

Sixty-fourth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1137

Introduced by

Representatives Frantsvog, Lefor, Seibel

Senators Krebsbach, Heckaman, Unruh

1 A BILL for an Act to create and enact two new sections to chapter 6-09.4 of the North Dakota
2 Century Code, relating to creation of the capital infrastructure revolving loan fund; to amend and
3 reenact sections 6-09.4-06, 6-09.4-10, and 6-09.4-22 of the North Dakota Century Code,
4 relating to creation of the capital infrastructure revolving loan fund; to provide for a transfer; and
5 to provide a continuing appropriation.

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

7 **SECTION 1. AMENDMENT.** Section 6-09.4-06 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **6-09.4-06. Lending and borrowing powers generally.**

10 1. The public finance authority may lend money to political subdivisions or other
11 contracting parties through the purchase or holding of municipal securities ~~which that,~~
12 in the opinion of the attorney general, are properly eligible for purchase or holding by
13 the public finance authority under this chapter or chapter 40-57 and for purposes of
14 the public finance authority's capital financing program or the capital infrastructure
15 revolving loan fund, for either of which the principal amount of any one issue does not
16 exceed five hundred thousand dollars. However, the public finance authority may lend
17 money to political subdivisions through the purchase of securities issued by the
18 political subdivisions through the capital financing program or the capital infrastructure
19 revolving loan fund without regard to the principal amount of the bonds issued, if the
20 industrial commission approves a resolution that authorizes the public finance
21 authority to purchase the securities. The capital financing program or capital
22 infrastructure revolving loan fund authorizing resolution must state that the industrial
23 commission has determined that private bond markets will not be responsive to the
24 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.

2. 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.

3. 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.

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

1 **6-09.4-10. Reserve fund.**

- 2 1. The public finance authority shall establish and maintain a reserve fund in which there
3 must be deposited all moneys appropriated by the state for the purpose of the fund, all
4 proceeds of bonds required to be deposited therein by terms of any contract between
5 the public finance authority and its bondholders or any resolution of the public finance
6 authority with respect to the proceeds of bonds, any other moneys or funds of the
7 public finance authority which it determines to deposit therein, any contractual right to
8 the receipt of moneys by the public finance authority for the purpose of the fund,
9 including a letter of credit or similar instrument, and any other moneys made available
10 to the public finance authority only for the purposes of the fund from any other source
11 or sources. Moneys in the reserve fund must be held and applied solely to the
12 payment of the interest on and the principal of bonds and sinking fund payments as
13 the same become due and payable and for the retirement of bonds, including payment
14 of any redemption premium required to be paid when any bonds are redeemed or
15 retired prior to maturity. Moneys in the reserve fund may not be withdrawn therefrom if
16 the withdrawal would reduce the amount in the reserve fund to an amount less than
17 the required debt service reserve, except for payment of interest then due and payable
18 on bonds and the principal of bonds then maturing and payable and sinking fund
19 payments and for the retirement of bonds in accordance with the terms of any contract
20 between the public finance authority and its bondholders and for the payments on
21 account of which interest or principal or sinking fund payments or retirement of bonds,
22 other moneys of the public finance authority are not then available in accordance with
23 the terms of the contract. The required debt service reserve must be an aggregate
24 amount equal to at least the largest amount of money required by the terms of all
25 contracts between the public finance authority and its bondholders to be raised in the
26 then current or any succeeding calendar year for the payment of interest on and
27 maturing principal of outstanding bonds, and sinking fund payments required by the
28 terms of any contracts to sinking funds established for the payment or redemption of
29 the bonds.
- 30 2. If the establishment of the reserve fund for an issue or the maintenance of an existing
31 reserve fund at a required level under this section would necessitate the investment of

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

7 3. No bonds may be issued by the public finance authority unless there is in the reserve
8 fund the required debt service reserve for all bonds then issued and outstanding and
9 the bonds to be issued. Nothing in this chapter prevents or precludes the public
10 finance authority from satisfying the foregoing requirement by depositing so much of
11 the proceeds of the bonds to be issued, upon their issuance, as is needed to achieve
12 the required debt service reserve. The public finance authority may at any time issue
13 its bonds or notes for the purpose of providing any amount necessary to increase the
14 amount in the reserve fund to the required debt service reserve, or to meet such
15 higher or additional reserve as may be fixed by the public finance authority with
16 respect to such fund.

17 4. In order to assure the maintenance of the required debt service reserve, there shall be
18 appropriated by the legislative assembly and paid to the public finance authority for
19 deposit in the reserve fund, such sum, if any, as shall be certified by the industrial
20 commission as necessary to restore the reserve fund to an amount equal to the
21 required debt service reserve. However, the commission may approve a resolution for
22 the issuance of bonds, as provided by section 6-09.4-06, which states in substance
23 that this subsection is not applicable to the required debt service reserve for bonds
24 issued under that resolution.

25 5. If the maturity of a series of bonds of the public finance authority is three years or less
26 from the date of issuance of the bonds, the public finance authority may determine that
27 no reserve fund need be established for that respective series of bonds. If such a
28 determination is made, holders of that respective series of bonds may have no interest
29 in or claim on existing reserve funds established for the security of the holders of
30 previously issued public finance authority bonds, and may have no interest in or claim

1 on reserve funds established for the holders of subsequent issues of bonds of the
2 public finance authority.

