

Minutes of a Meeting of the Industrial Commission of North Dakota

Held on April 30, 2024 beginning at 12:30 p.m.

Governor's Conference Room – State Capitol

Present: Governor Doug Burgum, Chairman  
Attorney General Drew H. Wrigley  
Agriculture Commissioner Doug Goehring

Also Present: This meeting was open through Microsoft Teams so not all attendees are known.  
Agency representatives joined various portions of the meeting.

Governor Burgum called the meeting of the Industrial Commission to order at approximately 12:35 p.m.

Ms. Karen Tyler took roll call. Governor Burgum, Attorney General Wrigley and Commissioner Goehring were present.

Governor Burgum invited the room to stand and join the Commission in reciting the Pledge of Allegiance.

**OFFICE OF THE INDUSTRIAL COMMISSION**

Ms. Karen Tyler presented for consideration of approval the March 26, 2024 Industrial Commission meeting minutes.

**It was moved by Attorney General Wrigley and seconded by Commissioner Goehring that the Industrial Commission approve the March 26, 2024 Industrial Commission meeting minutes.**

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

Under other business, Ms. Tyler presented for consideration of approval a Request from the ND State Investment Board (SIB) to enter into an agreement with the State Historical Society of ND (SHSND) for investment management services for SHSND Endowment Funds.

Pursuant to NDCC 21-10-06, Industrial Commission approval is required to enter into such an agreement. Previously, in April of 2022, the Industrial Commission approved the agreement for the SIB to provide investment management services to the Historical Society for the Lewis & Clark Interpretive Center Endowment Fund. These additional Endowments would be a new and separate relationship, and as such require Commission approval.

The Historical Society Endowment Funds are for projects related to:

- Marquis de Mores Home in Medora
- Pembina State Museum
- Missouri-Yellowstone Confluence Interpretive Center
- Fort Buford State Historic Site
- Reference Services in the State Archives.

The funds are currently in the cash account of the State Treasurer and total assets of the endowments are between \$800,000-900,000.

The memo reads as follows:

“ The North Dakota Century Code states in 21-10-06:

... The state investment board may provide investment services to, and manage

the money of, any agency, institution, or political subdivision of the state, **subject to agreement with the industrial commission**. The scope of services to be provided by the state investment board to the agency, institution, or political subdivision must be specified in a written contract. The state investment board may charge a fee for providing investment services and any revenue collected must be deposited in the state retirement and investment fund.

Attached is a request from the Retirement and Investment Office's Chief Financial Officer for the State Investment Board to be permitted to enter into an agreement with the State Historical Society to provide investment management services for their Endowment Funds, which are described in the attached letter.

The Commission has previously approved the Investment Board providing this service for the State Historical Society's Lewis and Clark Interpretive Center Endowment Fund. It is my recommendation that this request be granted.”

**It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission grant the State Investment Board's request to enter into an agreement with the State Historical Society to provide investment management services for the State Historical Society's Endowment Funds.**

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

#### **NORTH DAKOTA PUBLIC FINANCE AUTHORITY**

Ms. Mindy Piatz of Brady Martz gave a presentation of the 2023 Audit. The audit covered the accompanying financial statements of the governmental activities, the business-type activities, and each major fund of the North Dakota Public Finance Authority, as of and for the years ended December 31, 2023 and 2022, and the related notes to the financial statements, which collectively comprise the North Dakota Public Finance Authority's basic financial statements. In the audit firm's opinion, the financial statements referred to above present fairly, in all material respects, for the years then ended in accordance with the accounting principles generally accepted in the United States of America.

Ms. DeAnn Ament gave a presentation of the Public Finance Authority 2023 Annual Report.

The North Dakota Public Finance Authority (PFA) was established for the purpose of making loans to political subdivisions of the State through the purchase of municipal securities which, in the opinion of the Attorney General of North Dakota, are properly eligible for purchase by the PFA. Subject to credit and program requirements, a loan can be made by the PFA to a political subdivision for any purpose for

which the political subdivision has the legal authority to borrow money through the issuance of municipal securities. Certain types of municipal securities issued under N.D.C.C. ch. 40-57 (MIDA bonds) may also be purchased by the PFA.

#### Capital Financing Program

Under its Capital Financing Program (CFP), the PFA makes loans for the purpose of financing projects or improvements for which political subdivisions are legally authorized to borrow money through the issuance of municipal securities. Subject to credit requirements and certain program requirements, financing is available in any dollar amount.

The interest rates payable by a political subdivision are market rates, which are set through a competitive bid process when the PFA issues and sells its bonds to fund a loan. The interest rates paid by the PFA on its bonds are the same rates a political subdivision will pay on its municipal securities sold to the PFA.

There were no CFP Bonds issued in 2023. The total outstanding amount of CFP Reserve Fund Letters of Credit on December 31, 2023 was \$27,079,973. The CFP Reserve Fund Letters of Credit are issued to meet the requirement of the CFP General Bond Resolution that the PFA maintain reserves for each series, equal to the largest aggregate amount of principal and interest due in any twenty-four-consecutive month period.

