

**Sixty-eighth Legislative Assembly of North Dakota
In Special Session Commencing Monday, October 23, 2023**

SENATE BILL NO. 2398
(Legislative Management)

AN ACT to amend and reenact sections 15.1-27-04.1, 15.1-36-02, and 15.1-36-04 of the North Dakota Century Code, relating to baseline funding and the determination of state school aid, loans from the coal development trust fund, and evidences of indebtedness; to provide an appropriation; to provide for retroactive application; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-27-04.1 of the North Dakota Century Code is amended and reenacted as follows:

15.1-27-04.1. Baseline funding - Establishment - Determination of state aid. (Effective through June 30, 2025)

1. To determine the amount of state aid payable to each district, the superintendent of public instruction shall establish each district's baseline funding. A district's baseline funding consists of:
 - a. All state aid received by the district in accordance with chapter 15.1-27 during the 2018-19 school year;
 - b. An amount equal to the property tax deducted by the superintendent of public instruction to determine the 2018-19 state aid payment;
 - c. An amount equal to seventy-five percent of the revenue received by the school district during the 2017-18 school year for the following revenue types:
 - (1) Revenue reported under code 2000 of the North Dakota school district financial accounting and reporting manual, as developed by the superintendent of public instruction in accordance with section 15.1-02-08;
 - (2) Mineral revenue received by the school district through direct allocation from the state treasurer and not reported under code 2000 of the North Dakota school district financial accounting and reporting manual, as developed by the superintendent of public instruction in accordance with section 15.1-02-08;
 - (3) Tuition reported under code 1300 of the North Dakota school district financial accounting and reporting manual, as developed by the superintendent of public instruction in accordance with section 15.1-02-08, with the exception of revenue received specifically for the operation of an educational program provided at a residential treatment facility, tuition received for the provision of an adult farm management program, and beginning in the 2021-22 school year, seventeen percent of tuition received under an agreement to educate students from a school district on an air force base with funding received through federal impact aid, and an additional seventeen percent of tuition received under an agreement to educate students from a school district on an air force base with funding received through federal impact aid each school year thereafter, until the 2024-25 school year when sixty-eight percent of tuition received under an agreement to educate students from a school district on an air force base with funding received through federal impact aid must be excluded from the tuition calculation under this paragraph;

- (4) Revenue from payments in lieu of taxes on the distribution and transmission of electric power;
 - (5) Revenue from payments in lieu of taxes on electricity generated from sources other than coal; and
 - (6) Revenue from the leasing of land acquired by the United States for which compensation is allocated to the state under 33 U.S.C. 701(c)(3);
- d. An amount equal to the total revenue received by the school district during the 2017-18 school year for the following revenue types:
- (1) Mobile home tax revenue;
 - (2) Telecommunications tax revenue; and
 - (3) Revenue from payments in lieu of taxes and state reimbursement of the homestead credit and disabled veterans credit; and
- e. Beginning with the 2020-21 school year, the superintendent shall reduce the baseline funding for any school district that becomes an elementary district pursuant to section 15.1-07-27 after the 2012-13 school year. The reduction must be proportional to the number of weighted student units in the grades that are offered through another school district relative to the total number of weighted student units the school district offered in the year before the school district became an elementary district. The reduced baseline funding applies to the calculation of state aid for the first school year in which the school district becomes an elementary district and for each year thereafter. For districts that become an elementary district prior to the 2020-21 school year, the superintendent shall use the reduced baseline funding to calculate state aid for the 2020-21 school year and for each year thereafter.
2. a. The superintendent shall divide the district's baseline funding determined in subsection 1 by the district's 2017-18 weighted student units to determine the district's baseline funding per weighted student unit.
- b. For any school district that becomes an elementary district pursuant to section 15.1-07-27 after the 2017-18 school year, the superintendent shall adjust the district's baseline funding per weighted student unit used to calculate state aid. The superintendent shall divide the district's baseline funding determined in subsection 1 by the district's weighted student units after the school district becomes an elementary district to determine the district's adjusted baseline funding per weighted student unit. The superintendent shall use the district's adjusted baseline funding per weighted student unit in the calculation of state aid for the first school year in which the school district becomes an elementary district and for each year thereafter.
- c. Beginning with the 2021-22 school year and for each school year thereafter, the superintendent shall reduce the district's baseline funding per weighted student unit. Each year the superintendent shall calculate the amount by which the district's baseline funding per weighted student unit exceeds the payment per weighted student unit provided in subsection 3. ~~The~~For the 2023-24 school year the superintendent shall reduce the district's baseline funding per weighted student unit by ~~fifteen~~forty percent of the amount by which the district's baseline funding per weighted student unit exceeds the payment per weighted student unit for the ~~2021-22~~2023-24 school year. For each year thereafter, the reduction percentage is increased by an additional fifteen percent. However, the district's baseline funding per weighted student unit, after the reduction, may not be less than the payment per weighted student unit provided in subsection 3.

