

Good morning, Mr. Chairman, and members of the Government Finance Committee, I am Ron Henke, Director of the North Dakota Department of Transportation (NDDOT). I am here today to provide an overview of the Highway 85 Project Report submitted to the Legislative Council at the end of July. The full report is included for your reference.

### **Introduction**

The US Highway 85 Expansion Project aims to improve a critical 62-mile stretch of roadway in Stark, Billings, and McKenzie counties by upgrading it from a two-lane to a four-lane highway. This segment runs from the Interstate 94 interchange to the Watford City Bypass (McKenzie County Road 30). The expansion seeks to enhance safety, accommodate increased traffic, and support economic growth in the region while minimizing impacts on environmental, socioeconomic, and human-made resources.

### **Project Progress and Federal Approvals**

Since the completion of the environmental review process and the signing of the Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) in March 2019, significant progress has been made.

- Long X Bridge | Completed in 2020
- Long X Bridge to Watford City | Will be completed in 2024
- I-94 to Long X Bridge | Preliminary engineering taking place
- Junction Highway 200 north 13 miles | Federal discretionary grant is secured

The Federal Highway Administration (FHWA) requires reevaluation of the FEIS/ROD prior to major approvals to ensure its validity. To date, three reevaluations have been completed and approved by FHWA, with future evaluations planned annually until the project's completion.

### **Funding Requirements and Project Timeline**

The estimated total funding required to complete the remaining phases of the US Highway 85 corridor is approximately \$556.9 million. This funding covers right-of-way acquisition, utility relocation, construction, and construction engineering for the project segments, with construction scheduled to start in 2026 and continue through 2030. The funding needs for each year are as follows:

- **2025:** \$10.9 million
- **2026:** \$83.7 million
- **2027:** \$144.3 million
- **2028:** \$125.7 million

- **2029:** \$83.9 million
- **2030:** \$108.5 million

### **Funding Options Considered**

To meet the financial needs of the project **within the timeline identified above**, several funding options were evaluated:

1. **Bonds:** Issuing state bonds would provide immediate access to funds, spreading project costs over an extended period and securing lower interest rates. However, bonds commit future budgets to debt service, require stable revenue streams for repayment, and increase overall project costs due to interest payments.
2. **Bank Loans:** Bank loans offer quick access to funds, potentially competitive interest rates, and flexibility in repayment terms. However, they may involve variable rates, shorter repayment periods, and higher annual payments compared to bonds, which could strain future budgets.
3. **Pay-As-You-Go:** This approach avoids interest costs and debt issuance but could delay project implementation due to limited available revenue. This method would extend construction timelines and miss potential economic benefits associated with timely project completion.

### **Funding Options Eliminated**

Two funding sources were removed from further analysis due to their uncertainties and because they do not allow the state to meet the timeline identified above:

- **Federal Discretionary Grants:** These grants were ruled out due to their unpredictability and timing issues, which could result in incomplete or delayed project segments, leaving US Highway 85 partially developed for an extended period.
- **Federal Formula Funds:** These funds are crucial for maintaining North Dakota's overall transportation network and cannot be diverted solely to this project without compromising statewide infrastructure needs.

### **Conclusion**

The US Highway 85 Expansion Project is critical for enhancing regional connectivity, supporting economic growth, and ensuring safety for travelers in western North Dakota. As the project moves forward, legislative support for a robust and reliable funding strategy to ensure timely completion will be essential to its success.

Mr. Chairman and members of the Government Finance Committee, this concludes my testimony. I'd be happy to answer any questions you may have. Thank you.

*The US Highway 85 Project Report is completed in accordance with HB 1012, section 17, which requires the NDDOT to provide a report to Legislative Management on developing a plan to complete the US Highway 85 four-lane project in its entirety as approved in the Final Environmental Impact Statement (FEIS) for project number 9-085(085)075, PCN 20046.*

## PROJECT DESCRIPTION

The US Highway 85 project encompasses approximately 62 miles of roadway in Stark, Billings, and McKenzie counties, North Dakota. The project begins at the Interstate 94 interchange and extends north to the Watford City Bypass (McKenzie County Road 30). The proposed action is to expand this segment of US Highway 85 from a two-lane highway to a four-lane highway with flexible design options to avoid or minimize impacts and rehabilitate or replace the historic Long X Bridge over the Little Missouri River. The goal of the project is to essentially maintain and follow the existing US Highway 85 alignment, utilizing the existing infrastructure to minimize potential impacts on environmental, socioeconomic, and human-made resources, to the maximum extent practicable.