As of December 31, 2023, the total cumulative amount of bonds issued under the CFP General Bond Resolution was \$264,125,000 and the total outstanding amount of bonds under the CFP General Bond Resolution was \$113,755,000.

#### Capital Financing Disaster Loan Program

On June 16, 2011, the Industrial Commission authorized the PFA to utilize the Capital Financing Program to provide loans for political subdivisions impacted by weather related events. Under its Capital Financing Disaster Loan Program, the PFA makes loans for the purpose of providing disaster assistance to political subdivisions affected by weather related events until federal and state money is available and/or to assist in cash flowing local match requirements.

Any North Dakota political subdivision 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 was eligible to apply. The political subdivision must show ability to repay the financing either from Federal or State government disaster payments or from tax receipts. The interest rate payable by a political subdivision is the 1-month Federal Home Loan Bank plus 2% adjusted monthly with a floor of 2%.

There were no Disaster Financing loans approved in 2023. Loans approved under this program total \$71,531,546 and none were outstanding as of December 31, 2023. Part E of Attachment 1 beginning on page 1-4 of this Report contains a complete list, as of December 31, 2023, of all loans made by the PFA under the Disaster Loan Program, including the name of each political subdivision, the original amount of each loan, and the outstanding principal of each loan.

The proceeds of the CFP Disaster Bonds have historically been used to make loans to political subdivisions approved for financing under the Disaster Loan Program. The PFA did not sell any CFP Disaster Bonds to Bank of North Dakota in 2023. As of December 31, 2023, the total cumulative amount of bonds issued under the Disaster Loan Program was \$14,405,612 and there are no bonds outstanding under the Disaster Loan Program.

#### State Revolving Fund Program

The State Revolving Fund Program (SRF Program) was established in 1990 to enable North Dakota to receive federal capitalization grants as authorized under the Clean Water Act. In 1998, the SRF Program was amended to enable the State to receive capitalization grants as authorized under the Safe Drinking Water Act. The SRF Program grants, received from the United States Environmental Protection Agency, are to be used to make below-market interest rate loans to political subdivisions for the purpose of financing authorized projects, to establish reserve funds, and for other purposes under the Clean Water Act and the Safe Drinking Water Act. Authorized projects under the Clean Water Act include wastewater treatment facilities and nonpoint source pollution control projects. Authorized projects under the Safe Drinking Water Act include public water systems. The SRF Program is administered jointly by the North Dakota Department of Environmental Quality (DEQ) and the PFA.

The interest rates on SRF Program loans are set by the DEQ in consultation with the PFA. The interest rates are fixed for the term of a loan. The interest rate for tax-exempt SRF Program loans is 2.0%. Loans made with American Recovery and Reinvestment Act (ARRA) funds are at 1.0% and/or have a loan forgiveness component. Loans for lead service line replacement funded from Bipartisan Infrastructure Law funding will have a 0.5% interest rate.

The PFA approved \$135,731,193 of Clean Water SRF Program loans to 12 political subdivisions in 2023. The PFA approved \$42,155,000 of Drinking Water SRF Program loans to 15 political subdivisions in 2023.

The total amount of SRF Program Bonds issued under the PFA's SRF Program Master Trust Indenture is \$768,695,000. This total includes \$203,865,000 of the 1990, 1993, 1995, 1996, 1998, 2000, 2001, 2003A, 2003B, 2004, 2005, 2008, and 2011 SRF Program Bonds which have been advance refunded and are no longer considered to be outstanding. As of December 31, 2023, the total amount of SRF Program Bonds outstanding was \$278,770,000, and the total outstanding amount of SRF Program loans was \$858,344,505.

#### Industrial Development Bond Program

The Public Finance Authority's Industrial Development Bond Program (IDBP) provides loans to North Dakota manufacturers that meet the IRS definition for small issue manufacturers. Bonds issued under this Program are moral obligation bonds of the State unless the borrower has the financial strength to request that the Public Finance Authority issue the bonds on a conduit basis. Public Finance Authority limits the program to \$2,000,000 per borrower and \$20,000,000 for the entire program. For conduit issuance when the state's moral obligation is not used as a credit enhancement there are no project or program limits.

The interest rates payable by a borrower are market rates, which are set through a competitive bid process when the PFA issues and sells its bonds to fund a loan. The interest rates paid by the PFA on its bonds are the same rates a borrower will pay on its bonds sold to the PFA.

The outstanding amount of Reserve Fund Letters of Credit on December 31, 2023 was \$198,050. The IDBP Reserve Fund Letters of Credit are issued to meet the requirement of the IDBP General Bond Resolution that the PFA maintain reserves for each series, equal to the largest aggregate amount of principal and interest due in any twenty-four consecutive month periods. The IDBP Reserve Fund Letters of Credit are issued by BND.

