

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on March 24, 2020 beginning at 12:30 p.m.
Pioneer Room - State Capitol

Present: Governor Doug Burgum, Chairman
Attorney General Wayne Stenehjem
Agriculture Commissioner Doug Goehring

Also Present: Some attendees are listed on the attendance sheet available in the Commission files
This meeting was open through a call-in number so not all attendees are known
Members of the Press

Governor Burgum called the Industrial Commission meeting to order at approximately 12:30 p.m. and the Commission took up Housing Finance Agency business.

HOUSING FINANCE AGENCY

Mr. Dave Flohr, Interim HFA Executive Director, presented the North Dakota Housing Finance Agency Housing Finance Program Bonds Supplemental General Authorization Resolution for 2020 Series A (Non-AMT) Bonds not to exceed \$150,000,000 for consideration.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission approve the following resolution:

**STATE OF NORTH DAKOTA
NORTH DAKOTA HOUSING FINANCE AGENCY
HOUSING FINANCE PROGRAM BONDS
HOME MORTGAGE FINANCE PROGRAM
2020 SERIES A (NON-AMT)
NOT TO EXCEED \$150,000,000**

**SUPPLEMENTAL
GENERAL AUTHORIZATION RESOLUTION**

WHEREAS, the Industrial Commission of North Dakota (the “Commission”), acting in its capacity as a state housing finance agency, i.e., the North Dakota Housing Finance Agency (the “Agency”), is empowered by the provisions of the North Dakota Century Code Chapter 54 17 (the “Act”) to establish and has established a home mortgage finance program to contract to purchase from lenders mortgage loans made to persons or families of low or moderate income to finance the purchase or substantial rehabilitation of owner occupied, residential dwelling units; and

WHEREAS, the Commission adopted the Housing Finance Program General Bond Resolution of 1994, on July 21, 1994, as amended (the “General Resolution”) under which Wilmington Trust, National Association, Minneapolis, Minnesota, was appointed successor trustee (the “Trustee”), which General Resolution was accepted by the Trustee, and which General Resolution is hereby ratified and confirmed; and

WHEREAS, the General Resolution authorizes the issuance and sale of the captioned Bonds (the “Bonds”) pursuant to the Act, the application of the proceeds of which will provide funding for the captioned Home Mortgage Finance Program (the “Program”) contemplated by the Act in furtherance of the Program for the provision of decent, safe, and sanitary housing for persons and families of low or moderate income; and

WHEREAS, the Commission acting as the Agency, pursuant to that 2020 General Authorization Resolution adopted by the Commission on January 21, 2020 (the “General Authorization Resolution”),

regarding the authorization of and the negotiation and sale of the Bonds, appointed as its agents the Executive Director, the Director of Homeownership Programs, and the Chief Financial Officer of the Agency for the purpose of negotiation of the terms of sale of the Bonds, subject to the limitations set out in the General Authorization Resolution, and to sign such agreements as are required for the issuance of the Bonds on behalf of the Commission after such terms of sale had been negotiated and to sign such certificates and other documents as are necessary and customary to complete the sale of the Bonds and to enter into agreements for their sale by the Agency and purchase by the Underwriters (as hereinafter defined, and which are so designated by an Authorized Officer); and

WHEREAS, the Agency wishes to authorize the issuance of not to exceed \$150,000,000 in aggregate principal amount of the Bonds upon the terms stated herein and in the 2020 Series A Bond Resolution (as defined below) and to use the proceeds thereof in furtherance of the purposes of the Program; and

WHEREAS, in furtherance of the above stated objectives, the Commission, the Agency and RBC Capital Markets, LLC, with such co-managers and selling group members as an Authorized Officer may specify, as the purchasers of the Bonds (the "Underwriters") have caused to be prepared and presented to the Commission the proposed forms of the following documents (unless otherwise indicated) (collectively, the "Bond Documents"):

- A. 2020 Series A Bond Resolution, in substantially final form, attached hereto as Attachment A;
- B. 2020 Series A Purchase Contract by and between the Commission and the Underwriters, attached hereto as Attachment B; and
- C. Preliminary Official Statement, with respect to the Bonds attached hereto as Attachment C; and

WHEREAS, in the judgment of the Commission, it is advisable that the Agency by its Executive Director, its Director of Homeownership Programs, or its Chief Financial Officer (each an "Authorized Officer"), jointly or severally, be authorized, and are hereby so authorized, to do all things necessary to establish the final rates and terms of the Bonds and to complete the transaction described herein, and in the Bond Documents.

NOW BE IT HEREWITH RESOLVED:

1. The Agency is hereby authorized to issue, execute, sell and deliver the Bonds, in substance as provided in the 2020 Series A Bond Resolution and in the final forms of the Bond Documents as approved by an Authorized Officer, provided that the Bonds meet the following conditions:
 - A. The Bonds: (i) shall be sold, issued, executed and delivered at such time as an Authorized Officer shall determine, in one or more series, in an aggregate principal amount not to exceed the amount set forth in the preambles to this Resolution; (ii) shall bear interest at fixed rates determined by an Authorized Officer, provided, however that such rates shall not exceed 4.50% per annum; (iii) shall be subject to redemption prior to maturity, at prices and otherwise as determined by an Authorized Officer to be in the best interests of the Agency; (iv) shall have long term ratings no lower than the long term rating on the bonds outstanding under the General Resolution immediately prior to the issuance of the Bonds; and (v) shall mature not later than January 1, 2052.
 - B. The Bonds shall be issued as bonds the interest on which is exempt from federal income taxation, unless otherwise determined by an Authorized Officer.
 - C. The Bonds shall not constitute debt of the State or any political subdivision thereof. Neither the faith and credit nor the taxing powers of the State or any political subdivision thereof may be pledged to the payment of the principal of or interest on the Bonds.
 - D. The Bonds shall be special limited obligation revenue bonds of the State payable solely from the revenues and assets pledged therefore under the General Resolution and the 2020 Series A Bond Resolution.
2. The forms and substance of the Bond Documents and any other documents that an Authorized Officer deems necessary or desirable to effect the issuance of the Bonds are hereby approved, with such changes, variations, omissions and insertions as an Authorized Officer shall

