

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

SENATE BILL NO. 2208

Introduced by

Senators Patten, Bekkedahl, Erbele, Kessel

Representatives Brandenburg, Porter

1 A BILL for an Act to amend and reenact subsection 9 of section 57-51.1-07.5 and sections
2 57-51.1-07.7 and 57-51.1-07.8 of the North Dakota Century Code, relating to the state share of
3 oil and gas tax revenue allocations, the municipal infrastructure fund, and the county and
4 township infrastructure fund.

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

6 **SECTION 1. AMENDMENT.** Subsection 9 of section 57-51.1-07.5 of the North Dakota
7 Century Code is amended and reenacted as follows:

8 9. The next fifty-nine million seven hundred fifty thousand dollars, or the amount
9 necessary to provide for twice the amount of the distributions under subsection ~~24~~ of
10 section 57-51.1-07.7, into the funds designated for infrastructure development in
11 non-oil-producing counties under sections 57-51.1-07.7 and 57-51.1-07.8 with fifty
12 percent deposited into the municipal infrastructure fund and fifty percent deposited into
13 the county and township infrastructure fund;

14 **SECTION 2. AMENDMENT.** Section 57-51.1-07.7 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **57-51.1-07.7. Municipal infrastructure fund - Continuing appropriation - State**
17 **treasurer - Reports.**

18 1. There is created in the state treasury the municipal infrastructure fund. The fund
19 consists of all moneys deposited in the fund under section 57-51.1-07.5. All moneys in
20 the fund are appropriated to the state treasurer on a continuing basis for the purpose

1 of providing grants to cities located in non-oil-producing counties. The grant funding
2 may be distributed only to cities located in non-oil-producing counties, excluding hub
3 cities, and may be used only for essential infrastructure projects.

4 ~~4.2.~~ By November thirtieth of each even-numbered year, ~~starting in 2022~~, a city that
5 receives a grant from the fund shall provide a report to the state treasurer on the use
6 of the funding. The state treasurer shall notify cities of the reporting requirement by
7 November first of each even-numbered year, ~~starting in 2022~~. Upon request, the state
8 treasurer may provide an extension of up to fifteen days for a city to submit the report.
9 The state treasurer shall determine the format of the report. The report must include
10 the amount of grant funding received and spent by the city and a description of the
11 infrastructure projects completed in part or in whole with the grant funding. The state
12 treasurer shall make the reports available to the public on the state treasurer's
13 website.

14 3. a. A city that does not provide the report in a timely manner or in the correct format
15 is not eligible to receive a grant from the fund for a period of two years starting
16 from the date the report was due.

17 b. If a city uses the funding in a manner inconsistent with the requirements of this
18 section as identified in any financial audits conducted by the state auditor or an
19 independent accounting firm, the state treasurer shall reduce any future grants to
20 that city by the amount spent that was inconsistent with the requirements.

21 c. If a city adopts an ordinance or policy that exceeds state statute, administrative
22 rule, or policy or interferes, unreasonably restricts, or conflicts with an agriculture
23 or energy infrastructure project that is required to be permitted or approved by a
24 state agency, as reported under this subdivision, the city is not eligible to receive
25 any grants from the fund beginning on ~~the later of the date on which the city~~
26 ~~adopted the ordinance or policy, or the date on which the state agency permits or~~
27 ~~approves the project~~ treasurer is notified by the board of university and school
28 lands of a determination of a violation under this subdivision.

29 (1) For purposes of this subdivision, an agriculture or energy infrastructure
30 project includes a project permitted or approved under chapter 4.1-25,
31 23.1-06, 38-08, 38-22, 49-22, 49-22.1, or 61-28 or under administrative

1 rules related to the implementation of those chapters but excludes wind and
2 solar projects approved or permitted under chapter 49-22.

3 (2) A person may report a suspected violation under this subdivision to the
4 board of university and school lands in the form and manner prescribed by
5 the board. The report must include the name of the city, the city's ordinance
6 or policy suspected of violating state statute, administrative rule, or policy,
7 and the state statute, administrative rule, or policy which the person
8 suspects is violated by the city's ordinance or policy. Within thirty days after
9 receiving the report, the board shall investigate the suspected violation, in
10 consultation with a state agency having jurisdiction over the relevant state
11 statute, administrative rule, or policy, and shall provide a written
12 determination to the person who submitted the report and to the city named
13 in the report. The board shall notify the state treasurer if the determination
14 identifies a violation. Any person aggrieved by the determination may appeal
15 the determination using the procedure under chapter 28-32.

16 ~~2.4.~~ Within forty days after the fund balance is greater than or equal to the amount needed
17 for the grants under this subsection or by September thirtieth of each odd-numbered
18 year, whichever is earlier, the state treasurer shall distribute moneys in the fund as
19 grants to cities for essential infrastructure projects. The state treasurer shall distribute
20 the grants only if the fund balance is at least ten percent of the amount needed for
21 distributions under this subsection based on the following:

- 22 a. Two million five hundred thousand dollars to each city with a population of at
23 least five thousand;
- 24 b. Five hundred thousand dollars to each city with a population of at least two
25 thousand but less than five thousand; and
- 26 c. One hundred twenty-five thousand dollars to each city with a population of at
27 least one thousand but less than two thousand.
- 28 d. If, at the time of the distributions, the moneys in the fund are less than the
29 amount needed for the grants under this subsection, the state treasurer shall
30 distribute the grants under this subsection on a pro rata basis.

