

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1281

Page 1, line 1, after "enact" insert "sections 61-02-68.14, 61-02-68.15, 61-02-68.16, 61-02-68.17, 61-02-68.18, 61-02-68.19, and"

Page 1, line 2, after the first "to" insert "state water commission bonding authority, guarantees of evidences of indebtedness, and" and after the semicolon insert "to amend and reenact sections 61-02-68.1 and 61-02-68.12 of the North Dakota Century Code, relating to guarantees of evidences of indebtedness by the state water commission;"

Page 1, after line 4, insert:

"SECTION 1. AMENDMENT. Section 61-02-68.1 of the North Dakota Century Code is amended and reenacted as follows:

61-02-68.1. Borrowing on interim notes - Expenses paid and loans made from proceeds - Issuance of notes. The commission, pursuant to appropriate resolution, and in order to carry out the business of developing the water resources of this state as provided in this chapter, may borrow money and issue interim financing notes (the terms "interim notes" or "notes" ~~may~~, unless the context ~~demands~~ otherwise requires, may be used in sections 61-02-68.1 through ~~61-02-68.13~~ 61-02-68.19 in lieu of the term "interim financing notes") in evidence thereof in order to provide owners with ~~tax-exempt~~ construction period financing. ~~Such~~ The construction period financing may include the costs of construction of works or projects, funding of debt service reserves and capitalized interest, and the payment of the costs of issuance.

SECTION 2. AMENDMENT. Section 61-02-68.12 of the North Dakota Century Code is amended and reenacted as follows:

61-02-68.12. Interim financing notes or guarantees not a state obligation - Payment restricted to revenues - Notes or guarantees not a lien. Interim financing notes issued by the commission under this chapter ~~shall or guarantees provided under sections 61-02-68.14, 61-02-68.15, 61-02-68.16, 61-02-68.17, 61-02-68.18, or 61-02-68.19 are not be in any way~~ a debt or liability of this state and ~~shall do~~ not constitute a loan of the credit of this state or create any debt or debts, liability or liabilities on behalf of this state, or be or constitute a pledge of the faith and credit of this state, but all ~~such~~ notes ~~shall be or guarantees are~~ payable solely from funds pledged or available for their payment as authorized in this chapter. ~~Such~~ The notes ~~shall or guarantees do~~ not constitute a charge, lien, nor encumbrance, legal or equitable, upon any property of the commission, other than funds received pursuant to an interim financing agreement.

Each note issued under this chapter ~~shall~~ must recite in substance that the note, including interest thereon, is payable solely from a loan or grant to be made by an agency or instrumentality of the United States government, or North Dakota, and that the note does not constitute a debt of the commission within the meaning of any constitutional or statutory limit.

SECTION 3. Section 61-02-68.14 of the North Dakota Century Code is created and enacted as follows:

61-02-68.14. Guarantee issued by commission. The commission may guarantee evidences of indebtedness issued or other obligations undertaken by the owners of water projects eligible to receive municipal, rural, and industrial water supply funds pursuant to Pub. L. 99-294 [100 Stat. 418], or evidences of indebtedness issued

or other obligations undertaken by a not-for-profit organization establishing a financing program for the owners of the water projects eligible to receive municipal, rural, and industrial water supply funds pursuant to Pub. L. 99-294 [100 Stat. 418] for the purpose of providing the owners with construction period financing. Construction period financing may include the cost of construction of works or projects, funding of debt service reserves and capitalized interest, and the payment of the costs of issuance. A commission guarantee of indebtedness or other obligations of an owner of a water project must be authorized by resolution of the commission and must be evidenced by a written agreement approved by the commission.

