

**CHAPTER 15.1-36**  
**SCHOOL CONSTRUCTION**

**15.1-36-01. School construction projects - Approval.**

1. Notwithstanding the powers and duties of school boards provided by law, the superintendent of public instruction shall approve the construction, purchase, repair, improvement, modernization, or renovation of any public school building or facility before commencement of the project if the cost of the project, as estimated by the school board, is in excess of one hundred fifty thousand dollars.
2. The superintendent of public instruction may not approve a project unless the school district proposing the project:
  - a. Demonstrates the need for the project and the educational utility of the project or demonstrates potential utilization of the project by a future reorganized school district;
  - b. (1) Demonstrates that the student population has been stable or has increased during the preceding five school years and is expected to be stable or to increase during the ensuing five school years; or  
(2) Demonstrates by clear and convincing evidence that, despite a declining student population, there are no feasible alternatives to the proposed project; and
  - c. Demonstrates the capacity to pay for the project under rules adopted by the superintendent of public instruction pursuant to chapter 28-32.
3. a. If the superintendent of public instruction denies the project, the school board may appeal the superintendent's decision to the state board of public school education. In considering the appeal, the state board shall review:
  - (1) The need for the project;
  - (2) The educational utility of the project;
  - (3) The potential use of the project by a future reorganized school district;
  - (4) The capacity of the district to pay for the project; and
  - (5) Any other objective factors relative to the appeal.b. The decision of the state board is final.
4. This section is applicable to any construction, purchase, repair, improvement, renovation, or modernization, even if the school board pays for the project in whole or in part with moneys received on account of the leasing of lands acquired by the United States for flood control, navigation, and allied purposes in accordance with 33 U.S.C. 701c-3 or in accordance with moneys received under the American Recovery and Reinvestment Act of 2009.
5. For purposes of this chapter, "facility" includes a public school parking lot, public school athletic complex, or any other improvement to real property owned by the school district.

**15.1-36-02. School construction projects - Loans.**

1. In order to provide school construction loans, the board of university and school lands may authorize the use of:
  - a. Fifty million dollars, or so much of that amount as may be necessary, from the coal development trust fund, established pursuant to section 21 of article X of the Constitution of North Dakota and subsection 1 of section 57-62-02; and
  - b. One hundred fifty million dollars from the strategic investment and improvements fund, established pursuant to section 15-08.1-08, for the period ending June 30, 2015.
2. In order to be eligible for a loan under this section, the board of a school district shall:
  - a. Propose a construction project with a cost of at least one million dollars and an expected utilization of at least thirty years;
  - b. Obtain the approval of the superintendent of public instruction for the construction project under section 15.1-36-01; and

- c. Submit to the superintendent of public instruction an application containing all information deemed necessary by the superintendent, including potential alternative sources or methods of financing the construction project.
3. If an eligible school district's taxable valuation per student is less than eighty percent of the state average taxable valuation per student, the district is entitled to receive:
  - a. A school construction loan equal to the lesser of twenty million dollars or ninety percent of the actual project cost;
  - b. An interest rate discount equal to at least one hundred but not more than four hundred basis points below the prevailing tax-free bond rates; and
  - c. A term of repayment that may extend up to twenty years.
4. If an eligible school district's taxable valuation per student is equal to at least eighty percent but less than ninety percent of the state average taxable valuation per student, the district is entitled to receive:
  - a. A school construction loan equal to the lesser of fifteen million dollars or eighty percent of the actual project cost;
  - b. An interest rate buydown equal to at least one hundred but not more than three hundred fifty basis points below the prevailing tax-free bond rates; and
  - c. A term of repayment that may extend up to twenty years.
5. If an eligible school district's taxable valuation per student is equal to at least ninety percent of the state average taxable valuation per student, the district is entitled to receive:
  - a. A school construction loan equal to the lesser of ten million dollars or seventy percent of the actual project cost;
  - b. An interest rate discount equal to at least one hundred but not more than three hundred basis points below the prevailing tax-free bond rates; and
  - c. A term of repayment that may extend up to twenty years.
6. The board of a school district may submit its loan application to the superintendent of public instruction before or after receiving authorization of a bond issue in accordance with chapter 21-03. If the vote to authorize a bond issue precedes the application for a loan, the application must be acted upon by the superintendent expeditiously but no later than one hundred eighty days from the date it is received by the superintendent.
7. The superintendent of public instruction shall consider each loan application in the order it received approval under section 15.1-36-01.
8. If the superintendent of public instruction approves the loan, the superintendent may determine the loan amount, the term of the loan, and the interest rate, in accordance with the requirements of this section. A school district's interest rate may not be less than one percent, regardless of any rate discount for which the district might otherwise qualify under this section.
9.
  - a. If a school district seeking a loan under this section received an allocation of the oil and gas gross production tax during the previous fiscal year in accordance with chapter 57-51, the board of the district shall provide to the board of university and school lands, and to the state treasurer, its evidence of indebtedness indicating that the loan originated under this section.
  - b. If the evidence of indebtedness is payable solely from the school district's allocation of the oil and gas gross production tax in accordance with section 57-51-15, the loan does not constitute a general obligation of the school district and may not be considered a debt of the district.
  - c. If a loan made to a school district is payable solely from the district's allocation of the oil and gas gross production tax in accordance with section 57-51-15, the terms of the loan must require that the state treasurer withhold the dollar amount or percentage specified in the loan agreement, from each of the district's oil and gas gross production tax allocations, in order to repay the principal and interest of the evidence of indebtedness. The state treasurer shall deposit the amount withheld into the fund from which the loan originated.

