptions. All property of the ~~bond bank~~ public finance authority and all bonds issued under this chapter must be deemed to be serving essential public and governmental purposes and such property and such bonds so issued, their transfer and the income therefrom, including any profits made on the sale thereof, shall at all times be exempt from state, county, and municipal taxes of any and all kinds.

SECTION 16. AMENDMENT. Section 6-09.4-17 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-17. Exemption of property from execution sale. All property of the ~~bond bank~~ public finance authority is exempt from levy and sale by virtue of an execution and no execution or other judicial process may issue against the same nor may any judgment against the ~~bond bank~~ public finance authority be a charge or lien upon its property; provided, that nothing contained in this chapter applies to or limits the rights of the holder of any bonds to pursue any remedy for the enforcement of any pledge or lien given by the ~~bond bank~~ public finance authority on its revenues. Any action or proceeding in any court to set aside a resolution authorizing the issuance of bonds by the ~~bond bank~~ public finance authority under this chapter or to

obtain any relief upon the ground that such resolution is invalid must be commenced within ten days after the adoption of said resolution by the industrial commission. After the expiration of such period of limitation, no claim for relief or defense founded upon the invalidity of the resolution or any of its provisions may be asserted nor may the validity of the resolution or any of its provisions be open to question in any court on any ground whatever.

SECTION 17. AMENDMENT. Section 6-09.4-18 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-18. Insurance or guaranty. The ~~bond bank~~ public finance 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 bonds issued by the ~~bond bank~~ public finance authority, or on any municipal securities purchased or held by the ~~bond bank~~ public finance 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 ~~bond bank~~ public finance authority to fulfill the terms of any agreement made with the holders of its bonds.

SECTION 18. AMENDMENT. Section 6-09.4-19 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-19. Remedies on default of municipal securities. In the event of default by a political subdivision in the payment of interest on or principal of any municipal securities owned or held by the ~~bond bank~~ public finance authority, the ~~bond bank~~ public finance authority may proceed to enforce payment, pursuant to applicable provisions of law, of such interest or principal or other amount then due and payable.

SECTION 19. AMENDMENT. Section 6-09.4-20 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-20. Form of municipal securities and investments. All municipal securities held by the ~~bond bank~~ public finance authority as permitted or provided for under this chapter must at all times be purchased and held in fully marketable form, subject to provision for any registration in the name of the ~~bond bank~~ public finance authority. All municipal securities at any time purchased, held, or owned by the ~~bond bank~~ public finance authority must, upon delivery to the ~~bond bank~~ public finance authority, be in fully marketable form and accompanied by such documentation as shall from time to time be required by the ~~bond bank~~ public finance authority.

SECTION 20. AMENDMENT. Section 6-09.4-21 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-21. Presumption of validity. After issuance, all bonds of the ~~bond bank~~ public finance 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 ~~bond bank~~ public finance authority.

SECTION 21. AMENDMENT. Section 6-09.4-22 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-22. Protection of service during term of loan.

1. The service provided or made available by a political subdivision through the construction or acquisition of an improvement, or the revenues therefrom, financed in whole or in part with a loan to the political subdivision from the ~~bond bank~~ public finance authority or any other state agency or enterprise, may not be curtailed or limited by inclusion of all or any part of the area served by the political subdivision within the boundaries of any other political subdivision, or by the granting of any private franchise for similar service within the area served by the political subdivision, during the term of the loan. The political subdivision providing the service may not be required to obtain or secure any franchise, license, or permit as a condition of continuing to serve the area if it is included within the boundaries of another political subdivision during the term of the loan.
2. Under the circumstances described in subsection 1, nothing prevents the two political subdivisions, with the ~~bond bank~~ public finance authority or other state agency or enterprise, from negotiating an agreement for the right or obligation to provide the service in question, provided that any agreement is invalid and unenforceable unless the ~~bond bank~~ public finance authority or other state agency or enterprise is a party to the agreement and unless the agreement contains adequate safeguards to ensure the security and timely payment of any outstanding bonds of the ~~bond bank~~ public finance authority issued to fund the loan.

SECTION 22. AMENDMENT. Section 6-09.4-23 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-23. Evidences of indebtedness - Authority to withhold school district state aid.

1. If the ~~municipal bond bank~~ public finance authority or a paying agent notifies the superintendent of public instruction, in writing, that a school district has failed to pay when due the principal or interest on any evidences of indebtedness issued after July 31, 1999, or that the ~~bond bank~~ public finance authority or the paying agent has reason to believe a school district will not be able to make a full payment of the principal and interest when the payment is due, the superintendent of public instruction shall withhold any funds that are due or payable or appropriated to the school district under chapter 15.1-27 until the payment of the principal or interest has been made to the ~~bond bank~~ public finance authority or the paying agent, or until the ~~bond bank~~ public finance authority or the paying agent notifies the superintendent of public instruction that arrangements satisfactory to the ~~bond bank~~ public finance authority or the paying agent have been made for the payment of the principal and interest then due and owing. The notification must include information required by the superintendent of public instruction. State funds available to a school district under chapter 15.1-27 are not subject to withholding under this section unless the withholding is authorized by resolution of the district's school board.