## FEDERAL APPROVALS

The National Environmental Policy Act (NEPA) environmental review process for the US Highway 85 project from Interstate 94 to the Watford City Bypass was completed with the signing of the Final Environmental Impact Statement (FEIS)/Record of Decision (ROD) on March 5, 2019, and publishing in the Federal Register on March 15, 2019. The FEIS and ROD can be found on the website at [U.S. 85 Expansion \(I-94 to Watford City Bypass\) | NDDOT](#). FHWA must be consulted prior to major approvals (e.g., final design; ROW acquisition; approval of plans, specifications, and estimates [PS&E]) or grants to determine whether the FEIS/ROD is still valid. The mechanism that FHWA uses to determine if the FEIS/ROD is still valid is called a reevaluation. A reevaluation of the US Highway 85 FEIS/ROD can be completed at any point, but at a minimum, a reevaluation is required prior to major FHWA approvals.

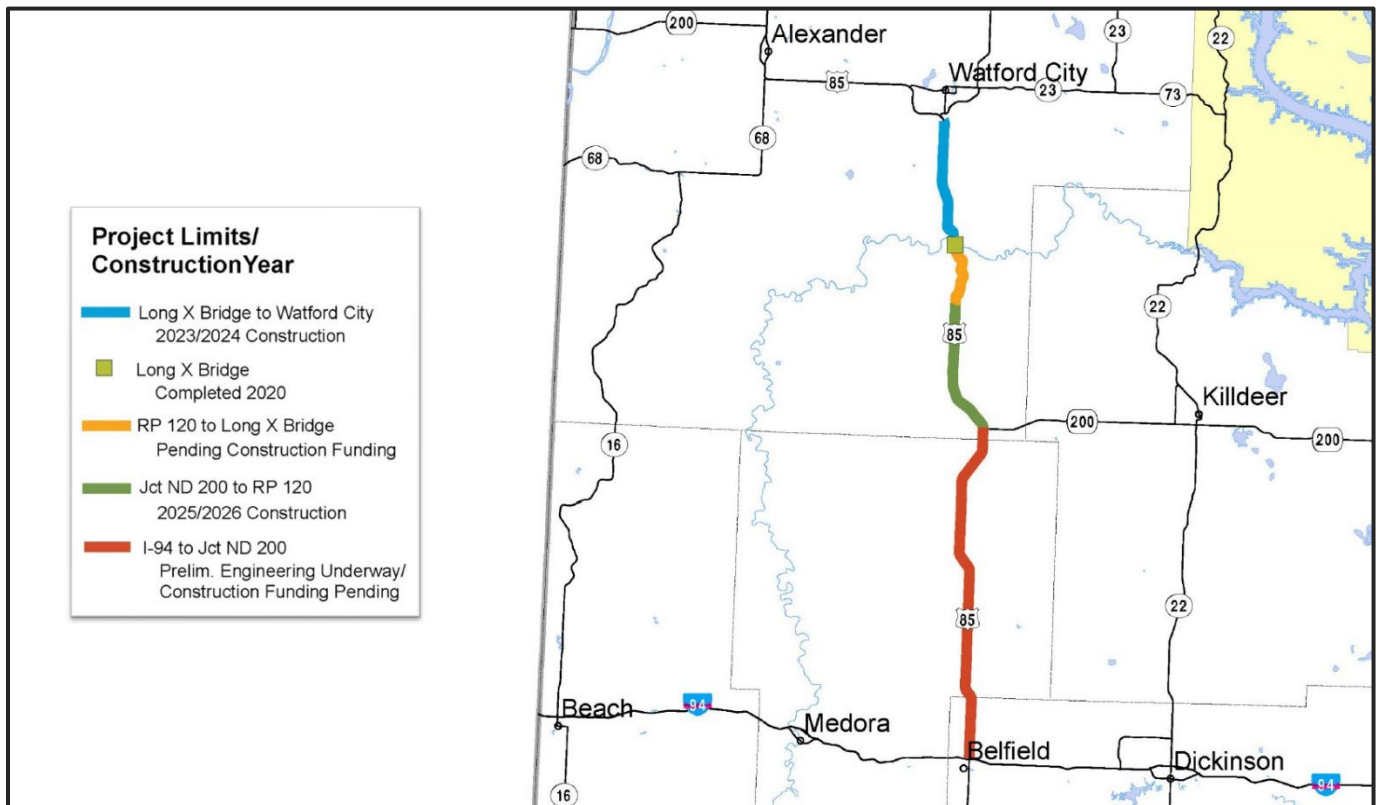
Due to the size and complexity of the US Highway 85 project, along with the various construction segments and funding sources, it was recommended that a reevaluation be completed on an annual basis for the US Highway 85 FEIS/ROD. A reevaluation guide and project specific reevaluation checklist were created during development of the FEIS/ROD to aid in the annual reevaluation process. To date, three (3) reevaluations have been completed and

approved by FHWA on July 14, 2021; November 14, 2022; and December 19, 2023. Future reevaluations of US Highway 85 FEIS/ROD are subsequently planned to be completed and approved by FHWA every year until the final roadway segment has been let for construction.