Legacy Fund Infrastructure Bond Program

The Public Finance Authority’s Legacy Fund Infrastructure Bond Program (Legacy Bonds) was established in 2021 to transfer funds to the Bank of North Dakota (BND) to allocate to legislature approved state infrastructure projects and programs. Upon request by BND, funds are transferred to BND for disbursement to funded programs. Bond payments will be funded by capitalized interest, earnings on unspent bond proceeds, and transfers from ND Legacy Fund earnings.

PFA issued Legacy Bonds to finance the following projects approved during the 2021 legislative session:

Fargo Diversion Project	\$ 435,500,000
Resources Trust Fund	\$ 74,500,000
Infrastructure Revolving Loan Fund	\$ 50,000,000
Highway Fund	\$ 70,000,000
NDSU Agriculture Products Development Facility	\$ 50,000,000

No Legacy Bonds were issued in 2023. Under the Legacy Fund Infrastructure Program \$710,115,000 of bonds have been issued. As of December 31, 2023, the total amount of Legacy Bonds outstanding was \$681,655,000.

The full report is available on the website.

Ms. Ament presented for consideration of approval the following State Revolving loan applications:

- i. **City of Ashley – Drinking Water - \$3,048,000.** The purpose of this project is to replace the City’s existing 65,000-gallon water tower with a new 250,000-gallon elevated storage tank as well as demolish the City’s water treatment plant and 300,000-gallon underground storage reservoir. The requested term is 30 years, and the City will issue improvement bonds payable with special assessments. The average annual payment will be \$30,203.

**It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the recommended \$3,048,000 Drinking Water State Revolving Fund Program loan to the City of Ashley.**

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

- ii. **Cass Rural Water Users District – Drinking Water - \$2,604,000.** The purpose of this project includes approximately 9.5 miles of new watermain, which will significantly enhance the capacity to convey more water from Reservoir B to Reservoir D and improve system pressures throughout Reservoir D service area. The requested term is 20 years, and the District will issue revenue bonds payable with water user fees.

**It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the recommended \$2,604,000 Drinking Water State Revolving Fund Program loan to the Cass Rural Water Users District.**

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

- iii. City of Underwood – Drinking Water - \$3,500,000. The purpose of this project is to replace the water tower to alleviate water pressure issues and replace high service pumps to meet current standards. The requested term is 30 years, and the City will issue revenue bonds payable with water user fees. The average annual payment will be \$40,416.

**It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the recommended \$3,500,000 Drinking Water State Revolving Fund Program loan to the City of Underwood.**

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

Ms. Ament presented the State Revolving Fund loans approved by the Public Finance Authority Advisory Committee.

- i. City of Grand Forks – Drinking Water - \$1,050,000. The purpose of this project is to begin the process of replacing some of the 700 known lead service lines. The requested term is 30 years, and the City will issue revenue bonds payable with water user fees.
- ii. City of Medina – Drinking Water - \$920,000. The purpose of this project is to complete phase 2 of the replacement of water main all services including two railroad crossings where new pipe is bored under the right-of-way. The requested term is 30 years and the City will issue improvement bonds payable with special assessments.

Under other business, Ms. Ament requested the Commission members sign a letter showing their support of the Council of Infrastructure Financing Authorities' effort to encourage funding of the CWSRF and DWSRF at congressionally authorized levels of \$3.25 billion each for the federal fiscal year 2025. Ms. Tyler circulated the letter for signatures.

#### **STATE ENERGY RESEARCH FUND**

Mr. Reice Haase presented for consideration of approval funding under contract SERC 2019-01 Task 2 – Provide Prompt Expertise for North Dakota: North Dakota Grid Resiliency Plan, \$87,000.

The memo reads as follows:

“During the 2023-2025 biennium, \$750,000 is available for the Commission to contract for on-demand studies under Contract SERC 2019-01 Task 2 – Provide Prompt Expertise for North Dakota. To date, \$135,000 has been contracted under Task 2, leaving \$615,000 for the remainder of the biennium. The EERC is requesting the Commission to authorize an additional **\$87,000** for work required to update the North Dakota Grid Resiliency Plan. The period of performance is estimated to be 8 months.

In 2023, the EERC prepared the first North Dakota Grid Resiliency Plan for the North Dakota Transmission Authority (NTA). The resiliency plan evaluates the risks and threats that various hazards

pose to the North Dakota electric grid and addresses gaps in improving grid resiliency. It also focuses on a resilience assessment framework that evaluates the current resilience strategies and provides recommendations for improving grid resiliency in the context of emerging catastrophic threats to the regional grid.

The NDTA recently requested that the EERC update the resiliency plan through the State Energy Research Center similar the original plan's development. To accomplish the update, the EERC will review the current plan for accuracy and update all sections that are outdated or inaccurate. The proposed effort will also involve hiring the previous subcontractor to utilize their utility industry expertise. In addition, some content from the resiliency plan's 2024 update will be included in the North Dakota State Energy Security Plan.

Therefore, I recommend that the Commission authorizes \$87,000 from Contract SERC 2019-01 Task 2 – Provide Prompt Expertise for North Dakota for the purpose of completing an update to the North Dakota Grid Resiliency Plan.”