2. Notwithstanding any withholding of state funds under section 15-39.1-23 or any other law, the superintendent of public instruction shall make available any funds withheld under subsection 1 to the municipal bond bank public finance authority or the paying agent. The bond bank public finance authority or the paying agent shall apply the funds to payments that the school district is required to make to the bond bank public finance authority or the paying agent.
3. If funds are withheld from a school district and made available to the bond bank public finance authority or a paying agent under this section and if tax revenues are received by the school district during the fiscal year in which the funds are withheld and are deposited in the district's sinking fund established in accordance with section 21-03-42, the district, with the consent of the bond bank public finance authority or the paying agent, may withdraw from its sinking fund an amount equal to that withheld by the superintendent of public instruction and made available to the bond bank public finance authority or a paying agent under this section.
4. Any excess funds at the Bank of North Dakota escrowed pursuant to an agreement between the municipal bond bank public finance authority and the state board of public school education for the benefit of the bond bank public finance authority and a school district must be held by the Bank. With the approval of the superintendent of public instruction, those funds may be used to subsidize the debt service payments on construction loans that are made to school districts by the bond bank public finance authority and which are subject to the withholding provisions of this section or construction loans made to school districts under the state school construction program established by section 11 of chapter 2 of the 1989 Session Laws. Notwithstanding the existence of an escrow agreement between the bond bank public finance authority and the state board of public school education, those funds must be transferred to the bond bank public finance authority upon certification by the bond bank public finance authority that the funds are in excess of the amount needed to provide for the payment in full of the outstanding principal and interest, when due, on the bond bank public finance authority bonds issued to purchase the municipal securities for which the escrow fund was established.

SECTION 23. A new section to chapter 6-09.4 of the North Dakota Century Code is created and enacted as follows:

Public finance authority - Issuance on behalf of other state agencies.

The public finance authority may issue bonds or other evidences of indebtedness on behalf of other state agencies, instrumentalities, or officers, including the farm finance agency, industrial commission, North Dakota building authority, student loan trust, and any other state agency, instrumentality, or officer authorized by law to issue bonds or other evidences of indebtedness and which elects to enter into an administrative agreement with the public finance authority under this chapter. The public finance authority may be assisted by any other official appointed by the industrial commission to aid the executive director or to serve as an authorized officer of the public finance authority from time to time. Notwithstanding any other provision of law, in issuing bonds or other evidences of indebtedness and in administering or managing any bond issue postissuance on behalf of any other state agency, instrumentality, or officer, the public finance authority may exercise any of the powers and authority of that state agency, instrumentality, or officer which the

industrial commission determines to be necessary or expedient in the issuance of bonds or other evidences of indebtedness or in the administration or management of the issue. Any bonds or other evidences of indebtedness issued by the public finance authority on behalf of any other state agency, instrumentality, or officer, if so determined by the industrial commission, continues to be the obligation or liability of the state agency or instrumentality as otherwise provided by law and not an obligation or liability of the public finance authority.

SECTION 24. A new section to chapter 6-09.4 of the North Dakota Century Code is created and enacted as follows:

Administrative agreements with state agencies and instrumentalities to issue bonds and other evidences of indebtedness. The public finance authority and any state agency, instrumentality, or officer authorized by law to issue bonds or other evidences of indebtedness to obtain funds for any authorized purpose may enter into an administrative agreement. The agreement may delegate to the public finance authority the power and authority to issue bonds or other evidences of indebtedness on behalf of the state agency, instrumentality, or officer to obtain funds for any other purpose authorized by law and may contain such other necessary or expedient terms and conditions as the industrial commission and the parties to the administrative agreement approve to effect the issuance of the bonds or other evidences of indebtedness and to aid in the administration or management of any bond issue after issuance.

SECTION 25. A new section to chapter 6-09.4 of the North Dakota Century Code is created and enacted as follows:

Public finance authority as continuation of and successor in interest to municipal bond bank.

1. Beginning with the effective date of this Act, the public finance authority is deemed the continuation of and successor in interest to the municipal bond bank and any reference to the municipal bond bank or bond bank in any agreement, certificate, contract, covenant, indenture, resolution, recital, undertaking, bond, note, other evidence of indebtedness, or in any other document or instrument means the public finance authority.
2. The public finance authority as the continuation of and successor in interest to the municipal bond bank is deemed to:
 - a. Possess all rights, title, privileges, powers, immunities, property, assets, and claims of the bond bank; and
 - b. Fulfill and perform all obligations of the bond bank, including all bond bank obligations relating to outstanding bonds and notes.

SECTION 26. AMENDMENT. Section 21-02-11 of the North Dakota Century Code is amended and reenacted as follows:

21-02-11. Advertising for bids - When required - Procedure similar to bond sales. If the governing board of a political subdivision determines to borrow upon certificates of indebtedness, it shall follow the procedure and is subject to the penalties prescribed in the provisions relating to the sale of bonds in chapter 21-03. Certificates of indebtedness need not be advertised for bids:

1. If they are sold to the state board of university and school lands, the Bank of North Dakota, the ~~North Dakota municipal bond bank~~ public finance authority, or in case other trust funds administered by public officials are invested in them; or
2. If they do not exceed the total sum of one hundred thousand dollars.

SECTION 27. AMENDMENT. Section 21-03-30 of the North Dakota Century Code is amended and reenacted as follows:

21-03-30. Municipal bonds - Private sale to United States or state agencies. The procedure prescribed in this chapter relative to calling for bids upon the sale of municipal bonds is not required in the case of bonds issued under the authorization of subdivision b or c of subsection 7 of section 21-03-06, or in case bonds are sold to:

1. The state board of university and school lands.
2. The Bank of North Dakota.
3. The ~~North Dakota municipal bond bank~~ public finance authority.
4. Trust funds administered by public officials.
5. The United States of America, or any agency or instrumentality thereof.