- approve. The execution of the applicable Bond Document by such Authorized Officer shall constitute conclusive evidence of such approval.
3. The Preliminary Official Statement, in substantially the form submitted to this meeting, with such changes, omissions, insertions and revisions as an Authorized Officer shall deem advisable, is hereby authorized, and the furnishing of the information in the Preliminary Official Statement and in a final Official Statement for the Bonds, and the use of such Preliminary Official Statement and final Official Statement by the Underwriters in connection with the offering of the Bonds to the public, are hereby approved. Any Authorized Officer is hereby authorized to execute and deliver to the Underwriters the final Official Statement for the Bonds in substantially the form of the Preliminary Official Statement submitted to this meeting, with such changes therein as are approved by such Authorized Officer. The execution of one or more copies of the final Official Statement by an Authorized Officer shall constitute conclusive evidence of such approval.
 4. All prior acts of the officers, agents and employees of the Commission and the Agency which are in conformity with the purpose and intent of the General Resolution, the General Authorization Resolution and this Supplemental General Authorization Resolution in furtherance of the issuance and sale of the Bonds shall be and the same hereby are in all respects approved, ratified and confirmed.

On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Flohr distributed a report on HFA's coronavirus response and noted a couple of items:

- Approximately half of the Agency staff are working from home. Some individuals need to be in the office to process checks and mail and others come in as needed.
- HFA is working with borrowers regarding payments. There are a lot of options for borrowers experiencing difficulties due to COVID-19.

Mr. Flohr reported on an issue that had occurred with the bond market regarding variable rate debt which resets weekly. There has been significant market turmoil resulting in a large volume of bonds in the market and significantly higher rates. HFA had \$128 million variable rate debt in the market this week and didn't have a buyer. BND has agreed to purchase the variable rate bonds which will be moved to other investors as the market improves. He expressed his appreciation to the Bank for their willingness to partner with the Agency in this manner.

HFA has been using the Agency's debt service reserve which consists of cash to buy mortgage backed securities as investments to earn interest. HFA is buying some other variable rate debt from other state housing agencies as an investment to assist those agencies with their cash flow needs up to \$24 million.

In response to a question about loan servicing for affected homeowners, Mr. Flohr noted that payment forbearance will follow Freddie Mac/Fannie Mae guidelines for conventional loans, which includes 3-12 months of forbearance, depending on the loan type. Borrowers are asked to pay what they can, and the remainder of the payment will be set aside. Once things are back to normal, a new repayment plan can be established, or the term of the loan can be extended. The FHA and Rural Development have not come out with guidelines for their mortgage programs.

Mr. Flohr clarified that pursuant to Freddie Mac/Fannie Mae/HUD requirements, there is a moratorium on evictions or foreclosures. HFA is also following those requirements and has stopped foreclosure sales and evictions.

Mr. Flohr indicated that HFA has approximately 11,000 borrowers and the Agency has been in contact with these borrowers to discuss the various available options. It was noted that there are investors in the Agency's bonds that must still be paid interest and the Agency's Fund balance will be utilized during payment forbearance.

In response to a question, Mr. Flohr stated that the only direct involvement HFA has with rentals involves HUD project-based contracts. There are approximately 3,000 units under this type of contract, and they all would fall under HUD guidelines with a moratorium on evictions. All other programs regarding rentals, such as tax credits, are under the jurisdiction of private owners and HFA doesn't have any control on those units.

Governor Burgum expressed appreciation of the HFA staff and their efforts to provide continuing services to North Dakota.

PUBLIC FINANCE AUTHORITY

Ms. DeAnn Ament, PFA Executive Director, presented the following State Revolving Loan Fund loan applications for consideration.

City of Carrington – \$1,270,000

The purpose of the project is to refinance USDA-RD and Bank of North Dakota loans which were issued for water treatment plant improvements. This will increase the existing loan by \$1,270,000 (from \$3,705,000 to \$4,975,000) under the Drinking Water State Revolving Fund (DWSRF). The refinancing will reduce annual debt service requirements by \$33,266 and reduce the repayment terms of debt by three years.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of the Public Finance Authority Advisory Committee and adopt the following resolution regarding a Drinking Water State Revolving Fund loan for the City of Carrington to increase the existing loan by \$1,270,000 (from \$3,705,000 to \$4,975,000) as follows:

RESOLUTION APPROVING LOAN FROM DRINKING WATER STATE REVOLVING FUND

WHEREAS, the Industrial Commission has heretofore authorized the creation of a Drinking Water State Revolving Fund Program (the "Program") pursuant to N.D.C.C. chs. 6-09.4, 61-28.1, and 61-28.2; and

WHEREAS, the State Revolving Fund is governed in part by the Master Trust Indenture dated as of July 1, 2011 (the "Indenture"), between the North Dakota Public Finance Authority (the "NDPFA") and the Bank of North Dakota (the "Trustee"); and

WHEREAS, the City of Carrington (the "Political Subdivision") has requested a \$1,270,000 increase to their previously approved \$3,705,000 loan (total \$4,975,000) from the Program for system expansion and an elevated water tank; and

WHEREAS, NDPFA's Advisory Committee is recommending approval of the Loan; and

WHEREAS, there has been presented to this Commission a form of Loan Agreement proposed to be adopted by the Political Subdivision and entered into with the NDPFA;

