

## **CHAPTER 4-36**

### **AGRICULTURAL DEVELOPMENT ACT**

**4-36-01. Declaration of intent.** It is hereby found and declared that:

1. The high cost as well as the lack of availability of agricultural loans for farmers with the resultant decreases in crop, livestock, and business productivity and inability on the part of farmers to acquire agricultural equipment and machinery, livestock, and real estate jeopardizes the continued existence of family-owned agricultural enterprises and lessens the supply of agricultural commodities available to fulfill the needs of the citizens of this state.
2. As a result of the continuing increase in the costs of maintaining operations, including costs of construction and rehabilitation, maintenance and repair expenses, and the cost of real estate, the state suffers from structural economic weaknesses which contribute to a decline in the operation and maintenance of agricultural enterprises and the capital investment therein.
3. The reduction in family-owned agricultural enterprises results in an insufficiency of gainful employment in rural areas and adds additional pressure on the state's welfare, public health, and crime prevention programs and increases the cost of unemployment compensation to the existing enterprises of the state.

**4-36-02. Legislative findings - Need for agricultural loan financing - How accomplished.** There exists in this state an inadequate supply of, and a pressing need for, farm credit and agricultural loan financing at interest rates which are consistent with the needs of farmers.

The problems set forth in section 4-36-01 and this section cannot alone be remedied through the operation of private enterprise or individual communities or both, but can be alleviated through governmental action designed to encourage the investment of private capital in the agricultural sector through the use of financing as provided in this chapter for the purpose of making loans available at interest rates lower than those available in the conventional farm credit markets.

Alleviating the conditions and problems, set forth in section 4-36-01 and this section by the encouragement of private investment through a financing as provided in this chapter, is a public purpose and use for which public money provided by the sale of revenue bonds may be borrowed, expended, advanced, and loaned. Such activities must not be conducted for profit. Such activities are proper governmental functions and can best be accomplished by the industrial commission of North Dakota. The necessity for the provisions of this chapter to protect the health, safety, morals, and general welfare of all the people of this state is hereby declared as a matter of legislative determination. The industrial commission of North Dakota under this chapter shall make financing available for farmers to meet the credit needs which private industry is unable to serve.

**4-36-03. Terms defined.** As used in this chapter, unless the context otherwise requires:

1. "Agriculture or agricultural enterprise" includes the real and personal property constituting farms, ranches, and other agricultural commodity producers; agriculturally related businesses; agriculturally related sewage, liquid and solid waste collection, disposal, treatment, and drainage services, and facilities; agriculturally related antipollution and air, water, ground, and subsurface pollution abatement and control facilities and services; agriculturally related permanent soil and water conservation projects, including the installation of tiling for drainage, planting of perennial grasses, legumes, shrubs, or trees, the establishment of grassed waterways, and the construction of terraces, or any other permanent soil and water conservation practice approved by the local soil conservation or water resource

district; and conservation farm equipment or any type of no-till or minimum-till machinery and equipment.

2. "Bonds" means any bonds, notes, debentures, interim certificates, bond, grant and revenue anticipation notes, or any other evidences of indebtedness.
3. "Commission" means the industrial commission of North Dakota created pursuant to section 54-17-01.
4. "Contracting party" means any party to a lease, sales contract, or loan agreement except the commission.
5. "Lender" means any federal or state-chartered bank, federal land bank, production credit association, bank for cooperatives, savings and loan association, building and loan association, small business investment company, or any other institution qualified within the state to originate and service loans, including insurance companies, credit unions, and mortgage loan companies.
6. "Loan insurer" and "loan guarantor" mean an agency, department, administration, or instrumentality, corporate or otherwise, of or in the department of housing and urban development, the farmers home administration of the department of agriculture, or the veterans administration of the United States, any private mortgage insurance company, or any other public or private agency which insures or guarantees loans.
7. "Operating loan" means an operating loan as defined under section 6-09.9-02.
8. "State" means the state of North Dakota.

**4-36-04. Commission - Powers enumerated.** The commission is hereby granted all powers necessary or appropriate to carry out and effectuate the purposes of this chapter, including the following:

1. Make and execute contracts and all other instruments necessary or convenient for the performance of its powers and functions under this chapter.
2. Employ architects, engineers, attorneys, inspectors, accountants, agricultural and financial experts, and such other advisors, consultants, and agents as may be necessary in its judgment, and to fix their compensation.
3. Borrow money and issue bonds as provided by this chapter.
4. Procure insurance or guarantees from any public or private entities, including any department, agency, or instrumentality of the United States, for payment of any bonds issued by the commission under this chapter, including the power to pay premiums on any such insurance.
5. Receive and accept from any source, aid or contributions of money, property, labor, or other things of value to be held, used and applied to carry out the purposes of this chapter subject to the conditions upon which the grants or contributions are made, including gifts or grants from any department, agency, or instrumentality of the United States for any purpose consistent with the provisions of this chapter.
6. Enter into agreements with any department, agency, or instrumentality of the United States or this state and with lenders and enter into loan agreements with contracting parties for the purpose of planning, regulating, and providing for the financing and refinancing of any agricultural enterprise or an operating loan.
7. Enter into contracts or agreements with lenders for the servicing and processing of loans.