SECTION 28. AMENDMENT. Subsection 7 of section 26.1-05-19 of the North Dakota Century Code is amended and reenacted as follows:

7. Bonds issued by the ~~North Dakota municipal bond bank~~ public finance authority pursuant to chapter 6-09.4.

⁶⁰ **SECTION 29. AMENDMENT.** Subdivision 1 of subsection 2 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

1. The industrial commission with respect to the activities of the Bank of North Dakota, North Dakota housing finance agency, ~~North Dakota municipal bond bank~~ public finance authority, North Dakota mill and elevator association, and North Dakota farm finance agency.

SECTION 30. AMENDMENT. Subsection 9 of section 40-33.3-06 of the North Dakota Century Code is amended and reenacted as follows:

9. May mortgage, pledge, and grant a security interest in any or all of its property or revenues to secure the repayment of moneys loaned to it or advanced to it by the ~~municipal bond bank~~ public finance authority as the result of a bond issue under chapter 6-09.4.

⁶⁰ Section 28-32-01 was also amended by section 11 of House Bill No. 1016, chapter 16, section 14 of House Bill No. 1169, chapter 406, section 13 of House Bill No. 1088, chapter 195, and section 6 of Senate Bill No. 2027, chapter 538.

SECTION 31. AMENDMENT. Section 54-01-27 of the North Dakota Century Code is amended and reenacted as follows:

54-01-27. Lease of state-owned property. Notwithstanding any other provision of law, the state, or any agency or institution of the state, may enter agreements to lease all or part of, or an undivided or other interest in, any real or personal property belonging to the state, or any agency or institution of the state, to and, or, from any agency or institution of the state or any person for such compensation and upon such terms and conditions as the parties under such agreement may stipulate. Such agreements must be authorized by the board, if any, or commissioner or other executive officer of the commission, agency, or institution holding, controlling, possessing, or owning the property or on whose behalf the property is held, and must be approved by the industrial commission. For purposes of this section, the agreements include any lease, sublease, purchase agreement, lease-purchase agreement, installment purchase agreement, leaseback agreement, or other contract, agreement, instrument, or arrangement pursuant to which any rights, interests, or other property are transferred to, by, or from any party to, by, or from one or more parties, and any related documents entered or to be entered, including any operating agreement, service agreement, indemnity agreement, participation agreement, loan agreement, or payment undertaking agreement entered as part of a long-term lease and leaseback transaction. A lease obligation under this section may not exceed a term of ninety-nine years. A lease obligation entered into under this section is payable solely from revenues to be derived by the state, or any agency or institution of the state, from the ownership, sale, lease, disposition, and operation of the property; any funds or investments permitted under state law, and any earnings thereon, to the extent pledged therefor; revenues to be derived by the state, or any agency or institution of the state, from any support and operating agreement, service agreement, or any other agreement relating to the property; funds, if any, appropriated annually by the legislative assembly or received from federal sources; and income or proceeds from any collateral pledged or provided therefor. A lease obligation under this section does not constitute an indebtedness of the state, or any agency or institution of the state, or a pledge of the full faith and credit or unlimited taxing resources of the state, or any agency or institution of the state. Notwithstanding any other law, the state, or any agency or institution of the state, may solicit and accept one or more proposals for a lease transaction, including the arrangement thereof, under this section, and accept any proposal that is determined to be in the public interest. The ~~bond bank~~ public finance authority, on behalf of the state, or any agency or institution of the state, may do and perform any acts and things authorized by this section, including making, entering, and enforcing all contracts or agreements necessary, convenient, or desirable for the purposes of this section.

SECTION 32. AMENDMENT. Section 54-17-36 of the North Dakota Century Code is amended and reenacted as follows:

54-17-36. Lease of municipal waterworks and sewage systems. Notwithstanding any other provision of law, the state, acting by and through its industrial commission, may enter agreements to lease all or part of, or an undivided or other interest in, the plant or equipment of any waterworks, mains, or water distribution system and any property related thereto pursuant to subsection 5 of section 40-33-01, subsection 12 of section 61-24.5-09, or subsection 23 of section 61-35-12 or any sewage system and all related property for the collection, treatment, purification, and disposal in a sanitary manner of sewage pursuant to section 40-34-19 or subsection 23 of section 61-35-12 to or from a municipality or other political subdivision or agency of the state, or to or from any person, for such compensation and upon such terms and conditions as the parties under such

agreement may stipulate. For the purposes of this section, such agreements include any lease, sublease, purchase agreement, lease-purchase agreement, installment purchase agreement, leaseback agreement, or other contract, agreement, instrument, or arrangement pursuant to which any rights, interests, or other property are transferred to, by, or from any party to, by, or from one or more parties, and any related documents entered or to be entered, including any operating agreement, service agreement, indemnity agreement, participation agreement, loan agreement, or payment undertaking agreement. Any lease obligation entered under this section is payable solely from revenues to be derived by the state or any agency or institution of the state from the ownership, sale, lease, disposition, and operation of the plant or equipment of any waterworks, mains, or water distribution system and any property related thereto or sewage systems and all related property for the collection, treatment, purification, and disposal in a sanitary manner of sewage; any funds or investments permitted under state law, and any earnings thereon, to the extent pledged therefor; revenues to be derived by the state from any support and operating agreement, service agreement, or any other agreement relating to the waterworks, mains, and water distribution system or sewage system; funds, if any, appropriated annually by the legislative assembly; and income or proceeds from any collateral pledged or provided therefor. A lease obligation entered under this section does not constitute an indebtedness of the industrial commission, the state, or any agency or officer or agent thereof, or a pledge of the full faith and credit or unlimited taxing resources of the industrial commission, the state, or any agency or officer or agent thereof. The industrial commission may authorize the ~~bond bank~~ public finance authority or another agency or institution of the state to do and perform any acts and things authorized by this section, including making, entering, and enforcing all contracts or agreements necessary, convenient, or desirable for the purposes of this section.