1 e. For the purposes of determining the city's population under this subsection, the
2 state treasurer shall use the most recent actual or estimated census data
3 published by the United States census bureau.

4 3-5. Within sixty days after the fund receives its statutory limit of oil and gas tax allocations
5 under section 57-51.1-07.5 or by September thirtieth of each odd-numbered year,
6 whichever is earlier, the state treasurer shall distribute the moneys in the fund as
7 grants to cities for essential infrastructure projects. The state treasurer shall distribute
8 the grants only if the fund balance is at least ten percent of the amount needed for
9 distributions under this subsection based on the following:

10 a. One hundred fifty dollars per person of the city's population.

11 b. In addition to the amounts in subdivision a, for a city with a positive average of
12 the annual percentage increase in population from three years prior, a dollar
13 amount equal to the product of the following:

14 (1) The amount calculated in subdivision a; and

15 (2) The average of the annual percentage increase in population from three
16 years prior, multiplied by ten.

17 c. In addition to the amounts in subdivisions a and b, for a city with a positive
18 average of the annual percentage increase in taxable property values from three
19 years prior, a dollar amount equal to the average of the annual property valuation
20 percentage increase for the three most recent years, multiplied by twenty-five
21 thousandths.

22 d. Grants may be distributed under this subdivision only if the grant distributions
23 under subsection 24 are completed. If the moneys in the fund are insufficient to
24 provide for the grants, the state treasurer shall distribute the grants under this
25 subsection on a pro rata basis. If any moneys remain in the fund after the
26 distribution of grants under this subsection, the state treasurer shall distribute any
27 remaining moneys in the fund in proportion to the combined total distributed to
28 each city under this section relative to the combined total distributed to all the
29 cities under this section.

- 1 e. For the purposes of determining the city's population under this subsection, the
2 state treasurer shall use the most recent actual or estimated census data
3 published by the United States census bureau.
- 4 f. For the purposes of determining taxable property values, the state treasurer shall
5 use the most recent data published by the tax commissioner in the tax levy
6 report.

7 4.6. For purposes of this section:

- 8 a. "Essential infrastructure projects" means capital construction projects to construct
9 new infrastructure or to replace existing infrastructure, which provide the fixed
10 installations necessary for the function of a city. Capital construction projects
11 exclude debt repayments and routine maintenance and repair projects, but
12 include the following:
- 13 (1) Water treatment plants;
 - 14 (2) Wastewater treatment plants;
 - 15 (3) Sewer lines and water lines, including lift stations and pumping systems;
 - 16 (4) Water storage systems, including dams, water tanks, and water towers;
 - 17 (5) Storm water infrastructure, including curb and gutter construction;
 - 18 (6) Road and bridge infrastructure, including paved and unpaved roads and
19 bridges;
 - 20 (7) Airport infrastructure;
 - 21 (8) Electricity transmission infrastructure;
 - 22 (9) Natural gas transmission infrastructure; and
 - 23 (10) Communications infrastructure, excluding fiber optic infrastructure.
- 24 b. "Fiscal year" means the period beginning September first and ending August
25 thirty-first of the following calendar year.
- 26 c. "Non-oil-producing county" means a county that received no allocation of funding
27 or a total allocation of less than five million dollars under subsection 2 of section
28 57-51-15 in the most recently completed even-numbered fiscal year before the
29 start of each biennium.

30 **SECTION 3. AMENDMENT.** Section 57-51.1-07.8 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **57-51.1-07.8. County and township infrastructure fund - Continuing appropriation -**
2 **State treasurer - Reports.**

3 1. There is created in the state treasury the county and township infrastructure fund. The
4 fund consists of all moneys deposited in the fund under section 57-51.1-07.5. All
5 moneys in the fund are appropriated to the state treasurer on a continuing basis for
6 the purpose of providing grants to non-oil-producing counties and townships located in
7 non-oil-producing counties. The grant funding may be distributed only to
8 non-oil-producing counties and townships located in non-oil-producing counties and
9 may be used only for road and bridge infrastructure projects.

10 ~~4.2.~~ By November thirtieth of each even-numbered year, ~~starting in 2022~~, a county that
11 receives a grant from the fund shall provide a report to the state treasurer on the use
12 of the funding. The state treasurer shall notify counties of the reporting requirement by
13 November first of each even-numbered year, ~~starting in 2022~~. Upon request, the state
14 treasurer may provide an extension of up to fifteen days for a county to submit the
15 report. The state treasurer shall determine the format of the report. The report must
16 include the amount of grant funding received and spent by the county and a
17 description of the road and bridge infrastructure projects completed in part or in whole
18 with the grant funding. The state treasurer shall make the reports available to the
19 public on the state treasurer's website.