8. To the extent permitted under its contract with the holders of bonds of the commission, consent to any modification with respect to the rate of interest, time, and payment of any installment of principal or interest, or any other term of any contract, loan, loan note, loan note commitment, contract, lease, or agreement of any kind to which the commission is a party.
9. To the extent permitted under its contract with the holders of bonds of the commission, enter into contracts with any lender containing provisions enabling it to reduce the rental or carrying charges to persons unable to pay the regular schedule of charges when, by reason of other income or payment by any department, agency, or instrumentality of the United States or of this state, the reduction can be made without jeopardizing the economic stability of the agricultural enterprise being financed.

**4-36-05. Commission - Duties enumerated.** The commission has the following duties in the exercise of powers granted by this chapter:

1. To invest proceeds from bonds issued under this chapter and any funds obtained therefrom not needed for immediate disbursement, including any funds held in reserve, in direct and general obligations of or obligations fully and unconditionally guaranteed by the United States, obligations issued by agencies of the United States, any obligations of the United States or agencies thereof, obligations of this state, or any obligations or securities which may from time to time be legally purchased by governmental subdivisions of this state, including the unsecured promissory notes of national banking associations having the highest investment rating.
2. To collect fees and charges, as the commission determines to be reasonable, in connection with its loans, advances, insurance, commitments, and servicing.
3. To sell, at public or private sale, with or without public bidding, any loan or other obligation held by the commission.
4. To do any act necessary or convenient to the exercise of the powers granted by this chapter or reasonably implied from it.

**4-36-06. Commission - Loans to lenders - Conditions.** The commission may make, and undertake commitments to make, loans to lenders under terms and conditions requiring the proceeds thereof to be used by such lenders to make operating loans and loans for agricultural enterprises. Loan commitments or actual loans shall be originated through and serviced by any bank, trust company, savings and loan association, mortgage banker, or other financial institution authorized to transact business in this state.

**4-36-07. Commission - Invest in, purchase, or assign loans - Conditions.** The commission may invest in, purchase, or make commitments to take assignments of, operating loans and loans made by lenders for the construction, rehabilitation, or purchase of agricultural enterprises. No loan is eligible for investment in, purchase, or assignment by the commission if the loan was made more than six months prior to the date of investment, purchase, or assignment by the commission.

**4-36-08. Commission - Lender's requirements.** Prior to exercising any of the powers authorized in sections 4-36-06 and 4-36-07, the commission shall require the lender to certify and agree that:

1. The loan is, or if the same has not been made will, at the time of making, be in all respects a prudent investment; and
2. Such lender will use the proceeds of such loan, investment, sale, or assignment within a reasonable period of time to make loans or purchase operating loans or

loans to provide agricultural enterprises, or, if such lender has made a commitment to make operating loans or loans to provide agricultural enterprises on the basis of a commitment from the commission to purchase such loans, such lender will make such loans and sell the same to the commission within a reasonable period of time.

**4-36-09. Commission - Optional requirements enumerated.** Prior to exercising any of the powers conferred by sections 4-36-06 and 4-36-07, the commission may, but is not obligated to:

1. Require that the loan involved be insured by a loan insurer or be guaranteed by a loan guarantor;
2. Require any type of security that it deems reasonable and necessary; or
3. Authorize the reservation of funds by lenders in such amount and subject to such conditions as the commission considers reasonable and necessary.

**4-36-10. Commission - Borrow money and issue bonds - Purposes.** The commission has the power to borrow money and to issue from time to time its bonds in such principal amounts as the commission determines is necessary to provide sufficient funds to carry out its purposes under this chapter to include:

1. Carrying out the additional powers of sections 4-36-06 and 4-36-09.
2. The payment of interest on bonds of the commission issued under this chapter.
3. The establishment of reserves to secure the bonds issued under this chapter.
4. All other expenditures of the commission incident to, necessary and convenient, to carry out its purposes and powers under this chapter.

