

Good morning, Mr. Chairman and members of the committee. I'm Terra Miller Bowley, Deputy Director for Administration for the North Dakota Department of Transportation (NDDOT). I'm here to introduce and testify in support of HB 1103.

The 67th Legislative Assembly passed HB 1431 which appropriated \$70 million in bond proceeds to the NDDOT. Of these funds, \$35 million was designated for state bridge projects and \$35 million was designated for matching excess federal funds made available during the 21 – 23 biennium. The \$35 million in bond proceeds designated for state bridge projects has been fully committed. The NDDOT was required on October 1, 2022 to certify to the Office of Management and Budget how much of the \$35 million in bond proceeds designated for matching excess federal funds was committed. Any uncommitted funds as of October 1 were to be transferred to the Infrastructure Revolving Loan Fund at the Bank of North Dakota. The NDDOT was unable to commit any of the \$35 million in bond proceeds designated for matching excess federal funds. Accordingly, these funds were transferred to the Infrastructure Revolving Loan Fund.

House Bill 1103 requests that the \$35 million in bond proceeds be transferred back to the NDDOT to match federal funding which may become available for road and bridge projects on the state highway system. House Bill 1103 also extends the availability of these funds to June 30, 2025.

Following the submission of HB 1103, the NDDOT was made aware of the opportunity to request an amendment to HB 1012 (the NDDOT's appropriation bill). This amendment would update the 2021 session law, eliminating the requirement to certify to OMB and the subsequent transfer of the remaining bond proceeds to the Infrastructure Revolving Loan Fund. The NDDOT formally requested this amendment be added to HB 1012 at the House Appropriations hearing held on January 5.

The NDDOT requires the passage of HB 1103 or the inclusion and passage of the proposed amendment to HB 1012 to extend the availability of the remaining bond proceeds. The NDDOT believes that it is highly probable that additional federal funding will become available which will allow the NDDOT to use this bond funding for its intended purpose. Currently the NDDOT has more than \$350 million in pending grant applications awaiting an award announcement.

This concludes my testimony. Thank you.

**Sixty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 5, 2021**

HOUSE BILL NO. 1431
(Representatives Pollert, Schmidt)
(Senators Sorvaag, Wardner)

AN ACT to create and enact a new section to chapter 6-09 and a new section to chapter 6-09.4 of the North Dakota Century Code, relating to a water infrastructure revolving loan fund and bonded debt repayments; to amend and reenact subsection 1 of section 6-09-49, and sections 6-09.4-06 and 6-09.4-10 of the North Dakota Century Code, relating to interest rates for infrastructure revolving loans, borrowing and lending authority of the public finance authority, and reserve funds associated with bonds; to repeal chapter 6-09.5 and section 61-02-78 of the North Dakota Century Code, relating to a community water development fund and an infrastructure revolving loan fund within the resources trust fund; to provide an appropriation; to provide a continuing appropriation; to provide for a transfer; to provide for a contingent transfer; to provide a bond issue limit; and to provide a loan repayment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 6-09-49 of the North Dakota Century Code is amended and reenacted as follows:

1. The infrastructure revolving loan fund is a special fund in the state treasury from which the Bank of North Dakota shall provide loans to political subdivisions, the Garrison Diversion Conservancy District, and the Lake Agassiz water authority for essential infrastructure projects. The Bank shall administer the infrastructure revolving loan fund. The maximum term of a loan made under this section is thirty years. A loan made from the fund under this section must have an interest rate that does not exceed two percent per year starting at two percent per year and increasing by one percent every five years, up to a maximum rate of five percent per year.

SECTION 2. A new section to chapter 6-09 of the North Dakota Century Code is created and enacted as follows:

Water infrastructure revolving loan fund - State water commission - Continuing appropriation.