**It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission authorize \$87,000 from Contract SERC 2019-01 Task 2 – Provide Prompt Expertise for North Dakota for the purpose of updating the North Dakota Grid Resiliency Plan.**

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

#### **RENEWABLE ENERGY PROGRAM**

Mr. Haase gave a presentation of the Renewable Energy Program Project Management and Financial Report. This fund currently has \$8,895,902 committed and \$2,783,705 available for commitment. The funding for this program is \$3 million from oil production taxes. There have been 71 cumulative projects with 17 projects being active. This program has a cumulative value of \$24 million being granted and \$161.7 million in project value to the State of North Dakota.

Mr. Haase presented for consideration of approval the Grant Round 53 Recommended Award:

- i. **R-053-B – Regional Electric Vehicle Infrastructure Resiliency (REVIR) Plan, Submitted by EERC; Total Project Costs: \$1,875,000; Award Amount: \$375,000.** The primary objective of this project is to 1) provide technical assistance in developing the REVIR plan by facilitating coordination between interstate, intrastate, and community-level working groups and stakeholders to plan for, respond to, and recover from anticipated and unanticipated disruptions to charging infrastructure availability and services; 2) identifying and addressing regional EV charging risks and providing mitigation strategies for ensuring maximum regionwide EV infrastructure reliability, resilience, and security; and 3) providing guidance to communities and stakeholders in preparing for and adapting to technological and socioeconomic developments in transportation electrification and implementing resilience solutions.

There was discussion around what the other States are doing with regards to this project (specifically Minnesota), and what aspects of resiliency are being explored. This award was tabled until next month's meeting, so no motion was made to approve or deny the project.

Mr. Haase presented for consideration of approval a project decommitment:

- i. R-050-064 – Novel Process for Biocoal Production with CO<sub>2</sub> Mineralization; Submitted by Envergen, LLC in October 2022; Award Amount to be Decommitted: \$174,830. The proposal was originally submitted with cost-share being provided by a USDA project, but due to unforeseen circumstances, the period of performance of the cost-share project did not match and they do not have the cost-share at this time.

**It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission accept the recommendation of the Renewable Energy Council and decommit the following Renewable Energy Program project:**

**R-050-064 – Novel Process for Biocoal Production with CO<sub>2</sub> Mineralization; Submitted by Envergen, LLC in October 2022; Award Amount to be Decommitted: \$174,830**

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

#### **DEPARTMENT OF MINERAL RESOURCES**

Dr. Lynn Helms presented for consideration of approval the following cases:

- i. Order No. 33067 issued in Case No. 30454 related to the confiscation of equipment and salable oil at the Brian and Linda Adams R-1 well.
- ii. Order No. 33068 issued in Case No. 30455 related to the confiscation of equipment and salable oil at the Adams 2 well.
- iii. Order No. 33069 issued in Case No. 30456 related to the confiscation of equipment and salable oil at the Adams 3 well.
- iv. Order No. 33070 issued in Case No. 30457 related to the confiscation of equipment and salable oil at the Adams 4 well.
- v. Order No. 33071 issued in Case No. 30458 related to the confiscation of equipment and salable oil at the Brian and Linda Adams SWD 1 well.
- vi. Order No. 33072 issued in Case No. 30459 related to the confiscation of equipment and salable oil at the Davis Perron 33-31 well.

**It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approves Orders 33067, 33068, 33069, 33070, 33071, and 33072 issued in Cases 30454, 30455, 30456, 30457, 30458, and 30459 respectively, authorizing the confiscation of equipment, bonds, and salable oil as well as the Brian and Linda Adams R-1, Adams 2, Adams 3, Adams 4, Brian and Linda Adams SWD 1, and Davis Perron 33-31 wells operated by Double AA Oil, L.L.C., or any working interest owners, pursuant to NDCC 38-08-04 and 38-08-04.9.**

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



- vii. Order No. 33155 issued in Case No. 30542 related to an application of Phoenix Operating LLC for a 1,920-acre spacing unit in Williams and Divide Counties, ND.
- viii. Order No. 33315 issued in Case No. 30665 related to spacing units in the Burg, Big Stone, and Skabo Bakken Pools in Williams and Divide Counties, ND.

**It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approves Order 33155 and 33315 issued in Cases 30542 and 30665 respectively, denying an application of Phoenix Operating LLC to establish a 1,920 acre spacing unit described as Sections 2 and 11, T 159N, R 98W and Section 35, T160N, R 98W and approving the respacing of T 159N, R 98-100W and T 160N, R 98-100W to provide orderly development with 1,920 and 1,280 acre spacing units.**

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

- ix. Order No. 33314 issued in Case No. 30664 related to the unitized management and operation of the South Westhope-Charles Unit in Bottineau County, ND

**It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approves Order 33314 issued in Case 30664 approving a petition of Resonance Exploration (North Dakota) LLC for an order providing for the unitized management, operation, and further development of the proposed South Westhope-Charles (Huber) Unit Area, consisting of lands within the South Westhope Field in Bottineau County, North Dakota; for approval of the unit agreement and unit operating agreement constituting the plan of unitization for the proposed South Westhope-Charles (Huber) Unit Area; for approval of the plan of operation; vacating the applicable spacing orders; and for such further and additional relief.**

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

- x. Order No. 33313 issued in Case No. 30663 related to an application of Resonance Exploration (North Dakota) LLC determining that the plan of unitization for the south Westhope-Charles Unit Area in Bottineau County, ND has been signed, ratified or approved by owners of interest.