NOW, THEREFORE, BE IT RESOLVED by the Industrial Commission of North Dakota as follows:

1. **The Loan is hereby approved, as recommended by the Advisory Committee.**
2. **The form of Loan Agreement to be entered into with the Political Subdivision is hereby approved in substantially the form on file and the Executive Director is hereby authorized to execute the same with all such changes and revisions therein as the Executive Director shall approve.**
3. **The Executive Director is authorized to fund the Loan from funds on hand in the Drinking Water Loan Fund established under the Indenture upon receipt of the Municipal Securities described in the Political Subdivisions bond resolution, to submit to the Trustee a NDPFA Request pursuant to the Indenture, and to make such other determinations as are required under the Indenture.**
4. **The Commission declares its intent pursuant to Treasury Regulations '1.150-2 that any Loan funds advanced from the Federally Capitalized Loan Account shall be reimbursed from the proceeds of bonds issued by the NDPFA under the Indenture.**

On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

City of Jamestown – \$2,123,000

The purpose of the project includes watermain rehabilitation, hydrants, gate valves, pressure reducing manhole/valve and street repairs. The City has 4,832 residential and 319 commercial users. The requested term for the Drinking Water State Revolving Fund (DWSRF) loan is 20 years. Accordingly, the average annual payment on the net loan will be approximately \$124,261. The City will issue improvement bonds payable with special assessments. The improvement bonds will be a contingent general obligation of the City, backed by the statutory requirement that the City levy a general deficiency tax in the event that the revenues from the collection of special assessments are not sufficient to pay the debt service on the improvement bonds.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approves the resolution as follows:

**RESOLUTION APPROVING
LOAN FROM DRINKING WATER STATE REVOLVING FUND**

WHEREAS, the Industrial Commission has heretofore authorized the creation of a Drinking Water State Revolving Fund Program (the "Program") pursuant to N.D.C.C. chs. 6-09.4, 61-28.1, and 61-28.2; and

WHEREAS, the State Revolving Fund is governed in part by the Master Trust Indenture dated as of July 1, 2011 (the "Indenture"), between the North Dakota Public Finance Authority (the "NDPFA") and the Bank of North Dakota (the "Trustee"); and

WHEREAS, the City of Jamestown (the "Political Subdivision") has requested a loan in the amount of \$2,123,000 from the Program for water main rehabilitation, hydrants, gate valves, pressure reducing manholes, and street repairs; and

WHEREAS, NDPFA's Advisory Committee is recommending approval of the Loan; and

WHEREAS, there has been presented to this Commission a form of Loan Agreement proposed to be adopted by the Political Subdivision and entered into with the NDPFA;

NOW, THEREFORE, BE IT RESOLVED by the Industrial Commission of North Dakota as follows:

1. **The Loan is hereby approved, as recommended by the Advisory Committee.**

2. The form of Loan Agreement to be entered into with the Political Subdivision is hereby approved in substantially the form on file and the Executive Director is hereby authorized to execute the same with all such changes and revisions therein as the Executive Director shall approve.

3. The Executive Director is authorized to fund the Loan from funds on hand in the Drinking Water Loan Fund established under the Indenture upon receipt of the Municipal Securities described in the Political Subdivisions bond resolution, to submit to the Trustee a NDPFA Request pursuant to the Indenture, and to make such other determinations as are required under the Indenture.

4. The Commission declares its intent pursuant to Treasury Regulations '1.150-2 that any Loan funds advanced from the Federally Capitalized Loan Account shall be reimbursed from the proceeds of bonds issued by the NDPFA under the Indenture.

On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

City of Mapleton – \$1,400,000

The purpose of the project is to construct a 300,000-gallon ground storage reservoir, pumping improvements and remove an existing water tower. This will be in conjunction with a State Water Commission grant of \$1.3 million. The requested term for the Drinking Water State Revolving Fund (DWSRF) loan is 30 years. The City of Mapleton will issue revenue bonds payable with water user fees. The average annual payment for the revenue bonds will be \$58,697.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission approves the resolution as follows:

**RESOLUTION APPROVING
LOAN FROM DRINKING WATER STATE REVOLVING FUND**

WHEREAS, the Industrial Commission has heretofore authorized the creation of a Drinking Water State Revolving Fund Program (the "Program") pursuant to N.D.C.C. chs. 6-09.4, 61-28.1, and 61-28.2; and

WHEREAS, the State Revolving Fund is governed in part by the Master Trust Indenture dated as of July 1, 2011 (the "Indenture"), between the North Dakota Public Finance Authority (the "NDPFA") and the Bank of North Dakota (the "Trustee"); and

WHEREAS, the City of Mapleton (the "Political Subdivision") has requested a loan in the amount of \$1,400,000 from the Program to construct a 300,000-gallon ground storage reservoir, improve pumps, and remove an existing water tower; and

WHEREAS, NDPFA's Advisory Committee is recommending approval of the Loan; and

WHEREAS, there has been presented to this Commission a form of Loan Agreement proposed to be adopted by the Political Subdivision and entered into with the NDPFA;

NOW, THEREFORE, BE IT RESOLVED by the Industrial Commission of North Dakota as follows:

1. The Loan is hereby approved, as recommended by the Advisory Committee.
2. The form of Loan Agreement to be entered into with the Political Subdivision is hereby approved in substantially the form on file and the Executive Director is hereby authorized to execute the same with all such changes and revisions therein as the Executive Director shall approve.

3. The Executive Director is authorized to fund the Loan from funds on hand in the Drinking Water Loan Fund established under the Indenture upon receipt of the Municipal Securities described in the Political Subdivisions bond resolution, to submit to the Trustee a NDPFA Request pursuant to the Indenture, and to make such other determinations as are required under the Indenture.