1. There is created in the state treasury the water infrastructure revolving loan fund to provide loans for water supply, flood protection, or other water development and water management projects. The fund consists of moneys transferred into the fund, interest earned on moneys in the fund, and principal and interest payments to the fund. All moneys in the fund are appropriated to the Bank of North Dakota on a continuing basis for loan disbursements and administrative costs.
2. The state water commission shall approve eligible projects for loans from the water infrastructure loan fund. The state water commission shall consider the following when evaluating eligible projects:
 - a. A description of the nature and purposes of the proposed infrastructure project, including an explanation of the need for the project, the reasons why the project is in the public interest, and the overall economic impact of the project.
 - b. The estimated cost of the project, the amount of loan funding requested, and other proposed sources of funding.

- c. The extent to which completion of the project will provide a benefit to the state or regions within the state.
3. Projects not eligible for the state revolving funds under chapters 61-28.1 and 61-28.2 must be given priority for loans from the water infrastructure revolving loan fund.
4. In consultation with the state water commission, the Bank of North Dakota shall develop policies for the review and approval of loans under this section. Loans made under this section must be made at the same interest rate as the revolving loan funds established under chapters 61-28.1 and 61-28.2.
5. The Bank of North Dakota shall manage and administer loans from the water infrastructure loan fund. The Bank shall deposit in the fund all principal and interest paid on loans made from the fund. Annually, the Bank may deduct one-quarter of one percent of the outstanding loan balance as a service fee for administering the water infrastructure revolving loan fund. The Bank shall contract with a certified public accounting firm to audit the fund. The cost of the audit must be paid from the fund.

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.

1. The public finance authority may lend money to political subdivisions or other contracting parties through the purchase or holding of municipal securities which, in the opinion of the attorney general, are properly eligible for purchase or holding by the public finance authority under this chapter or chapter 40-57 and for purposes of the public finance authority's capital financing program the principal amount of any one issue does not exceed five hundred thousand dollars. However, the public finance authority may lend money to political subdivisions through the purchase of securities issued by the political subdivisions through the capital financing program without regard to the principal amount of the bonds issued, if the industrial commission approves a resolution that authorizes the public finance authority to purchase the securities. The capital financing program 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 public finance authority, the authorizing resolution must state reasons for the public finance authority's involvement in the bond issue. The public finance authority may hold such municipal securities for any length of time it finds to be necessary. The public finance authority, for the purposes authorized by this chapter or chapter 40-57, may issue its bonds payable solely from the revenues available to the public finance authority which are authorized or pledged for payment of public finance authority obligations, and to otherwise assist political subdivisions or other contracting parties as provided in this chapter or chapter 40-57.
2. The 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.
3. The public finance authority may transfer money to the Bank of North Dakota for allocations to infrastructure projects and programs. Bonds issued for these purposes are payable in each biennium solely from amounts the legislative assembly may appropriate for debt service for any biennium or from a reserve fund established for the bonds. This section may not be construed to require the state to appropriate funds sufficient to make debt service payments with respect to the bonds or to replenish a related reserve fund. The bonds are not a debt of the Bank of North Dakota or the state. The full faith, credit, and taxing powers of the state are not pledged to the payment of the bonds. As of the date appropriated funds and reserves are

not sufficient to pay debt service on the bonds, the obligation of the public finance authority with respect to the bonds must terminate, and the bonds are no longer outstanding. In addition to providing funds for the transfers, the public finance authority may use the bond proceeds to pay the costs of issuance of the bonds and establish a reserve fund for the bonds.

4. Bonds of the public finance authority 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 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 public finance authority's obligations are obligations of the public finance authority.
5. 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 public finance authority to incur any indebtedness or liability on behalf of or payable by the state.

SECTION 4. 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 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 public finance authority and its bondholders or any resolution of the public finance authority with respect to the proceeds of bonds, any other moneys or funds of the public finance authority which it determines to deposit therein, any contractual right to the receipt of moneys by the 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 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 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 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 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 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 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 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 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 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 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 public finance authority is three years or less from the date of issuance of the bonds, the 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 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 public finance authority.
6. The industrial commission may determine ~~that~~ this section is inapplicable in whole or in part for bonds issued under ~~section~~:
 - a. Section 6-09.4-06;
 - b. Section 6-09.4-24; or ~~under the~~
 - c. The public finance authority's state revolving fund program.