**It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approves Order 33313 issued in Case 30663 authorizing the Director of the Department of Mineral Resources to determine that the plan of unitization for the South Westhope-Charles (Huber) Unit Area, Bottineau County, ND, has been signed, ratified or approved by owners of interest owning that percentage of the working interest and royalty interest within said unit as is required by applicable statutes and rules of the Commission.**

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

- xi. Order No. 33256 issued in Case No. 30607 related to an application of Petro-Hunt L.L.C. to establish an overlapping 3,840-acre spacing unit in Mountrail County, ND.

**It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approves Order 33256 issued in Case 30607 approving an application of Petro-Hunt, L.L.C. for an order amending the applicable orders for the Tioga, East Tioga and/or White Earth-Bakken Pools to establish an overlapping 3840-acre spacing unit described as Sections 20, 21, 28, 29, 32 and 33, T.158N., R.94W., Mountrail County, ND, and authorize one horizontal well to be drilled on such unit, or granting such other relief as may be appropriate.**

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

- xii. Order No. 33382 issued in Case No. 30723 related to the termination of the Eland East-Lodgepole Unit in Stark County, ND.

**It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approves Order 33382 issued in Case 30723 approving a motion of the Commission to consider the termination, or any other appropriate action, of the Eland East-Lodgepole Unit, Stark County, ND, operated by Wesco Operating, Inc.**

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

- xiii. Order No. 33343 issued in Case No. 30693 related to an application of XTO Energy Inc. for a pilot enhanced oil recovery operation in Dunn County, ND.

**It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approves Order 33343 issued in Case 30693 approving an application of XTO Energy Inc. for an order granting temporary authority to use the Nygaard Federal 13X-5A well (File No. 21702), Nygaard Federal 13X-5BXC well (File No. 32917), Nygaard Federal 13X-5B well (File No. 32919), located in a spacing unit comprised of Sections 8 and 17, T.148N., R.96W., and the Nygaard Federal 13X-5AXD well (File No. 32921), located in a spacing unit comprised of Sections 7, 8, 17 and 18, T.148N., R.96W., Dunn County, ND, as injection wells for a pilot enhanced oil recovery operation in the Lost Bridge-Bakken Pool, and such further and additional relief.**

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

## **LEGAL UPDATE**

Litigation Update:

- i. Northwest Landowners v. NDIC – Our motion for summary judgement was filed on April 12<sup>th</sup>. The other motions for summary judgement are due May 13<sup>th</sup>.
- ii. EPA Mercury and Air Toxics Standards (MATS) – Just received the re-publication from the EPA on the 25<sup>th</sup> along with 3 other rules. We are currently reviewing the differences from the previously proposed rule.
- iii. EPA Coal Combustion Residuals (CCR) Rule – pre-published last week, working on litigation strategy and looking at the differences between prior rules.
- iv. EPA Greenhouse Gas Rule – pre-published last week, working on litigation strategy and reviewing the differences between prior rules.

- v. NDIC v. DOI Quarterly Federal Lease Sales – Status conference on May 29<sup>th</sup>. Filed a request with Judge Trainer on April 12<sup>th</sup> for BLM to produce 5 documents and 3 witnesses.
- vi. North Oil and Gas v. Continental Resources, NDIC et al – the case settled and has been dismissed. \$300,000 to go back into the Abandoned Well and Site Reclamation Fund.

Federal Regulatory Update:

- i. BLM Resource Management Plan – Waiting on publication
- ii. BLM Conservation and Landscape Rule – Finalized and published a preliminary version. Plan to start implementing it on May 18<sup>th</sup>. Currently looking for other state partners.
- iii. BLM Mineral Leases and Leasing Process Rule – Pre-publication was April 12<sup>th</sup>. Waiting on final publication. ND is in a unique split of state, and already has the ongoing case in Judge Trainer’s court. Wyoming is indicating they will be joining us.
- iv. EPA Methane Waste Emission Charge – Comments were filed March 26<sup>th</sup>.
- v. BLM Venting and Flaring – Final on April 5<sup>th</sup>. We filed our complaint on April 24<sup>th</sup>. We are being joined by Montana, Wyoming and Utah with our complaint.
- vi. Dakota Prairie Grasslands Travel Management Plan – moving along slowly. Targeting July 2025 for finalizing.
- vii. DAPL Draft Environmental Impact Statement – expecting to hear on this in 4<sup>th</sup> quarter.
- viii. Federal Executive Order 14008

**NORTH DAKOTA HOUSING FINANCE AGENCY**

Mr. Dave Flohr presented for consideration of approval the 2025 Low Income Housing Tax Credit Qualified Allocation Plan.