3 6. The industrial commission may determine that this section is inapplicable in whole or
4 in part for bonds issued under section 6-09.4-24 ~~or under~~, the public finance
5 authority's state revolving fund program, or the capital infrastructure revolving loan
6 fund.

7 **SECTION 3. AMENDMENT.** Section 6-09.4-22 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **6-09.4-22. Protection of service during term of loan.**

- 10 1. The service provided or made available by a political subdivision through the
11 construction or acquisition of an improvement, or the revenues therefrom, financed in
12 whole or in part with a loan to the political subdivision from the public finance authority,
13 including a loan made from the capital infrastructure revolving loan fund, or any other
14 state agency or enterprise, may not be curtailed or limited by inclusion of all or any
15 part of the area served by the political subdivision within the boundaries of any other
16 political subdivision, or by the granting of any private franchise for similar service
17 within the area served by the political subdivision, during the term of the loan. The
18 political subdivision providing the service may not be required to obtain or secure any
19 franchise, license, or permit as a condition of continuing to serve the area if it is
20 included within the boundaries of another political subdivision during the term of the
21 loan.
- 22 2. Under the circumstances described in subsection 1, nothing prevents the two political
23 subdivisions, with the public finance authority or other state agency or enterprise, from
24 negotiating an agreement for the right or obligation to provide the service in question,
25 provided that any agreement is invalid and unenforceable unless the public finance
26 authority or other state agency or enterprise is a party to the agreement and unless
27 the agreement contains adequate safeguards to ensure the security and timely
28 payment of any outstanding bonds of the public finance authority, including bonds
29 issued under section 4 of this Act, issued to fund the loan.

30 **SECTION 4.** A new section to chapter 6-09.4 of the North Dakota Century Code is created
31 and enacted as follows:

Capital infrastructure revolving loan fund - Creation - Continuing appropriation.

1. The capital infrastructure revolving loan fund is a special fund in the state treasury which is to be used by the public finance authority to provide preferential loans to political subdivisions for essential infrastructure projects that are not eligible for financing under the state revolving fund.
2. The public finance authority may issue bonds as provided in this chapter to supplement and leverage the state funds transferred to the capital infrastructure revolving loan fund. All moneys transferred into the fund, interest upon moneys in the fund, and payments to the fund of principal and interest are appropriated on a continuing basis for administrative costs and for disbursement according to this section.
3. The public finance authority shall administer the capital infrastructure revolving loan fund. The public finance authority shall deposit in the capital infrastructure revolving loan fund all payments of interest and principal paid under loans made from the capital infrastructure revolving loan fund. The public finance authority may use a portion of the interest paid on the outstanding loans as a servicing fee to pay for administrative costs which may not exceed one-half of one percent of the amount of the interest payment.
4. The public finance authority's priorities for making loans from the capital infrastructure revolving loan fund:
 - a. Must include addressing the needs of rapid growth communities by providing critical infrastructure funding. Eligible infrastructure needs may include new sewer lines, water lines, and storm-water and transportation infrastructure, including curb and gutter construction.
 - b. May include disaster recovery efforts by providing funding to support the repair of necessary infrastructure.

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

Capital infrastructure revolving loan fund - Administration.

1. A political subdivision may submit an application to the public finance authority for a loan from the capital infrastructure revolving loan fund. If the applicant's share of the cost of the infrastructure project exceeds the maximum loan amount, the applicant

1 may apply for additional funding through the capital financing program to finance the
2 remainder of the infrastructure project.

3 2. The public finance authority shall calculate the maximum biennial loan amount for
4 which an applicant may qualify under this section by using the population growth in
5 that political subdivision during the most recent year statistics are available.

6 a. A political subdivision that experienced a growth rate that exceeded six percent
7 during the applicable year may qualify for a maximum loan of up to twenty million
8 dollars per biennium.

9 b. A political subdivision that experienced a growth rate that exceeded four percent
10 and did not exceed six percent during the applicable year may qualify for a
11 maximum loan of up to fifteen million dollars per biennium.

12 c. A political subdivision that experienced a growth rate that exceeded two percent
13 and did not exceed four percent during the applicable year may qualify for a
14 maximum loan of up to ten million dollars per biennium.

15 d. A political subdivision that experienced a growth rate that did not exceed two
16 percent during the applicable year may qualify for a maximum loan of up to five
17 million dollars per biennium.

18 3. A participating political subdivision shall close its loan issued under this section within
19 three months of loan approval. The participating political subdivision shall make the
20 first loan draw within six months of loan approval. If a participating political subdivision
21 does not use the entire amount of funds approved by the public finance authority, the
22 public finance authority may reallocate any unused funds to the next highest unfunded
23 project within the same population growth category and if all projects are funded in the
24 same category, the funds may be reallocated first to unfunded needs in any higher
25 ranking category, and then to unfunded projects in any lower categories from highest
26 priority to lowest.

27 **SECTION 6. TRANSFER - BANK OF NORTH DAKOTA - CAPITAL INFRASTRUCTURE**
28 **REVOLVING LOAN FUND.** The Bank of North Dakota shall transfer the sum of \$100,000,000,
29 or so much of the sum as may be necessary, from the Bank's current earnings and undivided
30 profits to the capital infrastructure revolving loan fund during the biennium beginning July 1,
31 2015, and ending June 30, 2017.