

September 2000

Introduced by

1 A BILL for an Act to create and enact chapter 4-42, a new subsection to section 26.1-05-19, a  
2 new subdivision to subsection 1 of section 57-38-01.2, a new subdivision to subsection 1 of  
3 section 57-38-01.3, a new subdivision to subsection 3 of section 57-38-30.3, a new subdivision  
4 to subsection 4 of section 57-38-30.3, and a new subsection to section 57-38-30.3 of the North  
5 Dakota Century Code, relating to the establishment and operation of the farmers equity trust  
6 fund, issuance of revenue bonds for support of the fund, investments, and income tax credits  
7 for investments in bonds and deductions for interest on bonds issued for support of the fund;  
8 and to provide an effective date.

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

10 **SECTION 1.** Chapter 4-42 of the North Dakota Century Code is created and enacted  
11 as follows:

12 **4-42-01. Definitions.** As used in this chapter, unless the context otherwise requires:

- 13 1. "Agricultural commodity" means an agricultural crop or animal capable of being  
14 raised commercially in this state.
- 15 2. "Bank" means the Bank of North Dakota.
- 16 3. "Bonds" means revenue bonds or other evidences of indebtedness issued by the  
17 industrial commission under this chapter.
- 18 4. "Value-added agricultural project" means a vertically integrated enterprise operated  
19 to process and market an agricultural commodity and established as a legal entity  
20 with the majority of ownership interests owned by agricultural commodity  
21 producers.

22 **4-42-02. Farmers equity trust fund.** The industrial commission shall establish the  
23 farmers equity trust fund as a fund at the Bank of North Dakota. Moneys in the fund may be  
24 used by the agricultural products utilization commission on behalf of the fund to acquire

ownership interests in value-added agricultural projects or for loans to value-added agricultural projects. A loan under this section must be secured by ownership interests in the project.

**4-42-03. Industrial commission powers.** The industrial commission has all powers necessary to carry out its functions under this chapter, including the power to:

1. Enter contracts or other instruments or agreements necessary or incidental to the performance of its duties and functions under this chapter including contracts, instruments, or agreements with any federal or state agency or instrumentality.
2. Sue and be sued.
3. Borrow money through the issuance and sale of bonds as provided in this chapter.
4. Invest proceeds of its bonds not needed for immediate disbursement, including any reserve funds, in investments the industrial commission determines to be prudent, subject to any agreements with the holders of bonds issued under this chapter.
5. Obtain insurance, a guarantee, or a letter of credit for payment of its bonds, including payment of premiums or other fees, from any public or private entity.
6. Consent to any modification, amendment, or other revision respecting the terms and provisions of its bonds or any legal instrument to which the industrial commission is a party, subject to any agreements with holders of bonds issued under this chapter.
7. Purchase bonds issued under this chapter out of any funds available to the commission and hold, cancel, or sell such bonds, subject to any agreements with holders of bonds issued under this chapter.

**4-42-04. Agricultural products utilization commission powers.** The agricultural products utilization commission has all powers necessary to carry out its functions under this chapter, including the power to:

1. Make investments in and loans to value-added agricultural projects under this chapter and charge any reasonable fees to borrowers as the commission determines to be appropriate.
2. Prescribe and approve forms and procedures for value-added agricultural projects to apply for investments and loans under this chapter.
3. Prescribe the terms and conditions of investments and loans to be made under this chapter.

- 1           4.   Establish procedures to evaluate a value-added agricultural project's relative merit,  
2               likelihood of success, and need for an investment or loan. Evaluation of relative  
3               merit must include consideration of the number of citizens of this state who would  
4               benefit from the project and the amount of benefit.

5           **4-42-05. Bank of North Dakota.** The industrial commission and the agricultural  
6 products utilization commission may delegate to the Bank of North Dakota and the Bank is  
7 authorized to exercise all administrative powers granted to the industrial commission and the  
8 agricultural products utilization commission under this chapter, including issuing and selling  
9 bonds and processing and reviewing applications for, and closing and servicing, investments  
10 and loans under this chapter. The Bank may not issue a letter of credit for bonds issued under  
11 this chapter.

12           **4-42-06. Issuance and sale of bonds - Use of proceeds.** The industrial commission  
13 may issue revenue bonds in such principal amounts as the industrial commission determines  
14 necessary to provide sufficient funds to carry out its powers and duties under this chapter. The  
15 proceeds must be used solely for deposit in the farmers equity trust fund and to pay costs of  
16 issuance and insurance of the bonds, pay accrued or capitalized interest or principal of the  
17 bonds, and provide any reasonably required reserve funds. The bonds must be authorized by  
18 resolution of the industrial commission and must bear the date, mature at the times, bear  
19 interest at the rates, be in the denominations, be payable from the sources, and be subject to  
20 the terms of redemption as may be provided by the resolution. The bonds may be sold at  
21 public or private sale at such times and at such prices as may be agreed to by the industrial  
22 commission. The industrial commission may provide for the refunding or refinancing of bonds  
23 under this chapter from time to time.