3. a. For the 2023-24 school year, the superintendent shall calculate state aid as the greater of:
 - (1) The district's weighted student units multiplied by ten thousand six hundred forty-six dollars;
 - (2) One hundred two percent of the district's baseline funding per weighted student unit, as established in subsection 2, multiplied by the district's weighted student units, not to exceed the district's 2017-18 baseline weighted student units, plus any weighted student units in excess of the 2017-18 baseline weighted student units multiplied by ten thousand six hundred forty-six dollars; or
 - (3) The district's baseline funding as established in subsection 1 less the amount in paragraph 1, with the difference reduced by ~~forty-five~~forty percent and then the difference added to the amount determined in paragraph 1.
- b. For the 2024-25 school year and each school year thereafter, the superintendent shall calculate state aid as the greater of:
 - (1) The district's weighted student units multiplied by eleven thousand seventy-two dollars;
 - (2) One hundred two percent of the district's baseline funding per weighted student unit, as established in subsection 2, multiplied by the district's weighted student units, not to exceed the district's 2017-18 baseline weighted student units, plus any weighted student units in excess of the 2017-18 baseline weighted student units multiplied by eleven thousand seventy-two dollars; or
 - (3) The district's baseline funding as established in subsection 1 less the amount in paragraph 1, with the difference reduced by ~~sixty~~sixty-five percent for the 2024-25 school year and the reduction percentage increasing by fifteen percent each school year thereafter until the difference is reduced to zero, and then the difference added to the amount determined in paragraph 1.
4. After determining the product in accordance with subsection 3, the superintendent of public instruction shall:
 - a. Subtract an amount equal to sixty mills multiplied by the taxable valuation of the school district, except the amount in dollars subtracted for purposes of this subdivision may not exceed the previous year's amount in dollars subtracted for purposes of this subdivision by more than twelve percent, adjusted pursuant to section 15.1-27-04.3; and
 - b. Subtract an amount equal to seventy-five percent of all revenue types listed in subdivisions c and d of subsection 1. Before determining the deduction for seventy-five percent of all revenue types, the superintendent of public instruction shall adjust revenues as follows:
 - (1) Tuition revenue shall be adjusted as follows:
 - (a) In addition to deducting tuition revenue received specifically for the operation of an educational program provided at a residential treatment facility, tuition revenue received for the provision of an adult farm management program, tuition received for the education of high-cost and special education students, and tuition received under an agreement to educate students from a school district on an air force base with funding received through federal impact aid as directed each school year in paragraph 3 of subdivision c of subsection 1, the superintendent of public instruction also shall reduce the total tuition reported by the school district by the amount of tuition revenue received for

the education of students not residing in the state and for which the state has not entered a cross-border education contract; and

- (b) The superintendent of public instruction also shall reduce the total tuition reported by admitting school districts meeting the requirements of subdivision e of subsection 2 of section 15.1-29-12 by the amount of tuition revenue received for the education of students residing in an adjacent school district.
- (2) After adjusting tuition revenue as provided in paragraph 1, the superintendent shall reduce all remaining revenues from all revenue types by the percentage of mills levied in 2022 by the school district for sinking and interest relative to the total mills levied in 2022 by the school district for all purposes.
- 5. The amount remaining after the computation required under subsection 4 is the amount of state aid to which a school district is entitled, subject to any other statutory requirements or limitations.
- 6. On or before June thirtieth of each year, the school board shall certify to the superintendent of public instruction the final average daily membership for the current school year.
- 7. For purposes of the calculation in subsection 4, each county auditor, in collaboration with the school districts, shall report the following to the superintendent of public instruction on an annual basis:
 - a. The amount of revenue received by each school district in the county during the previous school year for each type of revenue identified in subdivisions c and d of subsection 1;
 - b. The total number of mills levied in the previous calendar year by each school district for all purposes; and
 - c. The number of mills levied in the previous calendar year by each school district for sinking and interest fund purposes.