- d. Any evidence of indebtedness executed by the board of a school district under this subsection is a negotiable instrument and not subject to taxation by the state or any political subdivision of the state.
10. For purposes of this section, a "construction project" means the purchase, lease, erection, or improvement of any structure or facility by a school board, provided the acquisition or activity is within a school board's authority.

**15.1-36-02.1. School construction projects - Reorganized districts - Interest subsidy.**

1. If under chapter 15.1-12 two or more school districts prepare a reorganization plan, agree in that plan to pursue a construction project, and obtain the approval of the superintendent of public instruction in accordance with this chapter, the newly reorganized district is eligible to receive up to three hundred basis points of interest rate buydown on the lesser of:
  - a. Thirteen million five hundred thousand dollars; or
  - b. A percentage of the total project cost determined by:
    - (1) Allowing five percent for each school district that participated in the reorganization;
    - (2) Allowing five percent for each one hundred-square-mile [259-square-kilometer] increment that is added to the square miles [kilometers] of the geographically largest district participating in the reorganization;
    - (3) Allowing five percent for every ten students added to the enrollment of the district having the greatest number of enrolled students and participating in the reorganization; and
    - (4) Capping the allowable percentage at ninety percent of the total project cost.
2. In addition to the requirements of subsection 1, the percentage of cost subsidy determined under subdivision b of subsection 1 must equal at least twenty percent of the total project cost.

**15.1-36-03. School construction project loans - Management by Bank of North Dakota.**

If the superintendent of public instruction approves a loan application under section 15.1-36-02, the superintendent shall forward the application to the Bank of North Dakota. The Bank shall manage and service each school construction loan issued under this chapter and shall execute all necessary loan instruments. The Bank may charge a loan recipient a fee for managing and servicing the loan. The Bank shall receive payments of principal and interest from the school districts and shall remit the payments of principal and interest to the board of university and school lands. The board shall use or deposit the payments in accordance with section 57-62-02 and section 21 of article X of the Constitution of North Dakota.

**15.1-36-04. Evidences of indebtedness.**

The board of a school district may issue and sell evidences of indebtedness under chapter 21-03 to finance the construction or improvement of a project approved under this chapter. The principal amount of the loan and the evidences of indebtedness to repay the loan may not exceed the loan amount for which the district is eligible under this chapter. Evidences of indebtedness issued under this chapter constitute a general obligation of the school district.

**15.1-36-05. Construction of public school building - Violations - Penalty.**

1. A person is guilty of an infraction if the person:
  - a. Draws plans or specifications for the construction of a public school building or facility in violation of this chapter;
  - b. Superintends the construction of a public school building or facility in violation of this chapter;
  - c. Constructs a public school building or facility in violation of this chapter; or
  - d. Violates any other provision of this chapter.

2. A member of a school board is guilty of an infraction if the member concurred in a violation of this chapter by the board.

**15.1-36-06. School construction loans - Bank of North Dakota.**

1. In addition to any construction loans made available under section 15.1-36-02, the Bank of North Dakota may provide up to two hundred fifty million dollars to eligible school districts for school construction loans, except that the total of all loans provided under this section during the first year of the 2015-17 biennium may not exceed fifty percent of the total amount authorized under this subsection.
2. To be eligible for a loan under this section, the board of a school district shall:
  - a. Propose a new construction or remodeling project with a cost of at least one million dollars and an expected utilization of at least thirty years;
  - b. Obtain the approval of the superintendent of public instruction for the project under section 15.1-36-01;
  - c.
    - (1) Request from the tax commissioner a statement of the estimated tax increase, in mills and dollars, which would be applicable to a residential parcel of average true and full value within the county in which the school district is headquartered, if a loan under this section and any associated school construction bond issue were to be authorized in accordance with chapter 21-03;
    - (2) Request from the tax commissioner a statement of the estimated tax increase, in mills and dollars, which would be applicable to an acre of cropland and to an acre of noncropland, of average true and full value within the county in which the school district is headquartered, if a loan under this section and any associated school construction bond issue were to be authorized in accordance with chapter 21-03;
    - (3) Publish in the official newspaper of the district the information from the statements required by this subdivision with the notice of the election to authorize the school construction bond issuance in accordance with section 21-03-12; and
    - (4) Post on the school district's website the information from the statements preceding the date of the election to authorize the school construction bond issuance in accordance with chapter 21-03;
  - d. Receive authorization for a bond issue in accordance with chapter 21-03; and
  - e. Submit a completed application to the Bank of North Dakota.
3. With the advice and consent of the superintendent of public instruction, the Bank of North Dakota shall award the loans in accordance with a prioritization system that is based on a review of all applications filed during the twelve-month period preceding April first and gives consideration to:
  - a. Student occupancy and academic needs in the district;
  - b. The age of existing structures to be replaced or remodeled;
  - c. Building design proposals that are based on safety and vulnerability assessments;
  - d. Community support;
  - e. Cost; and
  - f. Any other criteria established in rule by the superintendent of public instruction, after consultation with an interim committee appointed by the legislative management.
4. The term of a loan under this section is twenty years, unless a shorter term is requested by the board of a school district in its application.
5. The interest rate on a loan under this section may not exceed two percent, until July 1, 2025. Thereafter, the interest rate on the remainder of a loan under this section:
  - a. May not exceed the Bank of North Dakota's base rate; or
  - b. May be a fixed rate.
6. If a school district's unobligated general fund balance on the preceding June thirtieth exceeds the limitation set forth under section 15.1-27-35.3, the loan amount to which