24           **4-42-07. Agreement with bondholders.** Any resolution of the industrial commission  
25 authorizing the issuance of bonds under this chapter may contain provisions or covenants,  
26 which will be a contract or agreement with the bondholders, as to:

- 27           1.   Setting aside reserves or sinking funds.  
28           2.   Limiting the purposes to which the proceeds from the sale of bonds may be applied  
29               and pledging the proceeds to secure the payment of the bonds.  
30           3.   Limiting the issuance of additional bonds, the terms upon which additional bonds  
31               may be issued and secured, and the refunding of outstanding or other bonds.

- 1           4.   Vesting in a trustee the property, rights, powers, and duties in trust as the industrial
- 2               commission may determine and limiting or abrogating the right of bondholders to
- 3               appoint a trustee or limiting the rights, powers, and duties of the trustee.
- 4           5.   Defining the acts, or omissions to act, which constitute a default of the obligations
- 5               and duties of the industrial commission to the bondholders, and providing for the
- 6               rights and remedies of the bondholders in the event of a default, provided that the
- 7               rights and remedies must be consistent with the general laws of the state and other
- 8               provisions of this chapter.
- 9           6.   Any procedure by which the terms of any contract with bondholders may be
- 10               amended or abrogated, the amount of bonds the holders of which must consent to
- 11               an amendment or abrogation, and the manner in which the consent may be given.
- 12           7.   Any other matter, of like or different character, which in any way affects the security
- 13               or protection of the bondholders.

14           **4-42-08. Reserve fund.**

- 15           1.   The industrial commission shall establish and maintain a reserve fund for bonds
- 16               issued under this chapter. There must be deposited in the reserve fund:
- 17               a.   All bond proceeds required to be deposited in the reserve fund by the terms of
- 18               any contract between the industrial commission and the bondholders or by the
- 19               terms of any resolution of the commission concerning the use of bond
- 20               proceeds.
- 21               b.   Any moneys from any other source made available to the industrial
- 22               commission for deposit in the reserve fund.
- 23           2.   Moneys in the reserve fund may be used only to make payments of the principal
- 24               and interest on bonds, including any premium required to be paid when bonds are
- 25               redeemed prior to maturity, and sinking fund installments as they become due and
- 26               payable. Moneys in the reserve fund may only be withdrawn in conformity with the
- 27               terms of any contract between the industrial commission and the bondholders or
- 28               any resolution of the industrial commission concerning the use of bond proceeds.

29           **4-42-09. Issuance of bonds to renew, pay, or refund bonds.** The industrial

30   commission may issue from time to time bonds to renew or to pay bonds issued under this  
31   chapter, including interest on those bonds, and to refund any bonds issued under this chapter

1 by the issuance of new bonds, whether the bonds to be refunded have matured or not, and to  
2 issue bonds partly to refund outstanding bonds and partly for any other purposes permitted  
3 under this chapter. The refunding bonds may be sold and the proceeds applied to the  
4 purchase, redemption, or payment of the bonds to be refunded, or exchanged for the bonds to  
5 be refunded.

6 **4-42-10. Payment of bonds - Not obligations of state - Payment and security.**

7 Bonds issued under this chapter are not payable from nor charged upon any funds other than  
8 the revenue pledged to the payment of the bonds. The industrial commission and the Bank are  
9 not subject to any liability on bonds issued under this chapter. Bonds issued under this chapter  
10 do not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the  
11 industrial commission or the Bank, except those agricultural enterprises owned or encumbered  
12 under this chapter. The bonds may be additionally secured by a pledge of any grant,  
13 contribution, or guarantee from the federal government, the state, or any legal entity or person.  
14 Bonds issued under this chapter are not an obligation or debt of the state. Each bond issued  
15 under this chapter must contain a statement that neither the faith and credit nor the taxing  
16 power of the state is pledged to the payment of the principal or interest on the bond.

17 **4-42-11. Legal investments.** Bonds issued under this chapter are legal investments in  
18 which all public officers or public bodies of the state and its political subdivisions and all banks  
19 organized under the laws of the state and engaged in the business of banking may invest  
20 funds.

21 **4-42-12. Bond authorization and sale.** Bonds under this chapter must be authorized  
22 by a resolution of the industrial commission and must bear the date and mature at the time the  
23 resolution provides, except that a bond may not mature more than thirty years from the date of  
24 its issue. Bonds must bear interest at the rate, including rate variations; be in the  
25 denominations; be in the form, either coupon or registered; carry the registration privileges; be  
26 executed in the manner; be payable in the medium of payment and at the place or places; and  
27 be subject to the terms of redemption, including redemption prior to maturity, as the resolution  
28 provides. Provisions of other state laws relating to issuance of revenue bonds do not apply to  
29 bonds issued under this chapter. Bonds issued under this chapter may be sold at public or  
30 private sale at the price the industrial commission determines.

1           **4-42-13. Bond issuance and validity.** Bonds issued under the authority of this  
2 chapter must be executed by a member of the industrial commission or by facsimile signature  
3 and the manual signature of an authenticating agent. Any bond bearing the signature of a  
4 member of the industrial commission in office on the date of execution is valid and binding for  
5 all purposes for which it was issued. After issuance, all bonds issued under this chapter are  
6 conclusively presumed to be fully authorized and issued under the laws of the state and any  
7 person or entity is estopped from questioning their authorization, issuance, execution, sale, or  
8 delivery by the industrial commission.

