Sixty-seventh Legislative Assembly of North Dakota

SENATE BILL NO. 2040

Introduced by

Senators Mathern, Heckaman, Oban

Representatives Boschee, Dobervich, Mitskog

- 1 A BILL for an Act to create and enact a new section to chapter 6-09.4 of the North Dakota
- 2 Century Code, relating to bonded debt repayments; to amend and reenact sections 6-09.4-06,
- 3 6-09.4-10, and 15.1-36-08 of the North Dakota Century Code, relating to borrowing and lending
- 4 authority of the public finance authority, reserve funds associated with bonds, and the school
- 5 construction assistance revolving loan fund; to provide an appropriation; and to provide a bond
- 6 issue limit.

7 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

8 **SECTION 1. AMENDMENT.** Section 6-09.4-06 of the North Dakota Century Code is

9 amended and reenacted as follows:

10 **6-09.4-06.** Lending and borrowing powers generally.

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

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1		involvement of the public finance authority, the authorizing resolution must state
2		reasons for the public finance authority's involvement in the bond issue. The public
3		finance authority may hold such municipal securities for any length of time it finds to
4		be necessary. The public finance authority, for the purposes authorized by this chapter
5		or chapter 40-57, may issue its bonds payable solely from the revenues available to
6		the public finance authority which are authorized or pledged for payment of public
7		finance authority obligations, and to otherwise assist political subdivisions or other
8		contracting parties as provided in this chapter or chapter 40-57.
9	<u>2.</u>	The public finance authority may lend money to the Bank of North Dakota under terms
10		and conditions requiring the Bank to use the proceeds to make loans for agricultural
11		improvements that qualify for assistance under the revolving loan fund program
12		established by chapter 61-28.2.
13	<u>3.</u>	The public finance authority may transfer money to the municipal infrastructure fund
14		under section 57-51.1-07.7, the county and township infrastructure fund under section
15		57-51.1-07.8, the school construction assistance revolving loan fund under section
16		15.1-36-08, the housing incentive fund under section 54-17-40, and the state treasurer
17		for road and bridge infrastructure project grants. Bonds issued for these purposes are
18		payable in each biennium solely from amounts the legislative assembly may
19		appropriate for debt service for any biennium or from a reserve fund established for
20		the bonds. This section may not be construed to require the state to appropriate funds
21		sufficient to make debt service payments with respect to the bonds or replenish a
22		related reserve fund. The bonds are not a debt of the municipal infrastructure fund, the
23		county and township infrastructure fund, the school construction assistance revolving
24		loan fund, the housing incentive fund, the state treasurer, or the state. The full faith,
25		credit, and taxing powers of the state are not pledged to the payment of the bonds. As
26		of the date appropriated funds and reserves are not sufficient to pay debt service on
27		the bonds, the obligation of the public finance authority with respect to the bonds must
28		terminate, and the bonds are no longer outstanding. In addition to providing funds for
29		the transfers, the public finance authority may use the bond proceeds to pay the costs
30		of issuance of the bonds and establish a reserve fund for the bonds.

1 Bonds of the public finance authority issued under this chapter or chapter 40-57 are 2 not in any way a debt or liability of the state and do not constitute a loan of the credit of 3 the state or create any debt or debts, liability or liabilities, on behalf of the state, or 4 constitute a pledge of the faith and credit of the state, but all such bonds are payable 5 solely from revenues pledged or available for their payment as authorized in this 6 chapter. Each bond must contain on its face a statement to the effect that the public 7 finance authority is obligated to pay such principal or interest, and redemption 8 premium, if any, and that neither the faith and credit nor the taxing power of the state 9 is pledged to the payment of the principal of or the interest on such bonds. Specific 10 funds pledged to fulfill the public finance authority's obligations are obligations of the 11 public finance authority.

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:

19 **6-09.4-10.** Reserve fund.

20 The public finance authority shall establish and maintain a reserve fund in which there 1. 21 must be deposited all moneys appropriated by the state for the purpose of the fund, all 22 proceeds of bonds required to be deposited therein by terms of any contract between 23 the public finance authority and its bondholders or any resolution of the public finance 24 authority with respect to the proceeds of bonds, any other moneys or funds of the 25 public finance authority which it determines to deposit therein, any contractual right to 26 the receipt of moneys by the public finance authority for the purpose of the fund, 27 including a letter of credit or similar instrument, and any other moneys made available 28 to the public finance authority only for the purposes of the fund from any other source 29 or sources. Moneys in the reserve fund must be held and applied solely to the 30 payment of the interest on and the principal of bonds and sinking fund payments as 31 the same become due and payable and for the retirement of bonds, including payment