SECTION 5. A new section to chapter 6-09.4 of the North Dakota Century Code is created and enacted as follows:

Debt service requirements - Bonds for infrastructure projects and programs.

Each biennium, the public finance authority shall request from the legislative assembly an appropriation from the general fund, derived from legacy fund earnings, Bank of North Dakota profits, or other sources to meet the debt service requirements for bonds issued by the authority for allocations to infrastructure projects and programs.

SECTION 6. REPEAL. Chapter 6-09.5 and section 61-02-78 of the North Dakota Century Code are repealed.

SECTION 7. PUBLIC FINANCE AUTHORITY - BOND ISSUE LIMITATION - BANK OF NORTH DAKOTA - APPROPRIATION.

1. Pursuant to the bonding authority under section 6-09.4-06, the public finance authority may issue up to \$680,000,000 of bonds for transfer to the Bank of North Dakota for allocations to infrastructure projects and programs, for the biennium beginning July 1, 2021, and ending June 30, 2023.

2. The term of any bonds issued under this section may not exceed twenty years. The public finance authority may issue bond anticipation notes or borrow from the Bank to support the allocations to infrastructure projects and programs prior to a bond issue. The public finance authority shall make available up to ten percent of the bonds for sale directly to North Dakota residents and financial institutions.
3. After payment of any issuance costs or any transfers to a reserve fund, \$680,000,000 from the bond proceeds issued by the public finance authority is appropriated to the Bank of North Dakota for allocations to infrastructure projects and programs, for the biennium beginning July 1, 2021, and ending June 30, 2023, as follows:
 - a. \$435,500,000 for the Fargo diversion project;
 - b. \$74,500,000 to the resources trust fund;
 - c. \$50,000,000 to the infrastructure revolving loan fund under section 6-09-49;
 - d. \$70,000,000 to the highway fund; and
 - e. \$50,000,000 to North Dakota state university, which is appropriated to North Dakota state university, for an agriculture products development center including a northern crops institute project.

SECTION 8. RESOURCES TRUST FUND - LOAN REPAYMENT. The state water commission shall use the bond proceeds allocated to the resources trust fund under section 7 of this Act to repay loans issued to the western area water supply authority from the resources trust fund.

SECTION 9. APPROPRIATION - RESOURCES TRUST FUND. There is appropriated out of any moneys in the resources trust fund in the state treasury, not otherwise appropriated, the sum of \$74,500,000, or so much of the sum as may be necessary, to the state water commission for Mouse River flood control, for the biennium beginning July 1, 2021, and ending June 30, 2023.

SECTION 10. APPROPRIATION - HIGHWAY FUND - CONTINGENT TRANSFER. There is appropriated out of any moneys in the highway fund in the state treasury, not otherwise appropriated, the sum of \$70,000,000, or so much of the sum as may be necessary, derived from bond proceeds to the department of transportation for state highway bridge projects and for matching federal funds that may become available, for the biennium beginning July 1, 2021, and ending June 30, 2023. Of the \$70,000,000, \$35,000,000 is designated for state highway bridge projects, and \$35,000,000 is designated for matching federal funds that may become available for state highway projects in excess of the federal funds appropriated to the department of transportation as part of its 2021-23 biennial budget. By October 1, 2022, the director of the department of transportation shall certify to the office of management and budget the amount of funding committed to matching excess federal funds from the \$35,000,000 provided under this section. If the amount committed is less than \$35,000,000, the office of management and budget shall transfer any uncommitted amounts to the infrastructure revolving loan fund under section 6-09-49.

SECTION 11. TRANSFER - WATER PROJECT LOAN FUNDS. The Bank of North Dakota shall transfer all outstanding loans and moneys in the community water facility loan fund and all outstanding loans and moneys in the infrastructure revolving loan fund within the resources trust fund to the water infrastructure revolving loan fund on July 1, 2021.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-seventh Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1431.

House Vote: Yeas 74 Nays 17 Absent 3

Senate Vote: Yeas 46 Nays 0 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2021.

Approved at _____ M. on _____, 2021.

Governor

Filed in this office this _____ day of _____, 2021,

at _____ o'clock _____ M.

Secretary of State