

Fifty-sixth
Legislative Assembly
of North Dakota

REENGROSSED HOUSE BILL NO. 1383

Introduced by

Representatives Dorso, Clark

Senators Grindberg, G. Nelson

1 A BILL for an Act to provide for establishment and operation of the housing development fund
2 and to provide a financial institutions tax credit for participation in the fund; to amend and
3 reenact sections 57-35.3-09 and 57-35.3-10 of the North Dakota Century Code, relating to
4 allocation of financial institutions' tax revenues; to provide a penalty; and to provide an effective
5 date.

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

7 **SECTION 1. Definitions.** As used in this Act:

- 8 1. "Financial institution" means a financial institution as defined in section 57-35.3-01.
- 9 2. "Fund" means the housing development fund.
- 10 3. "Fund administrator" means a certified development corporation with a statewide
11 focus which the small business administration has designated as a certified
12 development corporation.
- 13 4. "Governing board" means the board of directors of the corporation or board of
14 governors of the limited liability company established under section 2 of this Act.

15 **SECTION 2. Establishment - Organization.** Any financial institution or group of
16 financial institutions may establish a corporation or a limited liability company to own and
17 operate the housing development fund. Except as provided in this Act, all authority regarding
18 the articles of incorporation or articles of organization is the province of the governing board,
19 which must include a representative of the Bank of North Dakota and a representative of the
20 department of economic development and finance. The fund administrator shall maintain the
21 fund as an account at the Bank of North Dakota. The governing board is responsible for
22 adopting policies and procedures governing activities in connection with the fund. The
23 governing board may not distribute more than seventy-five percent of the net profit of the fund
24 in any of the first five years of operation.

1 **SECTION 3. Housing development fund use.** The housing development fund
2 established under section 2 of this Act may be used only for making participation loans in
3 housing development projects in this state. The participation of the fund in a loan may not
4 exceed the aggregate of loans from other sources and the investment of the project developer.
5 A loan from the fund may not be made to a financial institution. The governing board shall
6 establish the rate of interest and terms of repayment for a loan from the fund. Loans may be
7 made from the fund for any housing project in the state, but the primary focus for loans from the
8 fund must be to provide funding for multifamily housing projects in rural areas that are
9 experiencing or expecting a shortage of housing as a result of economic development. For
10 purposes of this section, "rural areas" means the area of the state not within the corporate limits
11 of a city with a population of twenty thousand or more.

12 **SECTION 4. Loan administration.** An application for a loan from the fund must
13 contain the information prescribed by the governing board. Except as provided in this section,
14 information contained in applications for loans from the fund is confidential. The fund
15 administrator shall review each loan application; report to the governing board whether the
16 applicant represents a housing project, whether the housing project is for multifamily housing,
17 and whether the housing project is located in a rural area; and make a recommendation to the
18 governing board on whether to approve the loan application. The commissioner of the
19 department of banking and financial institutions may examine the fund and activities of financial
20 institutions in connection with the fund to assure compliance with applicable laws. The fund
21 shall pay the costs of an examination and credit may not be allowed to any financial institution
22 for payment of examination costs.

23 **SECTION 5. Audited financial statement - Report of fund operations.** The
24 governing board shall contract annually with a certified public accountant for performance of an
25 audit and preparation of audited financial statements of the fund, prepared in accordance with
26 generally accepted accounting principles, and a report containing an analysis of the impact of
27 the fund on the state's economy, business and employment activity generated by loans from
28 the fund, and the effects of that activity on state and local tax revenues. The governing board
29 shall provide the financial statements and report to the governor, the commissioner of the
30 department of banking and financial institutions, and the legislative council. The governing

1 board shall make copies available to the public upon request. The cost of the audit and
2 preparation of financial statements and report must be paid from the fund.

3 **SECTION 6. Financial institutions tax credit - Penalty.** If the requirements of this
4 Act are met, a financial institution is entitled to a credit against taxes due under section
5 57-35.3-03 as determined under this section.

6 1. A financial institution making or participating in a loan under this Act is entitled to a
7 credit calculated for each calendar year the loan is in place. The amount of the
8 credit is the difference between:

9 a. The participating financial institution's share of the interest earned on the loan
10 during the calendar year; and

11 b. The participating financial institution's share of an amount of interest that
12 would have been earned during the same period by applying an interest rate,
13 calculated by adding three hundred basis points to a comparable treasury
14 security rate at the date of the issuance of the loan.

15 2. The maximum credit allowed a financial institution for any calendar year is the
16 amount of interest that would have been earned during the period by applying an
17 interest rate of three hundred basis points. A credit may not be allowed if the
18 interest earned exceeds the interest that would have been earned by applying the
19 calculation in subdivision b of subsection 1.