4. The Commission declares its intent pursuant to Treasury Regulations '1.150-2 that any Loan funds advanced from the Federally Capitalized Loan Account shall be reimbursed from the proceeds of bonds issued by the NDPFA under the Indenture.

On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

City of Wahpeton – \$3,000,000 (Clean Water SRF) and \$1,197,000 (Drinking Water SRF) for a total of \$4,197,000

The purpose of the project includes reconstruction of 1st Street North from 5th Avenue to 7th Avenue and 2nd Street from 6th Avenue to 8th Avenue. Project also includes a new lift station 3, decommissioning of the old, rehabilitation of lift station 2, and new forcemain and gravity sanitary sewer line. The requested term is 25 years. The City will issue revenue bonds payable with sanitary sewer user fees. The average annual payment for the revenue bonds will be \$147,450. The intent is to provide \$2 million of local funds, contingent on Prairie Dog funding. If Prairie Dog funds do not materialize, it is anticipated that the city will come back for a loan increase.

The City has 1,869 residential connections and 459 commercial connections which all pay a base rate of \$17.76 per connection each month. The City anticipates raising the monthly rate from \$5.64 to \$23.40 in the next year. This increase will generate approximately \$157,559 annually. Additionally, operation and maintenance expenses are anticipated to decrease by \$15,000 annually. A population of 7,899 people will benefit from the project.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approve the resolution as follows:

**RESOLUTION APPROVING
LOAN FROM CLEAN WATER STATE REVOLVING FUND**

WHEREAS, the Industrial Commission has heretofore authorized the creation of a Clean Water State Revolving Fund Program (the "Program") pursuant to N.D.C.C. chs. 6-09.4 and 61-28.2; and

WHEREAS, the Clean Water State Revolving Fund is governed in part by the Master Trust Indenture dated as of July 1, 2011 (the "Indenture"), between the North Dakota Public Finance Authority (NDPFA) and the Bank of North Dakota (the Trustee); and

WHEREAS, the City of Wahpeton (the "Political Subdivision") has requested a loan in the amount of \$3,000,000 from the Program for a new lift station 3, decommissioning of the old lift station, rehabilitation of lift station 2, a new force-main and gravity sanitary sewer line, and reconstruction of 1st Street North from 5th Avenue to 7th Avenue and 2nd Street from 6th Avenue to 8th Avenue; and

WHEREAS, the NDPFA's Advisory Committee is recommending approval of the Loan; and

WHEREAS, there has been presented to this Commission a form of Loan Agreement proposed to be adopted by the Political Subdivision and entered into with the NDPFA;

NOW, THEREFORE, BE IT RESOLVED by the Industrial Commission of North Dakota as follows:

1. **The Loan is hereby approved, as recommended by the Advisory Committee.**
2. **The form of Loan Agreement to be entered into with the Political Subdivision is hereby approved in substantially the form on file and the Executive Director is hereby authorized to execute the same with all such changes and revisions therein as the Executive Director shall approve.**
3. **The Executive Director is authorized to fund the Loan from funds on hand in the Clean Water Loan Fund established under the Indenture upon receipt of the Municipal Securities described in the Political Subdivisions bond resolution, to submit to the Trustee a NDPFA Request pursuant to the Indenture, and to make such other determinations as are required under the Indenture.**
4. **The Commission declares its intent pursuant to Treasury Regulations '1.150-2 that any Loan funds advanced from the Federally Capitalized Loan Account shall be reimbursed from the proceeds of bonds issued by the NDPFA under the Indenture.**

It was clarified by Ms. Ament that if Prairie Dog funds were not included in the calculation, the City would still be eligible for the full amount of the loan.

On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Ament presented the second loan application from the City of Wahpeton. The requested term is 25 years. The average annual payment will be \$58,787. The City will issue improvement bonds payable with special assessments.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approve the resolution as follows:

**RESOLUTION APPROVING
LOAN FROM DRINKING WATER STATE REVOLVING FUND**

WHEREAS, the Industrial Commission has heretofore authorized the creation of a Drinking Water State Revolving Fund Program (the "Program") pursuant to N.D.C.C. chs. 6-09.4, 61-28.1, and 61-28.2; and

WHEREAS, the State Revolving Fund is governed in part by the Master Trust Indenture dated as of July 1, 2011 (the "Indenture"), between the North Dakota Public Finance Authority (the "NDPFA") and the Bank of North Dakota (the "Trustee"); and

WHEREAS, the City of Wahpeton (the "Political Subdivision") has requested a loan in the amount of \$1,197,000 from the Program for a new lift station 3, decommissioning of the old lift station, rehabilitation of lift station 2, a new force-main and gravity sanitary sewer line, and reconstruction of 1st Street North from 5th Avenue to 7th Avenue and 2nd Street from 6th Avenue to 8th Avenue; and

WHEREAS, NDPFA's Advisory Committee is recommending approval of the Loan; and

WHEREAS, there has been presented to this Commission a form of Loan Agreement proposed to be adopted by the Political Subdivision and entered into with the NDPFA;

NOW, THEREFORE, BE IT RESOLVED by the Industrial Commission of North Dakota as follows:

1. **The Loan is hereby approved, as recommended by the Advisory Committee.**

2. The form of Loan Agreement to be entered into with the Political Subdivision is hereby approved in substantially the form on file and the Executive Director is hereby authorized to execute the same with all such changes and revisions therein as the Executive Director shall approve.

3. The Executive Director is authorized to fund the Loan from funds on hand in the Drinking Water Loan Fund established under the Indenture upon receipt of the Municipal Securities described in the Political Subdivisions bond resolution, to submit to the Trustee a NDPFA Request pursuant to the Indenture, and to make such other determinations as are required under the Indenture.