Baseline funding - Establishment - Determination of state aid. (Effective after June 30, 2025)

- 1. To determine the amount of state aid payable to each district, the superintendent of public instruction shall establish each district's baseline funding. A district's baseline funding consists of:
 - a. All state aid received by the district in accordance with chapter 15.1-27 during the 2018-19 school year;
 - b. An amount equal to the property tax deducted by the superintendent of public instruction to determine the 2018-19 state aid payment;
 - c. An amount equal to seventy-five percent of the revenue received by the school district during the 2017-18 school year for the following revenue types:
 - (1) Revenue reported under code 2000 of the North Dakota school district financial accounting and reporting manual, as developed by the superintendent of public instruction in accordance with section 15.1-02-08;
 - (2) Mineral revenue received by the school district through direct allocation from the state treasurer and not reported under code 2000 of the North Dakota school district financial accounting and reporting manual, as developed by the superintendent of public instruction in accordance with section 15.1-02-08;

- (3) Tuition reported under code 1300 of the North Dakota school district financial accounting and reporting manual, as developed by the superintendent of public instruction in accordance with section 15.1-02-08, with the exception of revenue received specifically for the operation of an educational program provided at a residential treatment facility, tuition received for the provision of an adult farm management program, and beginning in the 2025-26 school year, eighty-five percent of tuition received under an agreement to educate students from a school district on an air force base with funding received through federal impact aid, until the 2026-27 school year, and each school year thereafter, when all tuition received under an agreement to educate students from a school district on an air force base with funding received through federal impact aid must be excluded from the tuition calculation under this paragraph;
 - (4) Revenue from payments in lieu of taxes on the distribution and transmission of electric power;
 - (5) Revenue from payments in lieu of taxes on electricity generated from sources other than coal; and
 - (6) Revenue from the leasing of land acquired by the United States for which compensation is allocated to the state under 33 U.S.C. 701(c)(3); and
- d. An amount equal to the total revenue received by the school district during the 2017-18 school year for the following revenue types:
- (1) Mobile home tax revenue;
 - (2) Telecommunications tax revenue; and
 - (3) Revenue from payments in lieu of taxes and state reimbursement of the homestead credit and disabled veterans credit.
- e. Beginning with the 2020-21 school year, the superintendent shall reduce the baseline funding for any school district that becomes an elementary district pursuant to section 15.1-07-27 after the 2012-13 school year. The reduction must be proportional to the number of weighted student units in the grades that are offered through another school district relative to the total number of weighted student units the school district offered in the year before the school district became an elementary district. The reduced baseline funding applies to the calculation of state aid for the first school year in which the school district becomes an elementary district and for each year thereafter. For districts that become an elementary district prior to the 2020-21 school year, the superintendent shall use the reduced baseline funding to calculate state aid for the 2020-21 school year and for each year thereafter.
2. a. The superintendent shall divide the district's baseline funding determined in subsection 1 by the district's 2017-18 weighted student units to determine the district's baseline funding per weighted student unit.
- b. For any school district that becomes an elementary district pursuant to section 15.1-07-27 after the 2017-18 school year, the superintendent shall adjust the district's baseline funding per weighted student unit used to calculate state aid. The superintendent shall divide the district's baseline funding determined in subsection 1 by the district's weighted student units after the school district becomes an elementary district to determine the district's adjusted baseline funding per weighted student unit. The superintendent shall use the district's adjusted baseline funding per weighted student unit in the calculation of state aid for the first school year in which the school district becomes an elementary district and for each year thereafter.