**4-36-11. Commission - Issue bonds to renew, pay, or refund bonds.** The commission has the power to issue from time to time bonds to renew or to pay bonds issued under this chapter, including the interest thereon, and whenever it deems refunding expedient, to refund any bonds issued under this chapter by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund outstanding bonds and partly for any other purposes permitted under this chapter. The refunding bonds may be sold and the proceeds applied to the purchase, redemption, or payment of the bonds to be refunded, or exchanged for the bonds to be refunded.

**4-36-12. Commission - Bond issuance - Special obligations - How paid and secured.** Bonds issued under this chapter shall not be payable from nor charged upon any funds other than the revenue pledged to the payment thereof, nor is the commission subject to any liability thereon. Such bonds do not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the commission, except those agricultural enterprises, or portions thereof, mortgaged or otherwise encumbered under the provisions and for the purposes of this chapter. The bonds may be additionally secured by a pledge of any grant, contribution, or guarantee from the federal government, the state, or any corporation, limited liability company, association, institution, or person.

**4-36-13. Commission - Bond issuance - State or political subdivision - No obligation - Statement.** No bonds issued by the commission under this chapter constitute a debt, liability, or general obligation of this state or any political subdivision thereof, or a pledge of the faith and credit of this state or any political subdivision thereof, but are payable solely as provided by section 4-36-12. Each bond issued under this chapter shall contain on the face thereof a statement that neither the faith and credit nor the taxing power of this state or any political subdivision thereof is pledged to the payment of the principal of or the interest on such bond.

**4-36-14. Bonds authorized by resolution - Contents - Manner of sale.** The bonds must be authorized by a resolution of the commission, shall bear such date or dates, and shall mature at such time or times as such resolution may provide, except that no bond may mature more than thirty years from the date of its issue, as the resolution shall provide. The bonds shall bear interest at such rate or rates, including variations of such rates, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, including redemption prior to maturity, as such resolution may provide. The provisions of other state laws relating to the issuance of revenue bonds do not apply to bonds issued by the commission under this chapter. Bonds of the commission issued under this chapter may be sold by the commission at public or private sale, and at such price or prices as the commission shall determine.

**4-36-15. Bond issuance - Resolution provisions enumerated.** Any resolution authorizing the issuance of bonds under this chapter may contain provisions, which shall be a part of the contract or contracts with the holders of such bonds, as to:

1. The setting aside of reserves or sinking funds and the regulation and disposition thereof.
2. Limitations on the purposes to which the proceeds from the sale of bonds may be applied and pledging the proceeds to secure the payment of the bonds.
3. Limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding or other bonds.
4. The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which the consent may be given.
5. Limitations on the amount of money to be expended by the commission for operating expenses of the commission.
6. Vesting in a trustee or trustees such property, rights, powers, and duties in trust as the commission may determine, and limiting or abrogating the right of bondholders to appoint a trustee or limiting the rights, powers, and duties of the trustee.
7. Defining the acts or omissions to act which constitute a default and the obligations or duties of the commission to the holders of the bonds, and providing for the rights and remedies of the holders of the bonds in the event of default, including as a matter of right the appointment of a receiver; but the rights and remedies must not be inconsistent with the general laws of this state and other provisions of this chapter.
8. Any other matter, of like or different character, which in any way affects the security or protection of the holders of the bonds.

**4-36-16. Commission - Pledge - Effect - Lien - Recording not required.** Any pledge made by the commission is valid and binding from the time the pledge is made. The revenue, money, or properties so pledged and thereafter received by the commission are immediately subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge is valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the commission, irrespective of whether the parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

**4-36-17. Commission - Purchase bonds of commission canceled - Price.** The commission, subject to such agreements with bondholders as may then exist, has the power to purchase bonds issued by it hereunder out of any funds available therefor, which must thereupon

be canceled, at any reasonable price which, if the bonds are then redeemable, may not exceed the redemption price then applicable plus accrued interest to the next interest payment thereon.

**4-36-18. Bonds secured by trust indenture - Contents - Expenses how treated.** The bonds issued under this chapter may be secured by a trust indenture by and between the commission and a corporate trustee which may be any bank having the power of a trust company or any trust company within or without the state. Such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the commission in relation to the exercise of its powers and the custody, safekeeping, and application of all money. The commission may provide by the trust indenture for the payment of the proceeds of the bonds and the revenue to the trustee under the trust indenture or other depository, and for the method of disbursement thereof, with such safeguards and restrictions as the commission may determine.

**4-36-19. Bonds - Negotiable instruments.** Whether or not the bonds issued under this chapter are in the form and character of negotiable instruments, such bonds are hereby made negotiable instruments, subject only to provisions of the bonds relating to registration.