4. The Commission declares its intent pursuant to Treasury Regulations '1.150-2 that any Loan funds advanced from the Federally Capitalized Loan Account shall be reimbursed from the proceeds of bonds issued by the NDPFA under the Indenture.

On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Ament reported on a SRF Clean Water and Drinking Water Loan under \$1 million that was approved by the Public Finance Authority Advisory Committee as follows.

City of Mohall – \$391,000

The purpose of the project is to replace 2,000 linear feet of 8” water main, gate valves and multiple connections to existing water lines. The existing asbestos cement pipe will be abandoned except where necessary to connect existing water lines. The requested term for the Drinking Water State Revolving Fund loan is 20 years. The City of Mohall will issue revenue bonds payable with city sales tax. The average annual payment for the revenue bonds will be \$22,908. The reserve requirement will be \$26,125 and the 120% coverage requirement will be \$27,490.

Ms. Ament presented amendments to the Public Finance Authority Capital Financing Program Disaster Financing Availability Guidelines for consideration. The program was established in 2011 to deal with flooding that was occurring in the state. It previously focused on infrastructure, and the proposed revision would include cash flow financing. In 2011, some internal funds were used and when internal funds were unavailable, funds were borrowed from the Bank of North Dakota. Approximately \$14 million was borrowed in 2011-2012. (A redlined copy of the proposed changes is available in the Commission files.)

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approves changes to the Public Finance Authority Capital Financing Program Disaster Financing Availability Guidelines as follows:

**Public Finance Authority (PFA)
Capital Financing Program
Disaster Financing Availability**

Purpose: This program provides disaster assistance to political subdivisions affected by weather related or other emergency events until (i) federal and state money is available; (ii) local matching funds are available; or (iii) local funds are available to pay the related costs of local government operations.

Applicant: Any North Dakota political subdivision with borrowing authority that is within a county that has received a Presidential Public Disaster Declaration or a gubernatorial executive order or proclamation of a state disaster or emergency.

Lender: Public Finance Authority. The process requires the political subdivision to submit a Capital Financing Program Disaster Financing application to the PFA. Approval is subject to credit review and approval by the PFA Advisory Committee and when applicable, the Industrial Commission.

Use of Proceeds: To provide a short term loan to an eligible political subdivision for operating or capital purposes while the entity is waiting for (i) reimbursement from either the federal or state government; (ii) receipt of local tax revenues required to meet local matching funds requirements; or (iii) receipt of local tax revenues to pay related costs of local government operations.

Terms: The terms of the bonds will be flexible maturities of five years or less. The interest rate is the 1-month LIBOR (or any successor benchmark selected by the Public Finance Authority) + 2% adjusted monthly with a floor of 2%.

Fees: Bond counsel fees are the responsibility of the borrower.

Collateral: The political subdivision must show ability to repay the financing either from Federal or State government disaster payments or from tax receipts.

Documentation: Documentation to be satisfactory to the Public Finance Authority. A bond counsel opinion will be required.

In response to a question, Ms. Ament stated that communities that fell under disaster declarations issued last year related to flooding and are waiting for federal funds, would be eligible. In 2011, most of the funds were used for local share of projects or to assist with cashflows while waiting for FEMA funds to arrive.

On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Ament provided an update on the Coronavirus response. Both individuals from PFA are working from home. Public events have been canceled or moved to an online format. Most programs only require semi-annual loan payments. SRF program payments were made on March 1st, 2020 and Capital Financing Program payments will be made on June 1st, 2020. Issues with payments are not anticipated. The SRF program can adjust the amortizations amounts, though they cannot be lengthened. SRF payments aren't due until Sept. 1st so no action is needed at this time.

BANK OF NORTH DAKOTA

Mr. Eric Hardmeyer, BND President, provided an update on actions taken by the Bank of North Dakota in working with state agencies and partner banks regarding the Coronavirus (COVID-19) and financial situation. BND has been asked to provide funding by the Housing Finance Agency and the Public Finance Authority, if needed. It is likely that BND will be asked to assist other state agencies also because of the financial situation resulting from COVID-19.

Mr. Hardmeyer outlined what the Bank would be doing regarding Student Loans borrowers. Payments for student loans may be deferred for up to six months. Interest will continue to accrue, but late fees will be waived. The Federal Reserve lowered interest rates, and so variable rate borrowers will soon see some benefits. Beginning April 1, the variable rate will drop by over 1% to 2.38% (in-state borrower rate). To offer relief to fixed rate borrowers, the interest rate will be dropped by 1%. Because BND is in the process of switching software systems, the fixed rate adjustment will not take place until June. He stated that if the Bank had to manually adjust the rates on 69,000 fixed rate loans immediately it would take weeks.

It was noted that the federal government has offered forbearance for between 6-12 months and eliminated interest requirements. The question was raised as to what the implications would be for the State if the Bank were to do something similar for its student loan borrowers. Mr. Hardmeyer stated that the adjustment the Bank is implementing today will lower Bank income by \$5 million. If interest rates were eliminated, the impact would be approximately \$20 million+ in earnings on an annual basis.

In response to a question, Mr. Hardmeyer indicated that the Bank's contribution to the State which was approved during the last legislative session in total is \$255 million. The contribution to the General Fund for the current biennium was \$140 million. At the time of the session, the Bank anticipated earnings of \$320 million. Anticipated income for the current year is dropping rapidly and adjustments will likely need to be made to the loan loss reserve. BND has very strong capital, however projected earnings will not materialize as expected.

Commissioner Goehring noted that contributions from the Bank help offset tax money that would have to be raised otherwise and thanked the Bank for their good work.