SECTION 33. AMENDMENT. Subsection 1 of section 61-28.1-12 of the North Dakota Century Code is amended and reenacted as follows:

1. To apply for and accept grants of money from the United States environmental protection agency or other federal agencies which must be deposited in the drinking water treatment revolving loan fund to be used for purposes authorized under the Safe Drinking Water Act, including the following:
 - a. To provide loans or loan guaranties, or other financial assistance, to community water systems and nonprofit noncommunity water systems eligible for assistance from the revolving loan fund.
 - b. As a source of revenue and security for the payment of principal and interest on bonds issued by the state through the ~~North Dakota municipal bond bank~~ public finance authority if the bond proceeds are deposited in the revolving loan fund.
 - c. To buy or refinance debt obligations issued after July 1, 1993, to finance a project eligible for assistance from the revolving loan fund.
 - d. To guarantee or purchase insurance for debt obligations issued to finance a project eligible for assistance from the revolving loan fund.

- e. To provide other financial and technical assistance and to make any other expenditure authorized under the Safe Drinking Water Act.
- f. To earn interest before the disbursement of financial or technical assistance.
- g. To pay administrative expenses associated with the revolving loan fund as authorized under the Safe Drinking Water Act.

SECTION 34. AMENDMENT. Subsections 2 and 3 of section 61-28.2-01 of the North Dakota Century Code are amended and reenacted as follows:

2. There is established the water pollution control revolving loan fund, which must be maintained and operated by the state department of health. Grants from the federal government or its agencies allotted to the state for the capitalization of the revolving loan fund, and state matching funds when required, must be deposited directly in the revolving loan fund in compliance with the terms of the federal grant. Money in the revolving loan fund must be expended in a manner consistent with terms and conditions of the grants received by the state and may be used to offer loan guarantees; to provide payments to reduce interest on loans and loan guarantees; to make bond interest subsidies; to provide bond guarantees on behalf of municipalities, other local political subdivisions, and intermunicipal or interstate agencies; to provide assistance to a municipality, other local political subdivisions, or intermunicipal or interstate agencies with respect to the nonfederal share of the costs of a project; to finance the cost of facility planning and the preparation of plans, specifications, and estimates for construction of publicly owned treatment works or public water supply systems; to provide financial assistance for the construction and rehabilitation of a project on the state priority list; to secure principal and interest on bonds issued by a public trust having the state of North Dakota as its beneficiary, or the ~~North Dakota municipal bond bank~~ public finance authority if the proceeds of such bonds are deposited in the revolving loan fund and to the extent provided in the terms of the federal grant; to provide for loan guarantees for similar revolving funds established by municipalities, other local political subdivisions, or intermunicipal agencies; to purchase debt incurred by municipalities or other local political subdivisions for wastewater treatment projects or public water supply systems; to improve credit market access by guaranteeing or purchasing insurance or other credit enhancement devices for local obligations or obligations of a public trust having the state of North Dakota as its beneficiary or the ~~North Dakota municipal bond bank~~ public finance authority; to fund other programs which the federal government authorizes by the terms of its grants; to fund the administrative expenses of the department associated with the revolving loan fund; and to provide for any other expenditure consistent with the federal grant program and state law. Money not currently needed for the operation of the revolving loan fund or otherwise dedicated may be invested. All interest earned on investments must be credited to the revolving loan fund.

3. The department shall administer the revolving loan fund. The department may enter into contracts and other agreements in connection with the operation of the revolving loan fund, including contracts and agreements with federal agencies, political subdivisions, public trusts having the state of North Dakota as beneficiary or the ~~North Dakota municipal bond bank~~ public finance authority, and other parties to the extent necessary or convenient for the implementation of the revolving loan fund program. The department shall maintain full authority for the operation of the revolving loan fund in accordance with applicable federal and state law.

Approved March 25, 2005

Filed March 25, 2005

CHAPTER 90

SENATE BILL NO. 2276

(Senators Espegard, Grindberg)
(Representative Dosch)

BOND BANK BOND ISSUANCE

AN ACT to amend and reenact section 6-09.4-02, subsection 5 of section 6-09.4-03, sections 6-09.4-06, 6-09.4-07, 6-09.4-09, and 6-09.4-13, and subsection 1 of section 40-57-02 of the North Dakota Century Code, relating to the purchase of qualified small issue bonds by the municipal bond bank and issuance of municipal industrial development revenue bonds by the municipal bond bank; and to provide program limits for the purchase or issuance of qualified small issue bonds or municipal industrial revenue bonds by the municipal bond bank.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09.4-02 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-02. Legislative policy. It is declared to be the policy of the state of North Dakota to foster and promote the provision of adequate capital markets and facilities for borrowing money by political subdivisions or other contracting parties and for the financing of their respective public improvements or projects as those terms are used or defined in this chapter or chapter 40-57. It is in the public interest to encourage political subdivisions or other contracting parties to continue their independent undertakings of public improvements or projects and the financing thereof by making funds available at reduced interest costs, especially during periods of restricted credit or money supply. Current credit and municipal bond market conditions require the exercise of the powers of the state to further and implement such policies by authorizing a state instrumentality to be created to borrow money and to issue its bonds to make funds available at reduced rates and on favorable terms for borrowing by political subdivisions or other contracting parties through the purchase or holding of marketable municipal securities of political subdivisions or other contracting parties in fully marketable form or in another form adequate to secure bonds issued by the state instrumentality and by granting broad powers to accomplish and to carry out the policies of the state.