SECTION 4. Section 61-02-68.15 of the North Dakota Century Code is created and enacted as follows:

61-02-68.15. Pledges. The commission may pledge the municipal, rural, and industrial water supply funds authorized by Pub. L. 99-294 [100 Stat. 418] as security for a guarantee or note. A pledge is valid and binding whenever the pledge is made. The revenues or other moneys pledged and thereafter received by the commission are immediately subject to the lien of the pledge without physical delivery or further act, and the lien of the pledge is valid and binding as against all parties having claims of any kind against the commission, regardless of whether the parties have notice. Neither the resolution nor any other instrument by which a pledge is created need be filed or recorded, except in the records of the commission.

SECTION 5. Section 61-02-68.16 of the North Dakota Century Code is created and enacted as follows:

61-02-68.16. Reserve fund.

1. The commission shall establish and maintain a reserve fund in which there must be deposited all moneys appropriated by the legislative assembly for the purpose of the fund, all proceeds of notes issued or guaranteed by the commission required to be deposited in the fund by terms of a contract or a resolution of the commission with respect to the proceeds of notes, any moneys or funds of the commission that it determines to deposit in the fund, any moneys made available to the commission for the purposes of the fund from any other source, and any contractual right to the receipt of moneys by the commission for the purpose of the fund, including a letter of credit or similar instrument. Moneys in the reserve fund must be held and applied solely to the payment of the interest on and the principal of notes and sinking fund payments as they become due and payable and for the retirement of notes, including payment of any redemption premium required to be paid when any notes are redeemed or retired before maturity, and for the payment of principal and interest on evidences of indebtedness or obligations guaranteed by the commission. Moneys in the reserve fund may not be withdrawn if the withdrawal would reduce the amount in the reserve fund to an amount less than the required debt service reserve, except for payment of the interest due and payable on notes and the principal of notes maturing and payable and sinking fund payments and for the retirement of notes in accordance with the terms of a contract between the commission and its noteholders, for the payment of principal and interest on evidences of indebtedness or obligations of an owner of water projects for which a guarantee has been issued by the commission, and for payment of interest or principal or sinking fund payments or retirement of notes or draws upon a guarantee, for which other moneys of the commission are not then available in accordance with the terms of the contract. The reserve fund may not be used for the payment of a guarantee by the commission unless the commission has determined that notes of the commission cannot be issued under acceptable terms for the payment of the guarantee or that the payment of the guarantee will not reduce the reserve fund to an amount less than the required debt service

reserve. The required debt service reserve must be an aggregate amount equal to at least the largest amount of money required by the terms of all contracts between the commission and its noteholders to be raised in the current or any succeeding calendar year for the payment of interest on and maturing principal of outstanding notes and the payment required by the terms of any contract to a sinking fund established for the payment or redemption of the notes.

2. If the establishment of the reserve fund for an issue or the maintenance of an existing reserve fund at a required level under this section would necessitate the investment of all or any portion of a new reserve fund or all or any portion of an existing reserve fund at a restricted yield, because to not restrict the yield may cause the notes to be taxable under the Internal Revenue Code, then at the discretion of the commission a reserve fund does not need be established before the issuance of notes or the reserve fund need not be funded to the levels required by other subsections of this section or an existing reserve fund may be reduced.
3. Notes may not be issued by the commission unless there is in the reserve fund the required debt service reserve for all notes then issued and outstanding and the notes to be issued. This chapter does not prevent or preclude the commission from satisfying this requirement by depositing so much of the proceeds of the notes to be issued, upon their issuance, as is needed to achieve the required debt service reserve. The commission may issue its notes for the purpose of providing an amount necessary to increase the amount in the reserve fund to the required debt service reserve, or to meet any higher or additional reserve as may be fixed by the commission with respect to the fund.
4. In order to assure the maintenance of the required debt service reserve, there must be appropriated by the legislative assembly and paid to the commission for deposit in the reserve fund any sum certified by the commission as necessary to restore the reserve fund to an amount equal to the required debt service reserve or to maintain a reserve fund established by the commission under this chapter and required according to the terms of a guarantee issued by the commission. The commission may approve a resolution for the issuance of notes, as provided by this chapter, which states in substance that this subsection is not applicable to the required debt service reserve for notes issued under that resolution.
5. If the maturity of a series of notes of the commission is not more than three years from the date of issuance of the notes, the commission may determine that no reserve fund need be established for that respective series of notes or that the reserve fund may be in an amount less than the required debt service reserve. If the determination is made, holders of that respective series of notes do not have an interest in or claim on existing reserve funds established for the security of the holders of previously issued commission notes, and do not have an interest in or claim on reserve funds established for the holders of subsequent issues of notes of the commission.