20 3. The credit may not exceed the total amount of the financial institution's tax liability
21 under chapter 57-35.3 and unused credit may not be carried forward.

22 4. Credits under this section for all financial institutions may not exceed an aggregate
23 amount of seven hundred and fifty thousand dollars in a calendar year.

24 5. A financial institution claiming a credit under this section shall attach to its return a
25 schedule identifying each county within this state within which are located housing
26 development projects funded by loans for which credits are claimed by that
27 financial institution. The schedule must identify the location of, and the dollar
28 amount of credit attributable to, each project within each county.

29 **SECTION 7. Loans limited by assets of financial institutions.** The aggregate
30 amount of all loans made by a financial institution under this Act or the aggregate amount of a
31 financial institution's participation in loans made under this Act may not at any time exceed five

1 percent of the financial institution's admitted assets or the amount equal to the company's
2 capital and surplus in excess of the minimum capital and surplus required by law, whichever is
3 less.

4 **SECTION 8. AMENDMENT.** Section 57-35.3-09 of the 1997 Supplement to the North
5 Dakota Century Code is amended and reenacted as follows:

6 **57-35.3-09. Financial institution tax distribution fund - Continuing appropriation.**

7 The balance in the financial institution tax distribution fund on February first of 1999 and each
8 subsequent year must be distributed in the following manner:

- 9 1. On or before February 1, 1999, the commissioner shall determine and certify to all
10 county auditors:
 - 11 a. The total amount of tax certified to each county under chapters 57-35 and
12 57-35.1 in the years 1993 through 1997; and
 - 13 b. The amount determined under subdivision a for each county as a percentage
14 of the amount determined under subdivision a for all counties.
- 15 2. On or before February fifteenth of 1999 and each subsequent year, the
16 commissioner shall determine and certify to the state treasurer an amount for
17 payment by the state treasurer to each county treasurer equal to:
 - 18 a. The percentage for that county determined under subdivision b of
19 subsection 1; multiplied by
 - 20 ~~b.~~ The the balance in the financial institution tax distribution fund on February
21 first of that year plus five-sevenths of the total amount of credits claimed and
22 allowed in the state under section 6 of this Act for the taxable year for which
23 the distribution is being made; minus
 - 24 b. Five-sevenths of the total amount of credits claimed and allowed in that
25 county under section 6 of this Act for the taxable year for which the
26 distribution is being made. If the amount subtracted under this subdivision
27 exceeds the county's share of fund distributions for the taxable year, any
28 excess amount may be carried forward and deducted from distributions to the
29 county for up to two taxable years.
- 30 3. On or before March first of 1999 and each subsequent year, the state treasurer
31 shall pay to the treasurer of each county the amount determined for that county

- 1 under subsection 2. The amounts necessary to make these payments are
2 appropriated to the state treasurer as a standing and continuing appropriation for
3 distribution under this subdivision.
- 4 4. On or before February 1, 1999, the treasurer of each county shall determine and
5 certify to the state treasurer and to all affected political subdivisions of the county:
- 6 a. The total amount of tax apportioned and distributed to the state, the county,
7 and each political subdivision of the county under sections 57-35-13 and
8 57-35.1-06 in the years 1994 through 1998; and
- 9 b. The amount determined under subdivision a for each distributee as a
10 percentage of the amount determined under subdivision a for all distributees.
- 11 5. On or before the tenth working day of March in 1999 and each subsequent year,
12 the treasurer of each county shall determine and distribute to each distributee
13 described in subsection 4 an amount equal to:
- 14 a. The percentage for that distributee determined under subdivision b of
15 subsection 4; multiplied by
- 16 b. The amount of the payment by the state to the county in that year under
17 subsection 3.

18 **SECTION 9. AMENDMENT.** Section 57-35.3-10 of the 1997 Supplement to the North
19 Dakota Century Code is amended and reenacted as follows:

20 **57-35.3-10. Certification of estimated tax.** On or before August 1, 1998, and each
21 subsequent year, the commissioner shall provide a preliminary estimate of the distribution to be
22 made to each county in the following year. The preliminary estimate must show the total
23 amount of credits claimed and allowed in each county under section 6 of this Act for the taxable
24 year and how those credits affect distributions. The preliminary estimate must identify the
25 location of, and the dollar amount of credit attributable to, each project within each county. On
26 or before November fifteenth of 1998 and each subsequent year, the commissioner shall
27 determine the estimated amount of the distribution to be made to each county in the following
28 year under section 57-35.3-09 and shall certify that amount to the county auditor.

29 **SECTION 10. EFFECTIVE DATE.** This Act is effective for taxable years beginning
30 after December 31, 1998.