## PROGRESS OF FOUR-LANE

Since the signing of the FEIS/ROD in March of 2019, progress has been made on completing the four-lane corridor. Please see Figure 1 below:

**Figure 1:**



## FUNDING NEEDS

Funding needed by year to complete the remaining phases of the corridor are shown in Table 1 below. The costs in Table 1 are inflated to the year of obligation. Phases to be completed yet vary by project segment but include right of way, utility relocation, construction, and construction engineering. Preliminary engineering is active for the remaining project segments as dollars from the American Recovery Act (ARP) and the Flexible Transportation Fund (FTP) is being used. The schedule includes a construction of a project segment each year starting in 2026, with the last segment starting construction in 2030.

**Table 1:**

YEAR	FUNDING NEEDED
2025	\$ 10,922,855
2026	\$ 83,705,080
2027	\$ 144,274,279
2028	\$ 125,714,229
2029	\$ 83,876,418
2030	\$ 108,458,683
<b>TOTALS</b>	<b>\$ 556,951,544</b>

## FUNDING SOURCES

Five funding sources were considered to fund the completion of the US Highway 85 corridor from a two-lane to a four-lane highway. To complete the US Highway 85 corridor **within the timeline identified in Table 1**, three funding sources are moved forward for consideration. The other two were eliminated from further analysis as discussed below.

The below funding sources do not consider the overall financial situation of the state. Any questions on this should be referred to the Office of Management and Budget (OMB).

## SOURCES MOVED FORWARD FOR CONSIDERATION

- **BONDS:** Utilizing the bonding option would involve the state of ND issuing bonds to cover the costs. The legislature would need to provide a method for repayment of the bonds.

### Advantages:

- Immediate access to funds – Bonding would provide for timely access to funds.
- Spreads the project costs over an extended period – Bonding would spread the financial burden over an extended period – typically more than a decade.
- Fixed interest rates – Bonding locks in interest rates at the time of issuance, thus protecting against future interest rate increases.
- Potential for lower interest rates – Government entities often get lower interest rates due to their creditworthiness.
- Flexibility in repayment – May be able to structure repayment terms to manage projected cash flows.
- Stimulates economy – Bonding injects funds into the economy over a relatively short period of time, thus creating jobs and economic activity.
- No impact on current taxes – Costs are not initially borne directly by taxpayers.
- Potential tax advantage – Interest paid on some government bonds is often tax-exempt at the federal level, depending on how the bond issue is structured.

### Disadvantages:

- Interest payments – Bonding results in interest costs over the life of the bond; this increases the total project cost.
- Market dependency – Bonding is vulnerable to fluctuations in interest rates and bond market conditions.
- Long term commitment and constraints on future budgets – Commits future budgets to debt service, potentially limiting flexibility.
- Requires future revenue streams – Debt repayment necessitates stable revenue sources.

- **BANK LOANS:** Utilizing the bank loan option would require the NDDOT to obtain bank loans to cover the costs. The legislature would need to provide a method for repayment of the loans.

Advantages:

- Quick access to funds – Bank loans would provide for timely access to funds once the loan terms have been negotiated.
- Potential for competitive interest rates – Depending on market conditions, the loan may be structured with very competitive interest rates.
- Flexible terms – The terms of the loan can be tailored to project needs and cash flow projections.
- Potential for lower administrative costs – A bank loan may involve lower costs associated with issuance and management of the loan.
- No continuing disclosure requirements – Avoids the continuing disclosure requirements of a bond issue.
- Reduced market risk – A bank loan would involve less exposure to fluctuations in bond markets.
- Shorter repayment periods – A bank loan may have a shorter repayment term which may result in lower total interest costs.
- Retention of interest revenues – A loan from the Bank of North Dakota would keep the loan's interest within ND state government.

Disadvantages:

- Interest costs – Bank loans involve interest payments which will increase the total project costs.
- Potential for variable rates – Loans with variable rates run the risk of increases in those rates which will increase the total cost of the project.
- Dependency on bank approval – Bank loans are subject to bank approval and creditworthiness assessments.
- No tax advantages – Bank funding eliminates the potential tax advantage available to bond investors.
- Shorter repayment periods – Banks loans generally involve shorter repayment terms than bonds. This would lead to higher annual payments.