SECTION 6. Section 61-02-68.17 of the North Dakota Century Code is created and enacted as follows:

61-02-68.17. Additional reserves and funds. The commission may establish additional and further reserves or other funds or accounts as may be necessary, desirable, or convenient to further the accomplishment of the purposes of the commission to comply with the provisions of an agreement made by or a resolution of the commission.

SECTION 7. Section 61-02-68.18 of the North Dakota Century Code is created and enacted as follows:

61-02-68.18. Protection of service during term of guarantee or loan.

1. The service provided or made available by owners of water projects through the construction or acquisition of an improvement, or the improvement revenues, financed in whole or in part with a guarantee or loan to the owners of water projects from the commission or any other state entity, may not be curtailed or limited by inclusion of all or any part of the area served by the owners of water projects within the boundaries of any other owners of water projects, or by the granting of any private franchise for similar service within the area served by the owners of water projects, during the term of the guarantee or loan. The owners of water projects providing the service may not be required to obtain or secure a franchise, license, or permit as a condition of continuing to serve the area if it is included within the boundaries of another owner of a water project during the term of the guarantee or loan.
2. Under the circumstances described in subsection 1, nothing prevents the two owners of water projects and the commission or other state entity from negotiating an agreement for the right or obligation to provide the service in question, provided that an agreement is invalid unless the commission or other state agency or enterprise is a party to the agreement and unless the agreement contains adequate safeguards to ensure the security and timely payment of any outstanding notes of the commission issued to fund the loan.

SECTION 8. Section 61-02-68.19 of the North Dakota Century Code is created and enacted as follows:

61-02-68.19. Interim financing notes, guarantees, or bonds for municipal, rural, and industrial water supply projects - Public interest. Guarantees made under section 61-02-68.14 or bonds or interim notes issued under chapter 61-02 for the purpose of providing construction period financing for owners of water projects eligible to receive municipal, rural, and industrial water supply funds pursuant to Pub. L. 99-294 [100 Stat. 418] are in the public interest and are not subject to the limitation contained in subsection 2 of section 61-02-46."

Page 1, underscore lines 7 through 23

Page 2, underscore line 1

Page 2, line 2, underscore "of or interest on municipal securities, investment income, revenues, appropriations," and after the fourth comma insert "liquidation of security."

Page 2, underscore lines 3 through 27

Page 2, line 28, underscore "private bond markets", replace "with" with "without", and underscore "the guarantee of the program. The program may hold municipal"

Page 2, underscore lines 29 through 31

Page 3, line 1, underscore "obligations, and assist irrigation districts as provided in this chapter. Bonds", after "Bonds" insert "or guarantees", and underscore "of the program"

Page 3, underscore lines 2 through 11

Page 3, line 12, underscore "program to incur any indebtedness or liability on behalf of or payable by the state." and after the period insert "Guarantees or bonds issued under this chapter are in the public interest and are not subject to the limitation contained in subsection 2 of section 61-02-46."

Page 3, after line 12, insert:

"How bonds or guarantees may be secured. A bond or guarantee issued by the program may be secured by works or lands and the income derived from those works or lands."

Page 3, underscore lines 13 through 31

Page 4, underscore lines 1 through 31

Page 5, underscore lines 1 through 31

Page 6, underscore lines 1 through 31

Page 7, underscore lines 1 through 29

Page 8, underscore lines 1 through 31

Page 9, underscore lines 1 through 31

Page 10, underscore lines 1 through 17

Renumber accordingly