The memo related to the LIHTC Plan reads as follows:

“The NDHFA Advisory Board recommends the **Industrial Commission approve the 2025 Low Income Housing Tax Credit Qualified Allocation Plan (attached).**”

Section 42 of the Internal Revenue Code requires that the Agency allocate Low Income Housing Tax Credits in accordance with a Qualified Allocation Plan (QAP).

The initial draft 2025 QAP was published on February 14, 2024 for a 15-day public comment period that ended at 5 pm on March 1, 2024. A public hearing was held on March 5, 2024. Interested parties had the option to attend either in person at NDHFA Executive Board Room or via Microsoft Teams. Below is a summary of the substantive changes to the draft plan and the comments received. A copy of the final red-line draft is provided. Following Industrial Commission approval, the final QAP will be published to the Agency website.

The application round will open on September 1, 2024, and close on the last business day in September.

Section II. Project Rating (Scoring Criteria)

1. Universal Design (page 12)

The universal design scoring category incentivizes applicants to add certain accessibility features to the multi- family development. Significant changes were proposed to the universal design standards to reflect more objective and measurable design features, including incorporating design features that are

required to be project wide and others that are required in a percentage of the units. The total points available under the category was increased from 12 to 15. A separate universal design policy was created and will be used by all multifamily funding programs that have points for universal design. A copy of the policy is attached to the plan. The universal design policy underwent a separate public consultation process that included participation from the Centers for Independent Living, Money Follows the Person, Health and Human Services Aging Services Division, affordable housing development and architect partners.

## 2. Housing for Older Persons (page 13)

This section was updated to follow the Fair Housing Act's exemption of housing for older persons which allows for senior housing to be defined as:

- a. Provided under any state or federal program the Secretary of HUD has determined is specifically designed and operated to assist elderly persons; or
- b. 100% occupied by persons 62 years of age or older; or
- c. Houses at least one person 55+ in at least 80% of the occupied units and adheres to a policy that demonstrates an intent to house a person 55+.

Previously the scoring criteria referenced only exemption c. The proposed change expands the allowance to reflect all senior housing options that are available under the fair housing exemption, which was the initial intent of the criteria.

## 1. Preserve Existing Affordability (page 14)

The scoring criteria was redesigned to reflect different definitions of preserving affordability including

- a. Asset Preservation – preserving the physical asset. 10 pts.
- b. LIHTC Preservation- preserving an existing LIHTC project. 5 pts.
- c. Subsidy Preservation- preserving the housing subsidy. 10 pts.
- d. Subsidy Preservation Between Interested Parties- preserving existing subsidy, but the party that is receiving the subsidy is also the party that initially controls the subsidy. 5 pts.

NDHFA uses this scoring criteria to prioritize preserving existing affordable projects, providing assistance to housing authorities to reposition public housing inventory, and to ensure that we can maintain the current affordable housing portfolio. The new descriptions of preservation allow higher need preservation projects to rise to the top of the scoring criteria, while still providing some priority points to projects that are at less risk of immediate loss.

Comments were received requesting the agency to specifically name eligible programs such as HUD repositioning. The agency determined that attempting to identify all potential preservation projects may inadvertently qualify or disqualify projects that may or may not meet the intention of the scoring criteria.

Other Comment Received:

New Development/Preservation Parity (page 15)

Written comments were received requesting NDHFA to consider projects that preserve existing affordability to qualify under the preservation parity. This set aside parity is simply to ensure that annually at least one project that adds additional units and one project that rehabilitates/preserves existing units are selected for funding.

The category was updated to better describe the preservation to mean renovation or replacement of existing units.”

The full report of the LIHTC Plan can be found on the website.

**It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the Housing Finance Agency’s 2025 Low Income Housing Tax Credit Qualified Allocation Plan.**

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

Mr. Flohr presented for consideration of approval the 2024 Housing Incentive Fund Allocation Plan.

The memo related to the HIF Plan reads as follows:

“The NDHFA Advisory Board recommends the Industrial Commission **approve the 2024 Housing Incentive Fund Allocation Plan as presented:**

Annually the agency is responsible for developing a Housing Incentive Fund Allocation Plan (the Plan). The plan identifies the process for which eligible applicants must apply for HIF funding including the scoring criteria that will be used to rank, score, and select successful applications for multifamily projects. The 2024 Plan made available public comment February 14-March 1, 2024. A public hearing was held on March 5<sup>th</sup>, 2024, at NDHFA’s office and via Microsoft Teams.

During the 68<sup>th</sup> Legislative Assembly, HIF was appropriated \$13.75 million and had two significant changes to century code, NDCC 54.17.40.

1. Addition of eligible activity 3.b. New Construction, Rehabilitation, preservation, or acquisition of a single-family housing project in a developing community or community land trust project.
2. Removal of the 10 percent set aside requirement for homelessness activities.