- Long term commitment and constraints on future budgets – Commits future budgets to debt service, potentially limiting flexibility.
  - Requires future revenue streams – Debt repayment necessitates stable revenue sources.
- PAY AS YOU GO METHOD: Utilizing the pay as you go method would involve using revenues as they become available to fund the costs. Without the legislature providing additional revenues, this option would most likely extend the construction period by several additional years.

Advantages:

- Avoids interest costs – Does not result in the interest costs associated with debt.
- No debt issuance costs – Avoids the up front and management costs associated with debt issuances.
- No continuing disclosure requirements – Avoids the continuing disclosure requirements of a bond issue.
- No market dependency – The pay as you go approach is not vulnerable to bond market fluctuations.
- No long-term commitments – There are no long-term commitments beyond ensuring adequate funding is available to meet current obligations.
- Simplicity – Simplifies budgeting and financial planning processes and avoids the complexities associated with debt financing.

Disadvantages:

- Delayed project implementation – May result in extended deployment of project phases due to funding constraints.
- Vulnerability to economic downturns – Revenue fluctuations may impact project timelines.
- Opportunity costs – The pay as you go method misses out on potential economic benefits of timely project completion.
- Limitation on scale of other projects – The resulting demand on current resources may restrict the scope and scale of other activities.
- No tax advantages – Pay as you go funding eliminates the potential tax advantage available to bond investors.

- Infrastructure backlog – Because current funding is substantially committed to the project, a backlog in infrastructure development could result.
- Potential for Inadequate funding – Insufficient current funding may lead to suboptimal project outcomes.
- Public frustration due to extended project timeline – Because the project may result in construction activities over a more extended timeframe, the public may become intolerant and dissatisfied with the project.

## SOURCES REMOVED FROM FURTHER ANALYSIS

- FEDERAL DISCRETIONARY GRANTS: Federal discretionary grants (grants) were considered as a funding source. However, this was removed from further analysis as it is too uncertain and would not meet the timeline identified above. Relying on grants to fund the corridor would mean US Highway 85 may never be 4-laned or may sit for decades partially completed. While a couple pros exist to using grants (as noted below), both the timing and future of grant funding are highly uncertain, restricting the ability to plan and indefinitely delaying citizen benefits. NDDOT has had a high success rate in obtaining grants, relative to the national averages. However, even with this high rate, less than 3 in 10 dollars requested have been awarded to NDDOT, meaning it is impossible to know if requested funds will ever be provided for any given project. Additionally, many grant programs include requirements that make it nearly impossible to craft a qualifying application for some segments of US Highway 85, meaning a grant-funded corridor would be a patchwork of 4-lane and 2-lane segments for many years if not long-term. Unless Congress renews them as part of the transportation reauthorization process, the myriad of new grant programs created in the Infrastructure Investment and Jobs Act (IIJA or the Bipartisan Infrastructure Law – BIL) expire in 2026, far sooner than the corridor could be built. Therefore, grant programs suited for this corridor may not exist when the various segments can be constructed. As a result, this funding source is both untimely and uncertain, which trumps the positive aspects of grants. Grants are beneficial for a large-scale project such as 4-laning US Highway 85; further, grant funding is over-and-above the regular formula federal funds used to sustain the transportation system overall. However, despite these benefits, the uncertainty rules out grants as a reasonable strategy for funding this corridor of improvements. For the reasons noted above, federal discretionary grants were eliminated as the sole source for completing the corridor.

- **FEDERAL FORMULA FUNDS:** Federal Highway Administration (FHWA) federal formula funds distributed to the state of North Dakota are critical to efforts to meet immediate needs and the goals of the State Long Range Transportation Plan. These needs/goals include keeping you safe, caring for what we have, connecting North Dakota, helping you get there, and investing for the future. The state of North Dakota through the NDDOT receives approximately \$400M in federal formula funds annually. Approximately 22% of these funds are shared with the urban areas and counties throughout the state. The funds are used for all stages required to deliver projects including planning, preliminary engineering, right of way, utilities, construction, and construction engineering. Without these funds to address statewide needs the transportation system would rapidly deteriorate and become non-functional. The use of federal formula funds is done under the FHWA agreement the entity (NDDOT) receiving the funds will properly maintain any project constructed with those funds. If future formula funds were not available to continue to maintain statewide needs, we could jeopardize the future receipt of federal funds. It is very important the federal formula funds are used on the entire state system in a proactive way. One of the most significant advantages of preventative maintenance is cost savings. By addressing minor issues before they escalate, the need for more extensive and expensive repairs is reduced. This approach extends the life of the pavements and bridges, leading to a better allocation of resources and long-term financial savings. For the reasons noted above, federal formula funds were eliminated as a source for completing the corridor.