9           **4-42-14. Farmers equity trust fund investment tax credit.** If a taxpayer makes a  
10 qualified investment in bonds issued under this chapter for the farmers equity trust fund, the  
11 taxpayer is entitled to a credit against state income tax liability as determined under section  
12 57-38-29, 57-38-30, or 57-38-30.3. The amount of the credit to which a taxpayer is entitled is  
13 twenty percent of the amount invested during the taxable year by the taxpayer in bonds issued  
14 under this chapter, subject to the following:

- 15           1. In any taxable year, a taxpayer may claim no more than fifty percent of the credit  
16           under this section which is attributable to qualified investments in a single taxable  
17           year. The aggregate amount of credits under this section for any taxable year may  
18           not exceed fifty percent of the taxpayer's tax liability as otherwise determined  
19           under chapter 57-38.
- 20           2. Any amount of credit under this section not allowed because of the limitations of  
21           this section may be carried forward for up to one taxable year after the taxable year  
22           in which the investment was made.
- 23           3. A partnership or other passthrough entity that invests in bonds issued under this  
24           chapter for the farmers equity trust fund must be considered to be the taxpayer for  
25           purposes of the investment limitations in this section and the amount of the credit  
26           allowed with respect to an investment in the farmers equity trust fund must be  
27           determined at the partnership or passthrough entity level. The amount of the total  
28           credit determined at the partnership or passthrough entity level must be allowed to  
29           the partners or shareholders; limited to individuals, estates, and trusts; in  
30           proportion to their respective interests in the partnership or passthrough entity.

1           4.    A qualified investment must be at risk in bonds issued under this chapter for the  
2               farmers equity trust fund. A qualified investment must be in the form of a purchase  
3               of bonds issued under this chapter. An investment for which a credit is received  
4               under this section must remain in the form of bond obligations for at least three  
5               years.

6           5.    The tax credit under this section accrues to the taxpayer for the taxable year in  
7               which full consideration for bonds issued under this chapter was received by the  
8               industrial commission.

9           **4-42-15. Tax credit procedure and reporting.** To receive the tax credit provided by  
10          this chapter, a taxpayer must claim the credit on the taxpayer's annual state income tax return  
11          in the manner prescribed by the tax commissioner.

12          **4-42-16. Rules and administration.** The tax commissioner shall administer the  
13          provisions of this chapter which relate to the income tax credits and deductions allowed under  
14          this chapter and has the same powers as provided under section 57-38-56 for purposes of this  
15          chapter. The industrial commission shall administer the provisions of this chapter which relate  
16          to bonds issued under this chapter and the commission may adopt rules for that purpose in  
17          accordance with chapter 28-32. The agricultural products utilization commission shall  
18          administer the provisions of this chapter which relate to investments or loans from the farmers  
19          equity trust fund and may adopt rules for that purpose in accordance with chapter 28-32.

20          **SECTION 2.** A new subsection to section 26.1-05-19 of the 1999 Supplement to the  
21          North Dakota Century Code is created and enacted as follows:

22               Bonds issued under chapter 4-42.

23          **SECTION 3.** A new subdivision to subsection 1 of section 57-38-01.2 of the 1999  
24          Supplement to the North Dakota Century Code is created and enacted as follows:

25               Reduced by the amount of any interest received by the taxpayer during the  
26               taxable year on bonds issued under chapter 4-42 to the extent that interest  
27               was included in the taxpayer's federal taxable income.

28          **SECTION 4.** A new subdivision to subsection 1 of section 57-38-01.3 of the 1999  
29          Supplement to the North Dakota Century Code is created and enacted as follows:

1                   Reduced by the amount of any interest received by the corporation during the  
2                   taxable year on bonds issued under chapter 4-42 to the extent that interest  
3                   was included in the corporation's federal taxable income.

4                   **SECTION 5.** A new subdivision to subsection 3 of section 57-38-30.3 of the 1999  
5 Supplement to the North Dakota Century Code is created and enacted as follows:

6                   Interest income from bonds issued under chapter 4-42 to the extent that  
7                   income was included in the taxpayer's federal adjusted gross income.

8                   **SECTION 6.** A new subdivision to subsection 4 of section 57-38-30.3 of the 1999  
9 Supplement to the North Dakota Century Code is created and enacted as follows:

10                  Interest income from bonds issued under chapter 4-42 to the extent that  
11                  income was included in the taxpayer's federal adjusted gross income.

12                  **SECTION 7.** A new subsection to section 57-38-30.3 of the 1999 Supplement to the  
13 North Dakota Century Code is created and enacted as follows:

14                  An individual, estate, or trust is entitled to a credit against the tax determined under  
15                  this section for farmers equity trust fund investments as determined under section  
16                  4-42-14.

17                  **SECTION 8. EFFECTIVE DATE.** Sections 2 through 7 of this Act are effective for  
18 taxable years beginning after December 31, 2000.