Attorney General Stenehjem indicated that the relief the Bank is offering for the student loan borrowers is significant. However, the conversation shouldn't end and will need to be revisited in the coming months as there is a better understanding of the impact of this pandemic to see if there could be further reductions. The Bank will be called upon for other options and needs and both the Bank and Commission will need to balance all those requests.

Mr. Hardmeyer and Mr. Tim Porter clarified that \$20 million is the anticipated impact of moving interest rates down to 0% for six months. The impact of moving fixed interest rates down 1% for the year was \$5 million.

Mr. Todd Steinwand noted that the Bank's rates will be as low as any other private student loan providers' rates. Many other states will not be able to offer 0%. In response to a question about the proposed federal stimulus package, it is not clear whether private student loans will be addressed, but the Bank will continue to monitor if that is an option for the Bank to consider.

In response to a question, Mr. Hardmeyer indicated that the Bank has not considered adding deferred payments to the end of the student loan and extend the term of the loan. It is not clear if the new system would allow that change. This will be investigated and reported on at the next meeting.

Mr. Hardmeyer noted that regarding Residential Loan borrowers, the Bank is following the guidance provided by FHA, VA and USDA to provide repayment relief.

The Bank has been asked to look at deferring payments for the Rebuilders Program, which provided assistance to flood victims in 2011. An internal task force has been put together to consider an approach similar to student loans, including deferments up to 6 months. The loans are serviced by local banks in Bismarck and Minot and so the Bank would need to work with the local lenders. It won't be as easy as student loans due to the number of banks involved, but it will continue to be explored. There is approximately \$27 million in outstanding loans for this program. The plan is to provide some relief, but at this point are not sure of the best way to do that.

Assistance through Business loans has been taken over by federal loan programs. SBA has implemented a disaster program and doesn't feel that the Bank will be needed since local banks will be able to make loans directly. The Cares Act provides that normal rules be suspended. The Bank will be hosting a direct line call with local banks tomorrow to discuss these programs. Things are changing rapidly, and BND will

continue to evaluate how it can contribute. In his written memorandum, Mr. Hardmeyer noted that “Our desire is to fill a role that is meaningful and does not duplicate the efforts of the Small Business Administration and the Federal Reserve. We understand that the SBA will provide direct working capital loans of up to \$2 million with a 30-year repayment period. Additionally, we are aware that programs through the traditional SBA 7(a) or the Express programs may be offered that will allow business to borrow for payroll and overhead expenses. This program will be originated by banks using an SBA guaranty with the potential for these loans to be forgiven.” Mr. Hardmeyer concluded that the Bank will continue to monitor the situation to determine if there are niche areas where the Bank can use the PACE and FLEX-PAVE programs. Mr. Hardmeyer noted that the Bank had tentatively planned to do a bridge loan program but has learned today that this type of program will not be needed if the CARES Act is passed. Mr. Steinwand described the draft language in the Act that would be offered by the SBA.

Mr. Hardmeyer requested a waiver to the General Loan Policy provision requiring the Bank of North Dakota Advisory Board and Industrial Commission to approve loans to state agencies. This would streamline the Bank’s authority to make loans to state agencies. The Bank would consult with OMB to make sure that the loans are viable and necessary. Some loans would need to be approved by the Emergency Commission or Budget Section. It was noted that there is not a proposed limit. The Commission could put one in; however, the goal is to be flexible and the Commission is not scheduled to meet again until the end of April.

The question was raised as to whether the waiver would have a sunset. Mr. Hardmeyer indicated that the end of 2020 would be sufficient. The consensus of the Commission was that Ms. Fine should notify Commission members as the loans are approved.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission waive the General Loan Policy provision regarding Bank of North Dakota Advisory Board and Industrial Commission approval of loans to state agencies through December 31, 2020 with the conditions that (i) the Office of Management Budget be consulted and (2) the Industrial Commission Executive Director notify the Commission members when these loans are approved. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

STATE ENERGY RESEARCH CENTER

Mr. Tom Erickson, Energy & Environmental Research Center (EERC), noted that when the \$5,000,000 contract with the Industrial Commission was approved in 2019 \$500,000 was set aside for projects that were approved by the Industrial Commission. Today he is proposing the Commission consider a project to assess energy sustainability for the State from the State’s perspective. North Dakota’s energy industries are constantly adjusting to meet the future environmental, social, and economic needs of its citizens. The State of North Dakota needs to be prepared for transitions in the energy industries that will effect issues such as: 1) assuring affordable, dispatchable energy is available for North Dakota citizens, 2) maintaining existing and expanding future employment opportunities, 3) maintaining North Dakota’s healthy environment, and 4) maintaining state, tribal and local tax revenues.

This would be the first phase on a fast track project to gather as much information and do as much analysis prior to the upcoming legislative session. The intent is not to propose legislation, but to provide information that can be utilized by decision makers.

In response to questions, Mr. Erickson clarified that this would be an “all of the above” plan. EERC will work with all stakeholders, including the Industrial Commission and EmPower Commission, to understand

all the complex interactions between everything that affects state revenues, jobs for North Dakotans, while making sure we have socially and environmentally accessible energy.

In the written proposal Mr. Erickson stated:

“The EERC is proposing to initiate a phased research project focused on identifying the challenges and opportunities related to achieving energy sustainability for the State of North Dakota for the next 5 to 20 years. This effort will require a broad range of expertise, utilizing people with backgrounds in economics, technology development, social sciences, policy and the energy sector. Specific activities will include data gathering involving interviews and focus group meetings, data analysis, systems modeling and report generation.”

In response to a question, Mr. Erickson stated the goal is to create a model that is fluid and can be continually updated as new challenges and opportunities present themselves. CO₂ was cited as a great example that has economic, social, and environmental implications.