1 of any redemption premium required to be paid when any bonds are redeemed or 2 retired prior to maturity. Moneys in the reserve fund may not be withdrawn therefrom if 3 the withdrawal would reduce the amount in the reserve fund to an amount less than 4 the required debt service reserve, except for payment of interest then due and payable 5 on bonds and the principal of bonds then maturing and payable and sinking fund 6 payments and for the retirement of bonds in accordance with the terms of any contract 7 between the public finance authority and its bondholders and for the payments on 8 account of which interest or principal or sinking fund payments or retirement of bonds, 9 other moneys of the public finance authority are not then available in accordance with 10 the terms of the contract. The required debt service reserve must be an aggregate 11 amount equal to at least the largest amount of money required by the terms of all 12 contracts between the public finance authority and its bondholders to be raised in the 13 then current or any succeeding calendar year for the payment of interest on and 14 maturing principal of outstanding bonds, and sinking fund payments required by the 15 terms of any contracts to sinking funds established for the payment or redemption of 16 the bonds.

- 17 2. If the establishment of the reserve fund for an issue or the maintenance of an existing 18 reserve fund at a required level under this section would necessitate the investment of 19 all or any portion of a new reserve fund or all or any portion of an existing reserve fund 20 at a restricted yield, because to not restrict the yield may cause the bonds to be 21 taxable under the Internal Revenue Code, then at the discretion of the public finance 22 authority no reserve fund need be established prior to the issuance of bonds or the 23 reserve fund need not be funded to the levels required by other subsections of this 24 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 4. In order to assure the maintenance of the required debt service reserve, there shall be 5 appropriated by the legislative assembly and paid to the public finance authority for 6 deposit in the reserve fund, such sum, if any, as shall be certified by the industrial 7 commission as necessary to restore the reserve fund to an amount equal to the 8 required debt service reserve. However, the commission may approve a resolution for 9 the issuance of bonds, as provided by section 6-09.4-06, which states in substance 10 that this subsection is not applicable to the required debt service reserve for bonds 11 issued under that resolution.
- 12 5. If the maturity of a series of bonds of the public finance authority is three years or less 13 from the date of issuance of the bonds, the public finance authority may determine that 14 no reserve fund need be established for that respective series of bonds. If such a 15 determination is made, holders of that respective series of bonds may have no interest 16 in or claim on existing reserve funds established for the security of the holders of 17 previously issued public finance authority bonds, and may have no interest in or claim 18 on reserve funds established for the holders of subsequent issues of bonds of the 19 public finance authority.
- 20 <u>6.</u> The industrial commission may determine that this section is inapplicable in whole or
 21 in part for bonds issued <u>under sectionas follows:</u>
- 22 <u>a.</u> <u>Under section 6-09.4-06;</u>
- 23 <u>b.</u> <u>Under section</u> 6-09.4-24; or under
- 24

c. <u>Under</u> the public finance authority's state revolving fund program.

SECTION 3. A new section to chapter 6-09.4 of the North Dakota Century Code is created
 and enacted as follows:

- 27 Debt service requirements Municipal infrastructure fund County and township
- 28 infrastructure fund School construction assistance revolving loan fund Housing
- 29 incentive fund Road and bridge infrastructure project grants.
- 30 Each biennium, the public finance authority shall request from the legislative assembly an
- 31 appropriation from the general fund, derived from legacy fund earnings, Bank of North Dakota