The agency set aside \$12 million for multifamily housing projects and \$1,750,000 for single family housing projects. A program update for the Single-family program will be provided in a separate report.

Attached is a copy of the draft 2024 HIF allocation plan with a summary of the substantial changes proposed and public comments received.

1. General Provisions (page 4)

Added Single-Family Project as an eligible use. Identified that a separate program addendum will be established for the activity.

2. Maximum Award (page 5)

- a. Added language to allow the maximum award for a Developing Rural Community (pop. 5,000 or below) to qualify for up HIF up to 50 percent of the total development costs, not to exceed \$3,000,000.

This proposed change was a solution identified by the Rural Housing Task Force. A copy of the task force's white paper is attached.

- b. Increase maximum allowable HIF for a 9% tax credit awards to \$400,000, \$800,000 developing community, and \$1,500,000 for developing rural community.

Discussion

Written comments were received requesting the agency consider increasing the amount available to a 9% LIHTC award from \$300,000 to \$1 million. After consideration of the amount of HIF and other gap funding sources available, the proposed change is to increase to \$400,000, \$800,000, and \$1,600,000 respectively.

3. Recognizable Costs (page 5)

Increase the maximum total development costs per unit from \$200,000 to \$300,000 per unit.

Discussion

Written comments were received to consider increasing the maximum total development costs per unit. The cost per unit was last updated in 2021.

4. Application Processing Fee (page 6-7)

Added a \$250 application processing fee for subsequent NDHFA-funded program applications.

Discussion

The proposal is to charge a nominal fee for each application that staff must review. The fee is to discourage frivolous multiple sources applications.

**Scoring Changes Criteria Changes**

1. Universal Design (page 12)

The universal design scoring category incentivizes applicants to add certain accessibility features to the multi-family development. Significant changes were proposed to the universal design standards to reflect more objective and measurable design features, including incorporating design features that are required to be project wide and others that are required in a percentage of the units. The total points available under the category was increased from 15 to 20. A separate universal design policy was created and will be used by all multifamily funding programs that have points for universal design. A copy of the policy is attached to the plan. The universal design policy underwent a separate public consultation process that included participation from the Centers for Independent Living, Money Follows the Person, Health and Human Services Aging Services Division, affordable housing development and architect partners.”

The full report of the Housing Incentive Fund Plan can be found on the website.

**It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the Housing Finance Agency's 2024 Housing Incentive Fund Allocation Plan.**

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

Mr. Flohr gave a presentation of the 2024 HOME Program and 2024 Housing Trust Fund Allocation Plan.

#### 2024 HOME Program

The state administers its program through Subrecipients, non-profit and for-profits, and CHDOs.

The HOME Program focuses on 3 major housing needs:

- i. Single-family Homeowner Rehabilitation
- ii. Rental Production and Rehabilitation
- iii. Homebuyer Down Payment Assistance

The full report of the HOME Program can be found on the website.

#### 2024 Housing Trust Fund Allocation Plan

ND is expected to receive the small-state allocation from the National Housing Trust Fund. HUD authorizes NDHFA to expend from the HTF up to a maximum of 10 percent of the state allocation for reasonable costs to administer the HTF program. The maximum amount of administrative costs NDHFA may expend from the HTF will be evaluated a to reasonableness each year during allocation plan development.

Eligible recipients include:

- i. Units of local, state, and tribal government
- ii. Local and tribal housing authorities
- iii. Community action agencies
- iv. Reginal planning councils
- v. Non-profit organizations
- vi. For-profit developers

**\*\*Individuals are not eligible to receive direct assistance from the HTF.**

The full report of the Housing Trust Fund Allocation Plan can be found on the website.

Mr. Flohr gave a presentation of the 2024 Emergency Solutions Grant and 2024 ND Homeless Grant Allocation Plans.

The agency serves as the administrator for the Federal Emergency Solutions Grant (ESG) and the state appropriated ND Homeless Grant (NDHG). Similar to multifamily programs, the funds are allocated to recipients through the allocation plan which details the eligible activities and the selection criteria for

each program. The emergency solutions grant allocation plan is then incorporated into the HUD Annual Action plan for submission to HUD for approval.

### Emergency Solutions Grant

Emergency Solutions Grants will be utilized to provide services to individuals experiencing homelessness and those at risk of becoming homeless in the following eligible activities.

- Street Outreach;
- Emergency Shelter;
- Homelessness Prevention;
- Rapid Re-housing Assistance; and
- Homeless Management Information System- HUD required homeless data repository.

### Funding Level and Match

For FY 2024, an approximate amount of \$486,494 in federal funds will be made available. ESG requires 100 percent match on all but \$100,000 of the federal allocation or \$386,494. NDHFA proposed to use NDHG funding to provide 100 percent of the match requirement rather than relying on the non-profit recipients to provide and track match. This change eliminates administrative tracking.