- c. Beginning with the 2021-22 school year and for each school year thereafter, the superintendent shall reduce the district's baseline funding per weighted student unit. Each year the superintendent shall calculate the amount by which the district's baseline funding per weighted student unit exceeds the payment per weighted student unit provided in subsection 3. ~~The~~For the 2023-24 school year the superintendent shall reduce the district's baseline funding per weighted student unit by ~~fifteen~~forty percent of the amount by which the district's baseline funding per weighted student unit exceeds the payment per weighted student unit for the ~~2021-22~~2023-24 school year. For each year thereafter, the reduction percentage is increased by an additional fifteen percent. However, the district's baseline funding per weighted student unit, after the reduction, may not be less than the payment per weighted student unit provided in subsection 3.
3. a. For the 2023-24 school year, the superintendent shall calculate state aid as the greater of:
 - (1) The district's weighted student units multiplied by ten thousand six hundred forty-six dollars;
 - (2) One hundred two percent of the district's baseline funding per weighted student unit, as established in subsection 2, multiplied by the district's weighted student units, not to exceed the district's 2017-18 baseline weighted student units, plus any weighted student units in excess of the 2017-18 baseline weighted student units multiplied by ten thousand six hundred forty-six dollars; or
 - (3) The district's baseline funding as established in subsection 1 less the amount in paragraph 1, with the difference reduced by ~~forty-five~~forty percent and then the difference added to the amount determined in paragraph 1.
 - b. For the 2024-25 school year and each school year thereafter, the superintendent shall calculate state aid as the greater of:
 - (1) The district's weighted student units multiplied by eleven thousand seventy-two dollars;
 - (2) One hundred two percent of the district's baseline funding per weighted student unit, as established in subsection 2, multiplied by the district's weighted student units, not to exceed the district's 2017-18 baseline weighted student units, plus any weighted student units in excess of the 2017-18 baseline weighted student units multiplied by eleven thousand seventy-two dollars; or
 - (3) The district's baseline funding as established in subsection 1 less the amount in paragraph 1, with the difference reduced by ~~sixty-five~~fifty-five percent for the 2024-25 school year and the reduction percentage increasing by fifteen percent each school year thereafter until the difference is reduced to zero, and then the difference added to the amount determined in paragraph 1.
4. After determining the product in accordance with subsection 3, the superintendent of public instruction shall:
 - a. Subtract an amount equal to sixty mills multiplied by the taxable valuation of the school district; and
 - b. Subtract an amount equal to seventy-five percent of all revenue types listed in subdivisions c and d of subsection 1. Before determining the deduction for seventy-five percent of all revenue types, the superintendent of public instruction shall adjust revenues as follows:
 - (1) Tuition revenue shall be adjusted as follows:

- (a) In addition to deducting tuition revenue received specifically for the operation of an educational program provided at a residential treatment facility, tuition revenue received for the provision of an adult farm management program, tuition received for the education of high-cost and special education students, and tuition received under an agreement to educate students from a school district on an air force base with funding received through federal impact aid as directed each school year in paragraph 3 of subdivision c of subsection 1, the superintendent of public instruction also shall reduce the total tuition reported by the school district by the amount of tuition revenue received for the education of students not residing in the state and for which the state has not entered a cross-border education contract; and
 - (b) The superintendent of public instruction also shall reduce the total tuition reported by admitting school districts meeting the requirements of subdivision e of subsection 2 of section 15.1-29-12 by the amount of tuition revenue received for the education of students residing in an adjacent school district.
- (2) After adjusting tuition revenue as provided in paragraph 1, the superintendent shall reduce all remaining revenues from all revenue types by the percentage of mills levied in 2022 by the school district for sinking and interest relative to the total mills levied in 2022 by the school district for all purposes.
5. The amount remaining after the computation required under subsection 4 is the amount of state aid to which a school district is entitled, subject to any other statutory requirements or limitations.
6. On or before June thirtieth of each year, the school board shall certify to the superintendent of public instruction the final average daily membership for the current school year.
7. For purposes of the calculation in subsection 4, each county auditor, in collaboration with the school districts, shall report the following to the superintendent of public instruction on an annual basis:
 - a. The amount of revenue received by each school district in the county during the previous school year for each type of revenue identified in subdivisions c and d of subsection 1;
 - b. The total number of mills levied in the previous calendar year by each school district for all purposes; and
 - c. The number of mills levied in the previous calendar year by each school district for sinking and interest fund purposes.