⁶¹ **SECTION 2. AMENDMENT.** Subsection 5 of section 6-09.4-03 of the North Dakota Century Code is amended and reenacted as follows:

5. "Municipal security" means an evidence of indebtedness issued by a political subdivision and a revenue agreement entered into by a contracting party as those terms are used in chapter 40-57, but does not generally include an evidence of indebtedness issued pursuant to chapter 40-57 other than an evidence of indebtedness that qualifies as

⁶¹ Section 6-09.4-03 was also amended by section 2 of Senate Bill No. 2074, chapter 89.

a qualified small issue bond as defined under 26 U.S.C. 144(a) [Pub. L. 99-514; 100 Stat. 2606], as amended, and regulations promulgated and officially proposed to be promulgated thereunder, or as an "exempt facility bond" as defined under 26 U.S.C. 142(a) (4), (5), or (6) [Pub. L. 99-514; 100 Stat. 2606], as amended, and regulations promulgated and officially proposed to be promulgated thereunder, issued to provide one of the following:

- a. A facility for the furnishing of water.
- b. A wastewater facility.
- c. A ~~nonpoint source pollution control~~ solid waste disposal facility.

⁶² **SECTION 3. AMENDMENT.** Section 6-09.4-06 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-06. Lending and borrowing powers generally. The bond bank may lend money to political subdivisions or other contracting parties through the purchase ~~and~~ or holding of municipal securities which, in the opinion of the attorney general, are properly eligible for purchase or holding by the bond bank under this chapter or chapter 40-57 and for which the principal amount of any one issue does not exceed two hundred thousand dollars. However, the bond bank may lend money to political subdivisions or other contracting parties, through the purchase ~~and~~ or holding of securities issued by the political subdivisions or other contracting parties without regard to the principal amount of the bonds issued, if the industrial commission approves a resolution that authorizes the bond bank to purchase ~~and~~ or hold the securities. The authorizing resolution must state that the industrial commission has determined that private bond markets will not be responsive to the needs of the issuing political subdivision or other contracting party concerning the securities or, if it appears that the securities can be sold through private bond markets without the involvement of the bond bank, the authorizing resolution must state reasons for the bond bank's involvement in the bond issue. The bond bank may hold such municipal securities for any length of time it finds to be necessary. The bond bank, for the purposes authorized by this chapter or chapter 40-57, may issue its bonds payable solely from the revenues available to the bond bank which are authorized or pledged for payment of bond bank obligations, and to otherwise assist political subdivisions or other contracting parties as provided in this chapter or chapter 40-57.

The bond bank may lend money to the Bank of North Dakota under terms and conditions requiring the Bank to use the proceeds to make loans for agricultural improvements that qualify for assistance under the revolving loan fund program established by chapter 61-28.2.

Bonds of the bond bank issued under this chapter or chapter 40-57 are not in any way a debt or liability of the state and do not constitute a loan of the credit of the state or create any debt or debts, liability or liabilities, on behalf of the state, or constitute a pledge of the faith and credit of the state, but all such bonds are payable solely from revenues pledged or available for their payment as authorized in this chapter. Each bond must contain on its face a statement to the effect that the bond

⁶² Section 6-09.4-06 was also amended by section 6 of Senate Bill No. 2074, chapter 89.

bank is obligated to pay such principal or interest, and redemption premium, if any, and that neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or the interest on such bonds. Specific funds pledged to fulfill the bond bank's obligations are obligations of the bond bank.

All expenses incurred in carrying out the purposes of this chapter or chapter 40-57 are payable solely from revenues or funds provided or to be provided under this chapter or chapter 40-57 and nothing in this chapter may be construed to authorize the bond bank to incur any indebtedness or liability on behalf of or payable by the state.

⁶³ **SECTION 4. AMENDMENT.** Section 6-09.4-07 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-07. Powers. The bond bank has the following powers:

1. To sue and be sued.
2. To make and enforce bylaws, rules, and regulations for the conduct of its affairs and business and for use of its services.
3. To acquire, hold, use, and dispose of its income, revenue, funds, and moneys in accordance with law, this chapter or chapter 40-57, or legislative appropriations.
4. To acquire, rent, lease, hold, use, and dispose of other personal property for its purposes.
5. To borrow money and to issue its negotiable bonds or notes and to provide for and secure the payment thereof and to provide for the rights of the holders thereof, and to purchase, hold, and dispose of any of its bonds.
6. To fix and revise from time to time and charge and collect fees and charges for the use of its services or facilities.
7. To do and perform any acts and things authorized by this chapter or chapter 40-57 under, through, or by means of its officers, agents, or employees or by contracts with any person, firm, or corporation.
8. To make, enter into, and enforce all contracts or agreements necessary, convenient, or desirable for the purposes of the bond bank or pertaining to any loan to a political subdivision or other contracting party or any purchase or sale of municipal securities or other investments or to the performance of its duties and execution or carrying out of any of its powers under this chapter or chapter 40-57.
9. To purchase or hold municipal securities of political subdivisions or other contracting parties at such prices and in such manner as the bond bank shall deem advisable, and to sell municipal securities acquired or

⁶³ Section 6-09.4-07 was also amended by section 7 of Senate Bill No. 2074, chapter 89.