It was noted that sustainability can have a lot of different meanings and concern was expressed about using the word in the title. It was the consensus of the Commission that changing the title may help it be better received and the title of “Assessing North Dakota’s Energy Future” was suggested. Mr. Erickson was amenable to the suggested revision.

The EERC is requesting approval to utilize up to \$500,000 from the State Energy Research Center’s “Prompt Expertise for North Dakota” funding pool to carry out Phase I of this project. The period of performance for this effort is April 1, 2020 – December 31, 2020. It is likely that additional effort beyond this project will be needed to further advance a fully comprehensive energy sustainability analysis.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission authorize the Industrial Commission Executive Director and Secretary to execute a contract with the Energy and Environmental Research Center in an amount not to exceed \$500,000 to conduct an Assessing North Dakota’s Energy Future utilizing State Energy Research Center funds. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

It was stressed and Mr. Erickson agreed that the emphasize will be on an “all of the above” approach.

Mr. Erickson indicated that 20 exploratory research projects have been funded to date through the State Energy Research Center. He is looking forward to giving the Commission a full report after the first year.

DEPARTMENT OF MINERAL RESOURCES

Mr. Lynn Helms, DMR Director, presented the re-establishment of the Inactive Well Waiver and Noncompleted Well Waiver guidelines for consideration. Inactive wells typically occur because something breaks on a marginal well and after one year they become abandoned wells and need to be plugged and permanently reclaimed or returned to production. In an effort to retain these important resources, the Oil and Gas Division would like to reestablish the Inactive Well Waiver program.

The second area that the waiver would apply to is Noncompleted wells, which the industry calls DUCs. This occurs when the drilling process is finished on a well, but the well is not put into production. Without a waiver, it becomes abandoned and needs to be plugged or put in production after one year. The waiver would allow companies to refrain from putting the well in production right away if it is not economic to do so. Typically, \$3 million is spent in North Dakota during the drilling process.

The final area relates to a special set of wells that use a smaller drilling rig to drill and set surface casing. A suspension of drilling may occur by temporarily abandoning the well after making sure that it is properly cemented, but is temporarily abandoned at the base of surface casing. There are significant capital costs of bringing in the big rig and drilling it to total depth when conditions may not be economic.

Rather than trying to predict the length of price drop, a \$50 West Texas Intermediate oil price has been selected. This price point matches where North Dakota pricing was before the price collapse began. This tells the market that from a policy standpoint, it doesn't make sense to abandon valuable resources, add oil to an already saturated market, or to force additional capital investment unless prices are where industry can make a profit. Today North Dakota Bakken producers are getting \$13 - \$18 per barrel.

The 2015 guidelines would be reviewed to make sure they are up to date and industry would have an opportunity to comment. These waivers are appropriate under administrative code 43-02-03-55.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission authorizes the Department of Mineral Resources Director to update and revise as needed the Suspension of Drilling Waiver Guidelines, Inactive Well Waiver Guidelines, and Not Completed Well Waiver Guidelines, and to grant such waivers until North Dakota crude oil prices exceed \$50 (WTI) per barrel for 90 days. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

It was noted that a press release has been drafted and will be released immediately.

Mr. Helms and Mr. Bruce Hicks, Oil and Gas Division Assistant Director, presented the following orders for consideration.

Case 28217, Order 30790 – construction of a treating plant

Case 28218, Order 30791 – drilling of a saltwater disposal well to be utilized for fracture injection into the Broom Creek Formation

Case 28219, Order 30672 – determination of the amount of bond

Order 30790 would approve construction of a treating plant that would be able to take in oil field waste, including contaminated soil from a spill, drill cuttings, etc. and process that in preparation for slurry fracturing and determines the bond amount for the treating plant. Order 30791 authorizes the drilling of a disposal well for the purposes of fracture injecting slurry material into the Broom Creek Formation. Order 30672 determines the bond amount required for the well.

This is a new process. It has not been put into practice in North Dakota or surrounding states. However, it has been utilized in Texas, Alaska, and several foreign countries. The company has hired industry experts to design the well and process, as well as manage it in the initial 2-3 years. The geology is a good fit for the technology with good confining zones. The location is easily .5 mile from any producing wells. Many of the Louisiana and Alaska regulations have been adopted.

The recommendation is to approve the treating plant, disposal well, and slurry fracture injection process with bond amounts of \$200,000 for the well and \$909,000 for the treating plant. These are the amounts anticipated to be required to protect citizens of North Dakota from liability.

Mr. Helms clarified that the site is 40 acres located near the intersection of Highways 23 and 73. KT Enterprises owns the surface and therefore owns the pore space. Access roads, surface, and notices were dealt with in the hearing process.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that Order 30790 issued in Case 28217 authorizing the construction of a treating plant to be located in the NESE of Section 22, T.150N., R.96W., McKenzie County, North Dakota, and to require a Treating Plant bond in the amount of \$909,000, be approved, and further, pursuant to NDAC Chapter 43-02-05, Order 30791 issued in Case 28218 authorizing the drilling of a saltwater disposal well to be utilized for slurry fracture injection into the Minnelusa Group in a well to be known as the K T Enterprises 34-22 SFI well, to be located in the NESE of Section 22, T.150N., R.96W., Johnson Corner Field, McKenzie County, North Dakota, be approved and further pursuant to NDAC §43-02-03-15, Order 30672 issued in Case 28219 requiring KT Enterprises, LLC to provide a well bond of \$200,000 for the KT Enterprises 34-22 SFI well to be drilled in the NESE of Section 22, T.150N., R.96W., McKenzie County, North Dakota, Johnson Corner Field, to be utilized for slurry fracture injection into the Minnelusa Group Formation, with the three orders being approved this 24th day of March, 2020. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Case 28225, Order 30883 – determination of authority to recover a risk penalty

Mr. Helms stated that the applicant, Mr. Ben Larson, is a non-operating interest owner and was sent an election to participate in a well. Mr. Larson did sign the election to participate and mailed it to EOG, but it arrived three days beyond the 30-day window allowed for in the rule. Mr. Larson has the green card from the U.S. Postal Service, but it does not show a date for when the document was received. He thought the traditional mailbox rules should apply, but the Commission's rules don't allow for that. Therefore, the recommendation is to deny the application for risk penalty relief.