SECTION 2. AMENDMENT. Section 15.1-36-02 of the North Dakota Century Code is amended and reenacted as follows:

15.1-36-02. Coal development trust fund - Board of university and school lands - School construction projects - Unanticipated construction projects and emergency repairs - Loans.

1. Up to sixty million dollars from the coal development trust fund is available to the board of university and school lands for loans under this section.
2. To be eligible for a loan under this section, the school district must demonstrate a need based on an unanticipated construction project, an unanticipated replacement project, or an emergency repair, or a legislatively defined condition, and the board of a school district shall:
 - a. Obtain the approval of the superintendent of public instruction for the construction project under section 15.1-36-01; and

- b. Submit to the superintendent of public instruction an application containing all information deemed necessary by the superintendent, including potential alternative sources or methods of financing the construction project.
3. The superintendent of public instruction shall consider each loan application in the order ~~it~~the application received approval under section 15.1-36-01.
4. If the superintendent of public instruction approves the loan, the board of university and school lands shall issue a loan from the coal development trust fund.
 - a. For a loan made under this ~~section~~subsection:
 - ~~a.~~(1) The minimum loan amount is two hundred fifty thousand dollars and the maximum loan amount for which a school district may qualify is ~~two~~five million dollars;
 - ~~b.~~(2) The term of the loan is twenty years, unless the board of the school district requests a shorter term in the written loan application; and
 - ~~e.~~(3) The interest rate of the loan may not exceed two percent per year.
 - b. During the 2023-25 biennium, a loan including additional expenses due to unanticipated construction inflation is an allowable condition under subsection 2. For a loan made under this subsection which includes additional expenses due to unanticipated construction inflation:
 - (1) The unanticipated construction inflation must have occurred for a construction project bid after January 1, 2021, and before June 30, 2024;
 - (2) The maximum loan amount for which a school district may qualify is five million dollars;
 - (3) The interest rate on the loan may not exceed two percent per year;
 - (4) The term of the loan is twenty years, unless the board of the school district requests a shorter term in the written loan application; and
 - (5) The school district may pledge revenues derived from its general fund levy authority or other sources of revenue authorized by law.
5.
 - a. If a school district seeking a loan under this section received an allocation of the oil and gas gross production tax during the previous fiscal year in accordance with chapter 57-51, the board of the district shall provide to the board of university and school lands, and to the state treasurer, its evidence of indebtedness indicating ~~that~~ the loan originated under this section.
 - b. If the evidence of indebtedness is payable solely from the school district's allocation of the oil and gas gross production tax in accordance with section 57-51-15, the loan does not constitute a general obligation of the school district and may not be considered a debt of the district.
 - c. If a loan made to a school district is payable solely from the district's allocation of the oil and gas gross production tax in accordance with section 57-51-15, the terms of the loan must require ~~that~~ the state treasurer withhold the dollar amount or percentage specified in the loan agreement, from each of the district's oil and gas gross production tax allocations, in order to repay the principal and interest of the evidence of indebtedness. The state treasurer shall deposit the amount withheld into the fund from which the loan originated.

- d. Any evidence of indebtedness executed by the board of a school district under this subsection is a negotiable instrument and not subject to taxation by the state or any political subdivision of the state.
6. For purposes of this section, a "construction project" means the purchase, lease, erection, or improvement of any structure or facility by a school board, provided the acquisition or activity is within a school board's authority.

SECTION 3. AMENDMENT. Section 15.1-36-02 of the North Dakota Century Code is amended and reenacted as follows:

15.1-36-02. Coal development trust fund - Board of university and school lands - School construction projects - Unanticipated construction projects and emergency repairs - Loans.