1	profits, or other sources, to meet the debt service requirements for evidences of indebtedness				
2	issued by the authority to support the municipal infrastructure fund under section 57-51.1-07.7.				
3	the cour	the county and township infrastructure fund under section 57-51.1-07.8, the school construction			
4	assistance revolving loan fund under section 15.1-36-08, the housing incentive fund under				
5	section 54-17-40, and road and bridge infrastructure project grants distributed by the state				
6	treasure	<u>er.</u>			
7	SECTION 4. AMENDMENT. Section 15.1-36-08 of the North Dakota Century Code is				
8	amende	d and	d reer	nacted as follows:	
9	15.1-36-08. School construction assistance revolving loan fund - Bank of North				
10	Dakota	- Scł	nool d	construction projects - Continuing appropriation.	
11	1.	The	scho	ol construction assistance revolving loan fund is a special revolving loan fund	
12		adn	niniste	ered by the Bank of North Dakota. The fund consists of all moneys	
13		арр	ropria	ated or transferred to the fund by the legislative assembly, all interest or other	
14		ear	nings	of the fund, and all repayments of loans made from the fund.	
15	2.	Мо	neys i	n the fund, interest upon the moneys in the fund, and payments to the fund of	
16		prin	cipal	and interest are appropriated to the Bank of North Dakota on a continuing	
17		basis for the purpose of providing low-interest school construction loans and for paying			
18		administrative costs, in accordance with this section.			
19	3.	To b	be eliç	gible for a <u>school district</u> loan under this section, the board of a school district	
20		sha	II:		
21		a.	Pro	pose a new construction or remodeling project with a cost of at least	
22			one	million dollars and an expected utilization of at least thirty years;	
23		b.	Obt	ain the approval of the superintendent of public instruction for the project	
24			und	er section 15.1-36-01;	
25		C.	(1)	Publish in the official newspaper of the district the information regarding the	
26				proposed estimated additional millage and the dollar increase per one	
27				thousand dollars of taxable valuation in accordance with section 21-03-13	
28				along with the notice of the election to authorize the school construction	
29				bond issuance in accordance with section 21-03-12; and	

1			(2) Post the information on the school district's website preceding the date of			
2			the election to authorize the school construction bond issuance in			
3			accordance with chapter 21-03;			
4		d.	Receive authorization for a bond issue in accordance with chapter 21-03; and			
5		e.	Submit a completed application to the Bank of North Dakota.			
6	4.	The	e superintendent of public instruction shall review school district loan applications			
7		bas	based on a prioritization system that includes a review of all applications filed during			
8		the	twelve-month period preceding April first and gives consideration to:			
9		a.	Student occupancy and academic needs in the district;			
10		b.	The age of existing structures to be replaced or remodeled;			
11		C.	Building design proposals that are based on safety and vulnerability			
12			assessments;			
13		d.	Community support;			
14		e.	Cost; and			
15		f.	Any other criteria established by the superintendent of public instruction, after			
16			consultation with an interim committee appointed by the legislative management.			
17	5.	lf th	e superintendent of public instruction approves the <u>school district</u> loan, the Bank of			
18		Nor	North Dakota shall issue a loan from the school construction assistance revolving loan			
19		fun	d. For a loan made to a school district under this section:			
20		a.	The maximum loan amount for which a school district may qualify is ten million			
21			dollars. However, if a school district's unobligated general fund balance on the			
22			preceding June thirtieth exceeds the limitation under section 15.1-27-35.3, the			
23			loan amount under this section may not exceed eighty percent of the project's			
24			cost up to a maximum loan amount of eight million dollars;			
25		b.	The term of the loan is twenty years, unless the board of the school district			
26			requests a shorter term in the written loan application; and			
27		C.	The interest rate of the loan may not exceed two percent per year.			
28	6.	<u>To l</u>	be eligible for an area career and technology center loan under this section, the			
29		boa	rd of an area career and technology center shall:			
30		<u>a.</u>	Propose a new construction or remodeling project with a cost of at least			
31			one million dollars and an expected utilization of at least thirty years;			

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1	L	~	Obtain the approve			

1		<u>b.</u>	Obtain the approval of the department of career and technical education; and		
2		<u>C.</u>	Submit a completed application to the Bank of North Dakota.		
3	<u>7.</u>	To be eligible for a higher education institution loan under this section, the state board			
4		<u>of h</u>	ligher education shall:		
5		<u>a.</u>	Propose a new construction or remodeling project with a cost of at least		
6			one million dollars and an expected utilization of at least thirty years;		
7		<u>b.</u>	Obtain approval of the legislative assembly or budget section under section		
8			<u>15-10-12.1; and</u>		
9		<u>C.</u>	Submit a completed application to the Bank of North Dakota.		
10	<u>8.</u>	<u>Sub</u>	Subject to the approvals required under subsections 6 or 7 of this section, the Bank of		
11		<u>Nor</u>	th Dakota shall issue a loan from the school construction assistance revolving loan		
12		<u>fun</u>	d. For a loan made to an area career and technology center or an institution under		
13		<u>the</u>	control of the state board of higher education:		
14		<u>a.</u>	The maximum loan amount is fifty million dollars;		
15		<u>b.</u>	The term of the loan is twenty years, unless the board of an area career and		
16			technology center or the state board of higher education requests a shorter term		
17			in the written loan application; and		
18		<u>C.</u>	The interest rate of the loan may not exceed two percent per year.		
19	<u>9.</u>	The	e Bank may adopt policies and establish guidelines to administer this loan program		
20		in accordance with this section. The Bank of North Dakota may use a portion of the			
21		inte	rest paid on the outstanding loans as a servicing fee to pay for administration costs		
22		whi	ch may not exceed one-half of one percent of the amount of the interest payment.		
23		The	e Bank of North Dakota shall deposit principal and interest payments made by		
24		sch	ool districts, area career and technology centers, and institutions under the control		
25		<u>of t</u>	he state board of higher eduction for loans under this section in the school		
26		con	struction assistance revolving loan fund. The Bank of North Dakota shall arrange		
27		for	the conduct of an annual audit of the school construction assistance revolving loan		
28		fune	d, the cost of which must be paid from the fund and which must be conducted by		
29		an i	independent accounting firm.		
30	SEC	СТІО	N 5. PUBLIC FINANCE AUTHORITY - BOND ISSUANCE LIMITATION - STATE		
31	TREAS	UREI	R - APPROPRIATION.		