20 3. a. A county that does not provide the report in a timely manner or in the correct
21 format is not eligible to receive a grant from the fund for a period of two years
22 starting from the date the report was due.

23 b. If a county uses the funding in a manner inconsistent with the requirements of
24 this section as identified in any financial audits conducted by the state auditor or
25 an independent accounting firm, the state treasurer shall reduce any future
26 grants to that county by the amount spent that was inconsistent with the
27 requirements.

28 c. If a county or township adopts an ordinance or policy that exceeds state statute,
29 administrative rule, or policy or interferes, unreasonably restricts, or conflicts with
30 an agriculture or energy infrastructure project that is required to be permitted or
31 approved by a state agency, as reported under this subdivision, the county or

1 township is not eligible to receive any grants from the fund beginning on ~~the later~~
2 ~~of the date on which the city adopted the ordinance or policy, or the date on~~
3 ~~which the state agency permits or approves the project~~ treasurer is notified by the
4 board of university and school lands of a determination of a violation under this
5 subdivision.

6 (1) For purposes of this subdivision, an agriculture or energy infrastructure
7 project includes a project permitted or approved under chapter 4.1-25,
8 23.1-06, 38-08, 38-22, 49-22, 49-22.1, or 61-28 or under administrative
9 rules related to the implementation of those chapters but excludes wind and
10 solar projects approved or permitted under chapter 49-22.

11 (2) A person may report a suspected violation under this subdivision to the
12 board of university and school lands in the form and manner prescribed by
13 the board. The report must include the name of the county or township, the
14 county's or township's ordinance or policy suspected of violating state
15 statute, administrative rule, or policy, and the state statute, administrative
16 rule, or policy which the person suspects is violated by the county's or
17 township's ordinance or policy. Within thirty days after receiving the report,
18 the board shall investigate the suspected violation, in consultation with any
19 state agency having jurisdiction over the relevant state statute,
20 administrative rule, or policy, and shall provide a written determination to the
21 person who submitted the report and to the county or township named in the
22 report. The board shall notify the state treasurer if the determination
23 identifies a violation. Any person aggrieved by the determination may appeal
24 the determination using the procedure under chapter 28-32.

25 2-4. Within sixty days after the fund receives its statutory limit of oil and gas tax allocations
26 under section 57-51.1-07.5 or by September thirtieth of each odd-numbered year,
27 whichever is earlier, the state treasurer shall distribute moneys in the fund as grants to
28 counties for road and bridge infrastructure projects. The state treasurer shall distribute
29 the grants only if the fund balance is at least ten percent of the amount needed for
30 distributions under this section.

1 ~~3.5.~~ The state treasurer shall distribute the lesser of thirteen percent of the balance of the
2 fund or sixteen million one hundred thousand dollars to non-oil-producing counties for
3 the benefit of the organized and unorganized townships within each non-oil-producing
4 county. The distribution to each non-oil-producing county must provide for an equal
5 allocation to each organized and unorganized township. The amount allocated to
6 organized townships under this section must be paid by the county treasurer to each
7 organized township. The amount allocated to unorganized townships under this
8 section must be credited by the county treasurer to a special fund for unorganized
9 township roads. A township is not eligible for an allocation of funds under this section if
10 the township does not maintain any township roads.

11 4.6. After the distributions in subsection ~~35~~, the state treasurer shall distribute the
12 remaining money in the fund to non-oil-producing counties based on the most recent
13 data compiled by the upper great plains transportation institute regarding North
14 Dakota's county, township, and tribal road and bridge infrastructure needs. The
15 distribution to each non-oil-producing county must be proportional to each
16 non-oil-producing county's total estimated road and bridge investment needs relative
17 to the combined total estimated road and bridge investment needs of all the
18 non-oil-producing counties. The total estimated road and bridge investment needs for
19 each county is the twenty-year estimate for unpaved and paved road and bridge
20 needs as identified by the upper great plains transportation institute. If the data
21 compiled by the upper great plains transportation institute includes more than one
22 twenty-year estimate for the total needs of each county, the state treasurer shall use
23 an average of the twenty-year estimates for each county.

24 ~~5.7.~~ If the moneys in the fund are insufficient to provide for the grants under this section,
25 the state treasurer shall distribute the grants on a pro rata basis.

26 ~~6.8.~~ For purposes of this section:

27 a. "Fiscal year" means the period beginning September first and ending August
28 thirty-first of the following calendar year.

29 b. "Non-oil-producing county" means a county that received no allocation of funding
30 or a total allocation of less than five million dollars under subsection 2 of section

- 1 57-51-15 in the most recently completed even-numbered fiscal year before the
2 start of each biennium.
- 3 c. "Road and bridge infrastructure projects" means the projects associated with the
4 construction of new unpaved and paved road and bridge infrastructure or
5 associated with the maintenance, repair, or replacement of existing unpaved and
6 paved road and bridge infrastructure.