- held by it at such prices without relation to cost and in such manner as the bond bank deems advisable.
10. To invest any funds or moneys of the bond bank not then required for loan to political subdivisions or other contracting parties and for the purchase of municipal securities in the same manner as permitted for investment of funds belonging to the state or the Bank of North Dakota.
 11. To fix and prescribe any form of application or procedure to be required of a political subdivision or other contracting party for the purpose of any loan or the purchase of its municipal securities, and to fix the terms and conditions of any such loan or purchase and to enter into agreements with political subdivisions or other contracting parties with respect to any such loan or purchase.
 12. To consider the need, desirability, or eligibility of such loan, the ability of such political subdivision or other contracting party to secure borrowed money from other sources and the costs thereof, and the particular public improvement, project, or purpose to be financed by the municipal securities to be purchased by the bond bank.
 13. To impose and collect charges from a political subdivision or other contracting party for its costs and services in review or consideration of any proposed loan to a political subdivision or other contracting party or purchase of municipal securities of such political subdivision or other contracting party, and to impose and collect charges therefor whether or not such loan has been made or such municipal securities have been purchased.
 14. To fix and establish any and all terms and provisions with respect to any purchase of municipal securities by the bond bank, including dates and maturities of such bonds, provisions as to redemption or payment prior to maturity, and any and all other matters which in connection therewith are necessary, desirable, or advisable in the judgment of the bond bank.
 15. To procure insurance against any losses in connection with its property, operations, or assets in such amounts and from such insurers as it deems desirable to pay the premiums on such insurance.
 16. To the extent permitted under its contracts with the holders of bonds of the bond bank, to consent to any modification with respect to rates of interest, time, and payment of any installment of principal or interest, security, or any other term of bond, contract, or agreement of any kind to which the bond bank is a party.
 17. To do all acts and things necessary, convenient, or desirable to carry out the powers expressly granted or necessarily implied in this chapter or chapter 40-57.
 18. To do and perform any act and thing authorized by section 54-01-27 or 54-17-36 under, through, or by means of its officers, agents, or employees or by contracts with any person to assist the state, or any agency or institution of the state, in making, entering, and enforcing all contracts or agreements necessary, convenient, or desirable for the purposes of leasing all or part of, or an undivided or other interest in, property.

⁶⁴ **SECTION 5. AMENDMENT.** Section 6-09.4-09 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-09. Pledges. Any pledge of revenue or of a revenue agreement under chapter 40-57 made by the industrial commission as security for bond bank bonds is valid and binding from time to time when the pledge is made. The industrial commission may also pledge assets of the Bank of North Dakota as security for bond bank bonds. The revenues or other moneys so pledged and thereafter received by the bond bank are immediately subject to the lien of 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 bond bank, 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 bond bank.

SECTION 6. AMENDMENT. Section 6-09.4-13 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-13. Personal liability. Neither the members of the industrial commission nor any person executing bonds issued pursuant to this chapter or chapter 40-57 is liable personally on such bonds by reason of the issuance thereof.

SECTION 7. AMENDMENT. Subsection 1 of section 40-57-02 of the North Dakota Century Code is amended and reenacted as follows:

1. "Municipality" means counties as well as municipalities of the types listed in subsection 4 of section 40-01-01 and, in the case of parking projects, municipal parking authorities created pursuant to section 40-61-02 and the municipal bond bank or any successor in interest to the municipal bond bank for the purpose of issuing revenue bonds under this chapter. In acting as a municipality under this chapter, the municipal bond bank or its successor in interest shall follow the provisions of this chapter to the extent applicable or practicable but it need not comply with the notice and hearing provisions contained in sections 40-57-04 and 40-57-04.1 or the provisions of section 40-57-10. In the event of a conflict between the provisions of this chapter and chapter 6-09.4, the provisions of chapter 6-09.4 govern.

SECTION 8. MUNICIPAL BOND BANK PROGRAM LIMITS. Any qualified small issue bonds or municipal industrial revenue bonds purchased or issued by the municipal bond bank under this Act may not exceed two million dollars per political subdivision or other contracting party, as the case may be, and twenty million dollars in total for the biennium beginning July 1, 2005, and ending June 30, 2007, except that these limits do not apply to revenue bonds issued by the municipal bond bank under chapter 40-57 if the industrial commission approves a resolution under the second sentence of subsection 4 of section 6-09.4-10 making that subsection inapplicable to bonds issued under the resolution.

Approved March 9, 2005

Filed March 9, 2005

⁶⁴ Section 6-09.4-09 was also amended by section 9 of Senate Bill No. 2074, chapter 89.

CHAPTER 91**HOUSE BILL NO. 1132**

(Industry, Business and Labor Committee)
(At the request of the Bank of North Dakota)

**FAMILY FARM SURVIVAL LOAN PARTICIPATION
INTEREST**

AN ACT to amend and reenact subsection 2 of section 6-09.9-03 of the North Dakota Century Code, relating to participation interest purchased by the Bank of North Dakota in Family Farm Survival Act operating loans to farmers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 6-09.9-03 of the North Dakota Century Code is amended and reenacted as follows:

2. The amount of a participation interest purchased by the Bank under this section may not be greater than sixty-five percent of the loan amount or two hundred fifty thousand dollars, whichever is less. The term of any participation interest purchased under this section may not exceed one year.

Approved March 4, 2005

Filed March 4, 2005

CHAPTER 92**HOUSE BILL NO. 1131**

(Industry, Business and Labor Committee)
(At the request of the Bank of North Dakota)

FAMILY FARMERS ACT LOANS

AN ACT to amend and reenact subsection 2 of section 6-09.11-03 and subsection 4 of section 6-09.11-05 of the North Dakota Century Code, relating to participation interest purchased by the Bank of North Dakota and the maximum net worth of an applicant for a Financial Assistance for Family Farmers Act loan.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 6-09.11-03 of the North Dakota Century Code is amended and reenacted as follows:

2. The amount of a participation interest purchased by the Bank under this section may not be greater than the lesser of ~~one~~ two hundred fifty thousand dollars or ninety percent of the loan amount.