**4-36-20. Bonds - Signatures of prior members or officers - Validity.** In the event that any of the members or officers of the commission cease to be members or officers of the commission prior to the delivery of any bonds or coupons signed by them, their signatures or facsimiles thereof are nevertheless valid and sufficient for all purposes, the same as if such members or officers had remained in office until such delivery.

**4-36-21. Commission - Execute bonds - Members not subject to personal liability.** Neither the members of the commission nor any other person executing the bonds issued under this chapter is subject to personal liability or accountability by reason of the issuance thereof.

**4-36-22. Funds created.** The commission may create and establish such funds and accounts as may be necessary or desirable for carrying out the purposes of this chapter.

**4-36-22.1. Reserve fund.**

1. The commission may establish and maintain a reserve fund and may deposit moneys appropriated by the state for the purpose of the fund, all proceeds of bonds required to be deposited in the fund by terms of any contracts between the commission and its bondholders or any resolution of the commission pertaining to proceeds of bonds, moneys or funds of the commission which it determines to deposit, and moneys made available to the commission for the purposes of the fund from any other source, and may transfer funds from the interest rate buydown fund established in section 6-09.9-05. Moneys in the reserve fund must be held and applied solely to the payment of the interest on and the principal of bonds and sinking fund payments as the payments become due and payable and for the retirement of bonds, including the payment of any redemption premium required to be paid when any bonds are redeemed or retired prior to maturity.
2. The commission may certify to the legislative assembly such amounts as are necessary to maintain the fund at a level necessary to secure the payment of the principal, premium, if any, and interest on its bonds.

**4-36-23. Bondholders - Pledge - Agreement of the state.** The state does hereby pledge to and agree with the holder of any bonds issued under this chapter that the state will not limit or alter the rights vested in the commission to fulfill the terms of any agreements made with the holders thereof or in any way impair the rights or remedies of the holders until the bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of the holders, are fully met and discharged. The commission is authorized to include this pledge and agreement of the state in any agreement with the holders of the bonds.

**4-36-24. Bank of North Dakota - Authorization to exercise administrative powers - Payment of commission expenses - Reimbursement - Liability of state or political subdivision.** The commission may delegate to the Bank of North Dakota, and the Bank of North Dakota is hereby authorized to exercise, all administrative powers granted to the commission under this chapter. The Bank of North Dakota is further authorized to advance from its funds the amount necessary to permit the commission to issue bonds under this chapter which must be refunded to the Bank of North Dakota by the commission upon issuance of said bonds. Thereafter, all expenses incurred by the commission in carrying out the provisions of this chapter must be payable solely from funds provided under this chapter, and nothing in this chapter may be construed to authorize the commission to incur indebtedness or liability on behalf of or payable by this state or any political subdivision of it.

**4-36-25. Commission - Bonds exempt from taxation - Exception.** All bonds issued under this chapter, interest payable thereon and income derived therefrom except inheritance, estate, and transfer taxes, are at all times exempt from all taxes imposed by this state, any county, any city, or any other political subdivision of this state. Bonds may be issued under this chapter whereby the interest on the bonds is subject to federal income taxation.

**4-36-26. Bonds - Legal investments - Considered securities.** The bonds issued by and under the authority of this chapter by the commission are legal investments in which all public officers or public bodies of this state, its political subdivisions, all municipalities and municipal subdivisions, all banks, bankers, banking associations, trust companies, savings associations, including savings and loan associations, investment companies, and other persons carrying on a banking business, all administrators, guardians, executors, trustees, and other fiduciaries, and all other persons who are now or may later be authorized to invest in bonds or in other obligations of this state, may invest funds, including capital, in their control or belonging to them. The bonds are authorized securities which may be deposited with and received by all public officers and bodies of this state or any agency or political subdivision of this state and all municipalities and public corporations for any purpose for which the deposit of bonds or other obligations of this state is now or may be later authorized by law.

**4-36-27. Chapter - How construed.** Neither this chapter nor anything contained in this chapter is or shall be construed as a restriction or limitation upon any powers which the commission might otherwise have under any other law of this state, and this chapter is cumulative to such powers. This chapter does and must be construed to provide a complete, additional, and alternative method for the doing of the things authorized and must be regarded as supplemental and additional to powers conferred by any other laws. The issuance of bonds under the provisions of this chapter need not comply with the requirements of any other state laws applicable to the issuance of bonds, notes, and other obligations. No proceedings, notice, or approval is required for the issuance of any bonds or any instrument or the security therefor, except as provided in this chapter. All agricultural enterprises for which funds are advanced, loaned, or otherwise provided by the commission under this chapter must be in compliance with any land use, zoning, subdivision, and other laws of this state applicable to the land upon which such enterprise is located or is to be constructed.