It was noted that this has happened before and it's unfortunate. The question was raised as to whether there is any way documents could be tracked better. Mr. Helms indicated that this is noted in the findings. The Post Office doesn't always require the writing of a date on the green cards for receipts and the Oil and Gas Division has no control over that. The Post Office does maintain a temporary tracking system. If Mr. Larson had contacted the Post Office promptly, he would have been able to get those records. However, it was nearly 4 years before the Post office was contacted and the records are not maintained that long. If other people take note of the finding, they will see that they need to pay attention to this issue.

In response to a question about the financial implications, Mr. Helms stated that the cost of the 200% penalty is approximately \$7,600.

Mr. Helms clarified that Mr. Larson waited four years to try to get information from the Postal Service. If he had acted within 18-24 months, it is possible that he would have been able to obtain evidence to counter EOG's date stamp showing it arrived three days late.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 30883 issued in Case 28225 denying Benjamin J. Larson's petition and allowing EOG Resources, Inc. to impose a risk penalty related to the Liberty 35-1413H well (File No. 31429), located in a spacing unit described as the W/2 of Section 13 and the E/2 of Section 14, T.151N., R.91W., Parshall-Bakken Pool, Mountrail County, North Dakota, as provided in NDCC § 38-08-08, be approved this 24th day of March, 2020. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that under the authority of North Dakota Century Code Sections 44-04-19.1 and 44-04-19.2 the Industrial Commission close the meeting to the public and enter executive session for the purpose of attorney

consultation. The purpose of the executive session will be to consult with the Commission's attorney(s) regarding current adversarial proceedings in:

- **Case No. 27289– NDIC v. Energy Equity**
- **Case No. 28190 – NDIC v. Missouri Breaks**
- **Case No. 19-099 WPC Joint Consent Decree with DEQ**

On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Governor Burgum reminded the Commission members and those present that the discussion during executive session must be limited to the announced purpose for entering into executive session which was anticipated to last between 15 and 30 minutes. He noted that the Commission was meeting in executive session to consult with the Commission's attorney(s) regarding the adversarial proceedings listed on the agenda. It was noted that any formal action by the Commission would occur after it reconvened in open session.

Commission members, their staff, DMR staff, and counsel with the Attorney General staff remained in the executive session. DMR staff and counsel were asked to rejoin into the session as per the instructions given.

Governor Burgum noted that following the completion of the Department of Mineral Resources executive session pursuant to N.D.C.C. 6-09-35 the Industrial Commission would enter into executive session regarding Bank of North Dakota business. Commission members and those present in the BND executive session were reminded that the discussion during the BND executive session must be limited to those items listed on the agenda which was anticipated to last between 30 and 45 minutes. Any formal action by the Commission on the loan application will occur after it reconvenes in open session.

Only Commission members, their staff, and BND staff will participate in that executive session.

The DMR executive session began at 1:58 p.m.

DMR EXECUTIVE SESSION

Members Present:

Governor Doug Burgum
Attorney General Wayne Stenehjem
Commissioner Doug Goehring

Others in Attendance:

Reice Haase	Governor's Office
John Schneider	Department of Agriculture
Nici Meyer	Attorney General's Office
Lynn Helms	Department of Mineral Resources
Bruce Hicks	Department of Mineral Resources
Katie Haarsager	Department of Mineral Resources
Karlene Fine	Industrial Commission Office
Andrea Pfennig	Industrial Commission Office

The DMR executive session ended at 2:15 p.m. The BND executive session began at 2:22 p.m.

BND EXECUTIVE SESSION

Members Present:

Governor Doug Burgum

Attorney General Wayne Stenehjem

Agriculture Commissioner Doug Goehring

Bank of North Dakota Personnel Present:

Eric Hardmeyer Bank of North Dakota

Todd Steinwand Bank of North Dakota

Kirby Evanger Bank of North Dakota

Tim Porter Bank of North Dakota

Gus Staahl Bank of North Dakota

Others in Attendance:

Reice Haase Governor's Office

John Schneider Department of Agriculture

Karlene Fine Industrial Commission Office

Andrea Pfennig Industrial Commission Office

The meeting reconvened in open session at 2:45 p.m. and Governor Burgum invited the public to return to the meeting room. He noted that during its DMR executive session the Commission consulted with its attorneys on the current adversarial proceedings listed on the agenda. During the Bank of North Dakota Executive Session, the Commission made a motion regarding a loan request.

On a roll call vote, Governor Burgum, Attorney General Stenehjem, Commissioner Goehring voted aye. The motion carried unanimously.

It was moved by Attorney General Stenehjem and seconded by Agriculture Commissioner Doug Goehring that the Industrial Commission approve the settlement agreement in Case 27289 with Energy Equity as outlined by Mr. Lynn Helms at the March 24, 2020 Industrial Commission meeting. On a roll call vote, Governor Burgum, Attorney General Stenehjem, Commissioner Goehring voted aye. The motion carried unanimously.

With no further Industrial Commission business, Governor Burgum adjourned the meeting at 2:47 p.m.

North Dakota Industrial Commission



Karlene Fine, Executive Director and Secretary