SECTION 2. AMENDMENT. Subsection 4 of section 6-09.11-05 of the North Dakota Century Code is amended and reenacted as follows:

4. The net worth of the applicant does not exceed ~~two~~ three hundred thousand dollars.

Approved March 8, 2005

Filed March 8, 2005

CHAPTER 93**HOUSE BILL NO. 1133**

(Industry, Business and Labor Committee)
(At the request of the Bank of North Dakota)

PACE LOAN QUALIFICATIONS

AN ACT to amend and reenact subsection 1 of section 6-09.14-01 of the North Dakota Century Code, relating to the definition of qualified businesses to which Partnership in Assisting Community Expansion Act loans may be made.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 6-09.14-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Business" means a corporation, limited liability company, partnership, individual, or association involved in manufacturing, processing, value-added processing, and targeted service industries as defined by the Bank of North Dakota.

Approved March 4, 2005
Filed March 4, 2005

CHAPTER 94

SENATE BILL NO. 2217

(Senators Klein, Grindberg, Taylor)
(Representatives DeKrey, Mueller, Pollert)

BIODIESEL PRODUCTION INCENTIVES

AN ACT to create and enact chapter 6-09.17, two new sections to chapter 57-38, a new subsection to section 57-38-30.3, and a new subsection to section 57-39.2-04 of the North Dakota Century Code, relating to a biodiesel partnership in assisting community expansion program, corporate and individual income tax credits, and a sales tax exemption for blending of biodiesel fuel and purchase of biodiesel production equipment; to amend and reenact section 7 of chapter 531 of the 2003 Session Laws, relating to extending the time special fuels tax reductions are available for biodiesel fuel; to provide an appropriation; to provide a continuing appropriation; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 6-09.17 of the North Dakota Century Code is created and enacted as follows:

6-09.17-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Biodiesel partnership in assisting community expansion fund" or "fund" means a fund established to buy down the interest rate on loans to biodiesel production facilities as provided under this chapter.
2. "Biodiesel production facility" means a corporation, limited liability company, partnership, individual, or association involved in production of diesel fuel containing at least five percent biodiesel meeting the specifications adopted by the American society for testing and materials.
3. "Community" means the city or county in which an eligible biodiesel production facility is located, or a local development corporation, community organization, or any other group whose interest is in the economic growth of the area.

6-09.17-02. Biodiesel partnership in assisting community expansion fund - Continuing appropriation - Administration. A biodiesel partnership in assisting community expansion fund is hereby established. All moneys transferred into the fund, interest on fund moneys, and payments to the fund are hereby appropriated for the purposes of this chapter. This fund is subject to section 54-44.1-11 and any unexpended and unobligated balance in the fund at the end of the biennium must be transferred to the state general fund. The Bank of North Dakota shall administer the fund.

6-09.17-03. Fund - Purpose - Interest rate buydown. Moneys in the biodiesel partnership in assisting community expansion fund must be used for the purpose of buying down the interest rate on loans made by a lead financial institution in participation with the Bank of North Dakota. The Bank of North Dakota's

participation may not exceed eighty percent nor be less than fifty percent of the total loans. If the loan is approved by the lenders and there is evidence of the community's commitment and ability to fund its portion of the buydown, the fund's participation in the buydown must automatically be approved.

6-09.17-04. Fund moneys - Eligible uses.

1. a. The fund moneys may be used to participate in an interest rate buydown on a loan to a biodiesel production facility for the following eligible uses:
 - (1) Purchase of real property and equipment.
 - (2) Expansion of facilities.
 - (3) Working capital.
 - (4) Inventory.
- b. The loan funds cannot be used to refinance any existing debt or for the relocation of the business within North Dakota.
2. The community shall determine the amount of the interest rate buydown and apply to the Bank of North Dakota for participation from the biodiesel partnership in assisting community expansion fund. The funds for the community's portion of the buydown may come from a local development corporation, contributions, community funds, future dedicated tax programs, or any other community source. Any community funds provided for a buydown under chapter 6-09.14 for a biodiesel production facility may be considered as funds for the community's portion of the buydown under this chapter for that facility.
3. The fund participation portion in the buydown must be determined by the Bank of North Dakota based on economic conditions in the city or county in which the business is located.
4. The maximum amount from the fund in the interest rate buydown may not exceed four hundred thousand dollars per loan and not more than one loan may be provided to any single biodiesel production facility under this chapter. However, if the partnership in assisting community expansion fund does not have adequate funds on hand for an interest rate buydown for a biodiesel production facility, the maximum amount from the fund under this subsection is increased to six hundred thousand dollars per loan. The community funds required for participation in the interest rate buydown are limited to the amount required when the fund provides two hundred fifty thousand dollars per loan. The fund participation must be limited to the amount required to buy down the interest to five hundred basis points below the national prime interest rate.
5. The Bank of North Dakota shall adopt rules to implement this chapter.

SECTION 2. A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Income tax credit for blending of biodiesel fuel. A fuel supplier licensed pursuant to section 57-43.2-05 who blends biodiesel fuel is entitled to a credit against tax liability determined under section 57-38-29, 57-38-30, or 57-38-30.3 in the amount of five cents per gallon [3.79 liters] of biodiesel fuel of at least five percent blend, otherwise known as B5. For purposes of this section, "biodiesel" means fuel meeting the specifications adopted by the American society for testing and materials. The credit under this section may not exceed the taxpayer's liability as determined under this chapter for the taxable year and each year's unused credit amount may be carried forward for up to five taxable years.