1	1.	Pur	suant to the bonding authority under section 6-09.4-06, the public finance authority		
2		ma	y issue up to \$2,000,000,000 of evidences of indebtedness for the purposes of		
3		sup	supporting the municipal infrastructure fund under section 57-51.1-07.7, the county		
4		and	and township infrastructure fund under section 57-51.1-07.8, the school construction		
5		ass	assistance revolving loan fund under section 15.1-36-08, the housing incentive fund		
6		unc	under section 54-17-40, and road and bridge infrastructure project grants distributed		
7		by t	by the state treasurer during the biennium beginning July 1, 2021, and ending		
8		Jun	June 30, 2023.		
9	2.	Afte	er payment of any issuance costs or any transfers to a reserve fund, the proceeds		
10		of t	he evidences of indebtedness issued by the public finance authority must be		
11		trar	nsferred as follows:		
12		a.	Up to \$115,000,000 to the municipal infrastructure fund, but not in an amount that		
13			would cause the total distributions under section 57-51.1-07.7 to exceed the oil		
14			and gas tax revenue allocation limits under section 57-51.1-07.5;		
15		b.	Up to \$115,000,000 to the county and township infrastructure fund, but not in an		
16			amount that would cause the total distributions under section 57-51.1-07.8 to		
17			exceed the oil and gas tax revenue allocation limits under section 57-51.1-07.5;		
18		C.	\$750,000,000 to the school construction assistance revolving loan fund under		
19			section 15.1-36-08;		
20		d.	\$250,000,000 to the housing incentive fund under section 54-17-40; and		
21		e.	The remaining amount to the state treasurer for road and bridge infrastructure		
22			project grants. The proceeds of the evidences of indebtedness transferred under		
23			this subdivision are appropriated to the state treasurer for road and bridge		
24			infrastructure project grants for the biennium beginning July 1, 2021, and ending		
25			June 30, 2023. The state treasurer shall distribute the funding to counties based		
26			on the most recent data compiled by the upper great plains transportation		
27			institute regarding North Dakota's county, township, and tribal road and bridge		
28			infrastructure needs. The distribution to each county must be proportional to each		
29			county's total estimated road and bridge investment needs relative to the		
30			combined total estimated road and bridge investment needs of all the counties.		
31			The total estimated road and bridge investment needs for each county is the		

1 twenty-year estimate for unpaved and paved road and bridge needs as identified 2 by the upper great plains transportation institute. If the data compiled by the 3 upper great plains transportation institute includes more than one twenty-year 4 estimate for the total needs of each county, the state treasurer shall use an 5 average of the twenty-year estimates for each county. Of the grant funding 6 distributed to each county, twenty-six percent must be allocated to the townships 7 in the county to provide an equal allocation to each organized and unorganized 8 township. The amount allocated to each organized township must be paid by the 9 county treasurer to each organized township. The amount allocated to each 10 unorganized township must be credited by the county treasurer to a special fund 11 for unorganized township roads. A township is not eligible for an allocation of 12 funds under this subdivision if the township does not maintain any township 13 roads. Counties and organized townships must use the grant funding only for the 14 construction of new unpaved and paved road and bridge infrastructure or the 15 maintenance, repair, or replacement of existing unpaved and paved road and 16 bridge infrastructure.

The term of any evidences of indebtedness issued under this section may not exceed
twenty-five years. The public finance authority may issue bond anticipation notes or
borrow from the Bank of North Dakota for the purpose of supporting the municipal
infrastructure fund, the county and township infrastructure fund, the school
construction assistance revolving loan fund, the housing incentive fund, and road and
bridge infrastructure project grants distributed by the state treasurer prior to a bond
issuance.