that district is entitled under this section may not exceed eighty percent of the project's cost.

7. The maximum loan amount to which a school district is entitled under this section is twenty million dollars.

**15.1-36-07. School construction loans - Bank of North Dakota.**

1. In addition to any construction loans made available under section 15.1-36-02, the Bank of North Dakota may provide up to two hundred million dollars from the school construction assistance loan fund to eligible school districts for school construction loans, except that the total of all loans provided under this section prior to July 1, 2018, may not exceed fifty percent of the total amount authorized under this subsection.
2. To be eligible for a loan under this section, the board of a school district shall:
  - a. Propose a new construction or remodeling project with a cost of at least one million dollars and an expected utilization of at least thirty years;
  - b. Obtain the approval of the superintendent of public instruction for the project under section 15.1-36-01;
  - c.
    - (1) Request from the tax commissioner a statement of the estimated tax increase, in mills and dollars, which would be applicable to a residential parcel of average true and full value within the county in which the school district is headquartered, if a loan under this section and any associated school construction bond issue were to be authorized in accordance with chapter 21-03;
    - (2) Request from the tax commissioner a statement of the estimated tax increase, in mills and dollars, which would be applicable to an acre of cropland and to an acre of noncropland, of average true and full value within the county in which the school district is headquartered, if a loan under this section and any associated school construction bond issue were to be authorized in accordance with chapter 21-03;
    - (3) Publish in the official newspaper of the district the information from the statements required by this subdivision with the notice of the election to authorize the school construction bond issuance in accordance with section 21-03-12; and
    - (4) Post on the school district's website the information from the statements preceding the date of the election to authorize the school construction bond issuance in accordance with chapter 21-03;
  - d. Receive authorization for a bond issuance in accordance with chapter 21-03; and
  - e. Submit a completed application to the Bank of North Dakota.
3. With the advice and consent of the superintendent of public instruction, the Bank of North Dakota shall award the loans in accordance with a prioritization system that is based on a review of all applications filed during the twelve-month period preceding April first and gives consideration to:
  - a. Student occupancy and academic needs in the district;
  - b. The age of existing structures to be replaced or remodeled;
  - c. Building design proposals that are based on safety and vulnerability assessments;
  - d. Community support;
  - e. Cost; and
  - f. Any other criteria established in rule by the superintendent of public instruction, after consultation with an interim committee appointed by the legislative management.
4. The term of a loan under this section is twenty years, unless a shorter term is requested by the board of a school district in its application.
5. The interest rate on a loan under this section may not exceed two percent. The legislative assembly shall, however, conduct a biennial review of interest rates applicable to new loans.

6. If a school district's unobligated general fund balance on the preceding June thirtieth exceeds the limitation set forth under section 15.1-27-35.3, the loan amount to which that district is entitled under this section may not exceed eighty percent of the project's cost.
7. The maximum loan amount to which a school district is entitled under this section is twenty million dollars.
8.
  - a. The Bank of North Dakota shall manage and service each loan under this section and shall execute all necessary loan instruments. The Bank may charge a school district a fee for managing and servicing the loan.
  - b. The Bank shall receive payments of principal and interest from school districts and shall deposit such payments in the school construction assistance loan fund.

**15.1-36-08. School construction assistance loan fund - Continuing appropriation.**

1. The school construction assistance loan fund is a special revolving loan fund in the state treasury. The fund consists of:
  - a. All moneys appropriated or transferred to the fund by the legislative assembly;
  - b. One hundred fifty million dollars from the strategic investment and improvements fund, which had been allocated by the sixty-third legislative assembly for school construction loans in accordance with section 15.1-36-02; and
  - c. All interest or other earnings of the fund, and all repayments of loans made from the fund.
2. Moneys in the fund are appropriated on a continuing basis for the purpose of providing low-interest school construction loans, in accordance with this chapter.