A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

SECTION 3. A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Income tax credit for biodiesel sales equipment costs. A seller of biodiesel fuel is entitled to a credit against tax liability determined under section 57-38-29, 57-38-30, or 57-38-30.3 in the amount of ten percent per year for five years of the biodiesel fuel seller's direct costs incurred after December 31, 2004, to adapt or add equipment to a facility, licensed under section 57-43.2-05, to enable the facility to sell diesel fuel containing at least two percent biodiesel fuel by volume. For purposes of this section, "biodiesel fuel" means fuel meeting the specifications adopted by the American society for testing and materials. The credit under this section may not exceed a taxpayer's liability as determined under this chapter for the taxable year and each year's unused credit amount may be carried forward for up to five taxable years. A biodiesel fuel seller is limited to fifty thousand dollars in the cumulative amount of credits under this section for all taxable years. A biodiesel fuel seller may not claim a credit under this section for any taxable year before the taxable year in which the facility begins selling biodiesel fuel containing at least two percent biodiesel fuel by volume, but eligible costs incurred before the taxable year sales begin may be claimed for purposes of the credit under this section for taxable years on or after the taxable year sales of biodiesel fuel begin.

A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

⁶⁵ **SECTION 4.** A new subsection to section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

⁶⁵ Section 57-38-30.3 was also amended by section 1 of House Bill No. 1052, chapter 562, section 1 of House Bill No. 1145, chapter 561, section 2 of House Bill No. 1474, chapter 558, section 10 of Senate Bill No. 2146, chapter 317,

A taxpayer filing a return under this section is entitled to the credits provided under sections 2 and 3 of this Act.

⁶⁶ **SECTION 5.** A new subsection to section 57-39.2-04 of the North Dakota Century Code is created and enacted as follows:

Gross receipts from the sale of equipment to a facility, licensed under section 57-43.2-05, to enable the facility to sell diesel fuel containing at least two percent biodiesel fuel by volume. For purposes of this subsection, "biodiesel fuel" means fuel meeting the specifications adopted by the American society for testing and materials.

⁶⁷ **SECTION 6. AMENDMENT.** Section 7 of chapter 531 of the 2003 Session Laws is amended and reenacted as follows:

SECTION 7. EXPIRATION DATE. Sections 1, 3, 4, and 5 of this Act are effective for taxable events occurring from the effective date of this Act through June 30, ~~2005~~ 2007, and are thereafter ineffective.

SECTION 7. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$1,200,000, or so much of the sum as may be necessary, to the Bank of North Dakota for deposit in the biodiesel partnership in assisting community expansion fund for use as provided in chapter 6-09.17, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 8. EFFECTIVE DATE. Sections 2, 3, and 4 of this Act are effective for taxable years beginning after December 31, 2004. Section 5 of this Act is effective for taxable events occurring after June 30, 2005.

Approved April 22, 2005
Filed April 25, 2005

section 2 of Senate Bill No. 2362, chapter 557, section 3 of Senate Bill No. 2391, chapter 560, and section 4 of Senate Bill No. 2391, chapter 560.

⁶⁶ Section 57-39.2-04 was also amended by section 7 of House Bill No. 1043, chapter 580, section 19 of House Bill No. 1043, chapter 580, section 1 of House Bill No. 1179, chapter 571, section 2 of House Bill No. 1179, chapter 571, section 7 of House Bill No. 1259, chapter 470, section 1 of House Bill No. 1368, chapter 572, section 1 of House Bill No. 1496, chapter 575, section 2 of Senate Bill No. 2050, chapter 582, section 3 of Senate Bill No. 2170, chapter 574, and section 1 of Senate Bill No. 2176, chapter 573.

⁶⁷ Section 24-02-01.5 was also amended by section 1 of Senate Bill No. 2154, chapter 341, and section 1 of Senate Bill No. 2208, chapter 340.

CHAPTER 95

SENATE BILL NO. 2165

(Senators Trenbeath, Espegard, Heitkamp)
(Representatives Hawken, Herbel)

BANK LOGO UNAUTHORIZED USE

AN ACT to create and enact a new chapter to title 6 of the North Dakota Century Code, relating to the unauthorized use of the name or logo of a bank, trust company, savings association, savings bank, or affiliated entity; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Unlawful use of name or logo. A person may not use the name or logo of any bank, trust company, savings association, or savings bank or of an affiliate of such financial institution in connection with the sale, distribution, offer for sale, advertisement, or promotion of any product or service without first obtaining the written consent of the bank, trust company, savings association, savings bank, or affiliate. A person may not use the name or logo of a bank, trust company, savings association, savings bank, or affiliate in a manner that will make it difficult to understand or will mislead an individual about the source of origin, affiliation, or sponsorship of a product or service or about the true identity source of a communication regardless of the nature of the communication.

Civil liability - Attorney's fees. A person that violates this chapter is civilly liable to the bank, trust company, savings association, savings bank, or affiliate for each unlawful use of a name or logo in the amount of one thousand dollars or actual damages, whichever is greater, plus reasonable attorney's fees.

Injunction. A court may enjoin the use of a name or logo which violates this chapter. An action for injunction under this section is in addition to any other remedy that may be available.

Penalty. A person that willfully violates this chapter is guilty of a class B misdemeanor.

Approved March 9, 2005

Filed March 9, 2005