1. Up to sixty million dollars from the coal development trust fund is available to the board of university and school lands for loans under this section.
2. To be eligible for a loan under this section, the school district must demonstrate a need based on an unanticipated construction project, an unanticipated replacement project, an emergency repair, or a legislatively defined condition, and the board of a school district shall:
 - a. Obtain the approval of the superintendent of public instruction for the construction project under section 15.1-36-01; and
 - b. Submit to the superintendent of public instruction an application containing all information deemed necessary by the superintendent, including potential alternative sources or methods of financing the construction project.
3. The superintendent of public instruction shall consider each loan application in the order the application received approval under section 15.1-36-01.
4. If the superintendent of public instruction approves the loan, the board of university and school lands shall issue a loan from the coal development trust fund.
 - a. For a loan made under this ~~subsection~~section:
 - (1)a. The minimum loan amount is two hundred fifty thousand dollars and the maximum loan amount for which a school district may qualify is five million dollars;
 - (2)b. The term of the loan is twenty years, unless the board of the school district requests a shorter term in the written loan application; and
 - (3)c. The interest rate of the loan may not exceed two percent per year.
 - b. ~~During the 2023-25 biennium, a loan including additional expenses due to unanticipated construction inflation is an allowable condition under subsection 2. For a loan made under this subsection which includes additional expenses due to unanticipated construction inflation:~~
 - (1) ~~The unanticipated construction inflation must have occurred for a construction project bid after January 1, 2021, and before June 30, 2024;~~
 - (2) ~~The maximum loan amount for which a school district may qualify is five million dollars;~~
 - (3) ~~The interest rate on the loan may not exceed two percent per year;~~
 - (4) ~~The term of the loan is twenty years, unless the board of the school district requests a shorter term in the written loan application; and~~

- ~~(5) The school district may pledge revenues derived from its general fund levy authority or other sources of revenue authorized by law.~~
5. a. If a school district seeking a loan under this section received an allocation of the oil and gas gross production tax during the previous fiscal year in accordance with chapter 57-51, the board of the district shall provide to the board of university and school lands, and to the state treasurer, its evidence of indebtedness indicating the loan originated under this section.
 - b. If the evidence of indebtedness is payable solely from the school district's allocation of the oil and gas gross production tax in accordance with section 57-51-15, the loan does not constitute a general obligation of the school district and may not be considered a debt of the district.
 - c. If a loan made to a school district is payable solely from the district's allocation of the oil and gas gross production tax in accordance with section 57-51-15, the terms of the loan must require the state treasurer withhold the dollar amount or percentage specified in the loan agreement, from each of the district's oil and gas gross production tax allocations, in order to repay the principal and interest of the evidence of indebtedness. The state treasurer shall deposit the amount withheld into the fund from which the loan originated.
 - d. Any evidence of indebtedness executed by the board of a school district under this subsection is a negotiable instrument and not subject to taxation by the state or any political subdivision of the state.
6. For purposes of this section, a "construction project" means the purchase, lease, erection, or improvement of any structure or facility by a school board, provided the acquisition or activity is within a school board's authority.

SECTION 4. AMENDMENT. Section 15.1-36-04 of the North Dakota Century Code is amended and reenacted as follows:

15.1-36-04. Evidences of indebtedness.

~~The~~Except as otherwise provided in this chapter, the board of a school district may issue and sell evidences of indebtedness under chapter 21-02 or 21-03 to finance the construction or improvement of a project approved under this chapter. The principal amount of the loan and the evidences of indebtedness to repay the loan may not exceed the loan amount for which the district is eligible under this chapter. Evidences of indebtedness issued under this chapter or chapter 21-03 constitute a general obligation of the school district.

SECTION 5. APPROPRIATION - GENERAL FUND - DEPARTMENT OF PUBLIC INSTRUCTION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$3,000,000, or so much of the sum as may be necessary, to the department of public instruction for the purpose of providing integrated formula payments, for the biennium beginning July 1, 2023, and ending June 30, 2025.

SECTION 6. RETROACTIVE APPLICATION. Sections 1, 2, 4, and 5 of this Act apply retroactively to July 1, 2023.

SECTION 7. EFFECTIVE DATE. Section 3 of this Act becomes effective on July 1, 2024. The remainder of this Act becomes effective immediately upon its filing with the secretary of state.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2398.

Senate Vote: Yeas 47 Nays 0 Absent 0

House Vote: Yeas 85 Nays 4 Absent 5

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2023.

Approved at _____ M. on _____, 2023.

Governor

Filed in this office this _____ day of _____, 2023,

at _____ o'clock _____ M.

Secretary of State