### ND Homeless Grant

#### Funding Level

For FY 2024, an amount of \$1,250,000 in state funding is available. NDHFA will use a portion of the funds available to provide 100 percent of the ESG match liability. This total is approximately \$386,494 subject to the final FY2024 ESG allocation from HUD. Match is calculated based on the total ESG allocation minus \$100,000. Additionally, a total of \$43,200 HIF Homeless funds will be allocated under the NDHG application round.

Applications will be reviewed and scored based on the selection criteria outlined in the Selection Criteria. The minimum award will be \$50,000, a maximum award level has not been established.

The full report of the Emergency Solutions Grant and the ND Homeless Grant Plan can be found on the website.

Under other business, Mr. Dave Flohr presented an update on a grant award from the Federal Home Loan Bank. BND and NDHFA, together, applied for a Member Impact Fund grant from the Federal Home Loan Bank. They were awarded \$5.125 million out of \$11 million that the state of ND got all together. BND's contribution was \$1.281 million, and the Federal Home Loan Bank matched that 3:1 and put in \$3.844 million. A good portion of these funds will go towards single-family rehabilitation and the rehab accessibility program.

## **BANK OF NORTH DAKOTA**

Mr. Todd Steinwand presented the First Quarter 2024 Performance Highlights.



The first quarter 2024 ended with assets of \$10.5 billion driven by continued growth in the loan portfolio. The loan portfolio ended the quarter at \$5.8 billion. The timing in the funding of the State Institution loan programs as well as BND's Match program did not meet budget expectations in the Commercial Loan category. This was partially offset by the increased volumes in Commercial participation and Flex Pace programs. Activity in the Farm and Ranch program led to the Ag Portfolio having strong results. Residential loan runoff continues to slow due to the rise in interest rates, and the student loan portfolio continues to focus on state-sponsored DEAL loans. For the quarter ended March, the Bank has transferred \$5 million to buydown programs and \$700,000 to other state programs. During 2023, the Bank transferred \$140 million to the General Fund, \$30.5 million to buydown programs, \$52 million to the Infrastructure Revolving Loan Fund, and \$5.7 million to other state programs.

Net income for the first quarter 2024 was \$48.5 million. Interest Income exceeded budget by \$1.2 million, primarily due to higher rates on securities as well as rates and volumes in the commercial participation program offset by lower than budgeted balances at the Federal Reserve. A combination of higher average deposit balances, interest rates, and larger Federal funds purchased contributed to the higher interest expense. Non-interest Expense was \$1.3 million under budget. This consists of several operating components largely due to timing of incurrences, specifically with IT projects, loan servicing expenses, legal, and others service-related expenses.

Mr. Steinwand presented the Commission members with the following Non-confidential BND Advisory Board meeting minutes for their review:

- i. February 21, 2024 Nonconfidential Finance and Credit Committee Minutes
- ii. February 22, 2024 Nonconfidential Leadership Development and Compensation Committee Minutes
- iii. February 22, 2024 Nonconfidential Advisory Board Minutes

**It was moved by Attorney General Wrigley and seconded by Commissioner Goehring that under the authority of North Dakota Century Code Sections 6-09-35, 44-04-18.4, 44-04-19.1, 44-04-19.2, the Industrial Commission enter into executive session for the purposes Bank of North Dakota confidential business.**

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

**The Commission is meeting in executive session regarding Bank of North Dakota confidential business pursuant to N.D.C.C. 6-09-35 to consider those items listed on the agenda under Bank of North Dakota confidential business. Only Commission members, their staff, Commission staff, and BND staff will participate in that executive session.**

**Any formal action taken by the Commission will occur after it reconvenes in open session.**

**Governor Burgum reminded the Commission members and those present in the executive session that the discussions must be limited to the announced purposes which is anticipated to last approximately 30 minutes.**

The executive session began at approximately 4:10 p.m.

**The Meeting Closed to the Public for Executive Session Pursuant to NDCC 6-09-35, 44-04-18.4, 44-04-19.1, 44-04-19.2.**

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**BANK OF NORTH DAKOTA EXECUTIVE SESSION**

**Industrial Commission Members Present**

Governor Doug Burgum  
Attorney General Drew H. Wrigley  
Agriculture Commissioner Doug Goehring

**BND Members Present**

Todd Steinwand, BND  
Kirby Evanger, BND  
Craig Hanson, BND  
Kelvin Hullet, BND  
Rob Pfennig, BND  
Kaylen Hausauer, BND

**Others in attendance**

John Reiten	Governor's Office
Ryan Norrell	Governor's Office
Zach Greenberg	Governor's Office
Dutch Bialke	Ag Department
Karen Tyler	Industrial Commission Office
Reice Haase	Industrial Commission Office
Erin Stieg	Industrial Commission Office

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The executive session ended at 4:45 p.m. and the Commission reconvened in open session.

**During the Bank of North Dakota executive session, the Commission made a motion related to approval of two loan applications.**

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

Being no further business, Governor Burgum adjourned the meeting of the Industrial Commission at 6:00 p.m.

North Dakota Industrial Commission



Brenna Jessen, Recording Secretary



Reice Haase, Deputy Executive Director



Karen Tyler, Interim Executive Director

