

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

SENATE BILL NO. 2276
(Senators Espegard, Grindberg)
(Representative Dosch)

AN ACT to amend and reenact section 6-09.4-02, subsection 5 of section 6-09.4-03, sections 6-09.4-06, 6-09.4-07, 6-09.4-09, and 6-09.4-13, and subsection 1 of section 40-57-02 of the North Dakota Century Code, relating to the purchase of qualified small issue bonds by the municipal bond bank and issuance of municipal industrial development revenue bonds by the municipal bond bank; and to provide program limits for the purchase or issuance of qualified small issue bonds or municipal industrial revenue bonds by the municipal bond bank.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09.4-02 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-02. Legislative policy. It is declared to be the policy of the state of North Dakota to foster and promote the provision of adequate capital markets and facilities for borrowing money by political subdivisions or other contracting parties and for the financing of their respective public improvements or projects as those terms are used or defined in this chapter or chapter 40-57. It is in the public interest to encourage political subdivisions or other contracting parties to continue their independent undertakings of public improvements or projects and the financing thereof by making funds available at reduced interest costs, especially during periods of restricted credit or money supply. Current credit and municipal bond market conditions require the exercise of the powers of the state to further and implement such policies by authorizing a state instrumentality to be created to borrow money and to issue its bonds to make funds available at reduced rates and on favorable terms for borrowing by political subdivisions or other contracting parties through the purchase or holding of marketable municipal securities of political subdivisions or other contracting parties in fully marketable form or in another form adequate to secure bonds issued by the state instrumentality and by granting broad powers to accomplish and to carry out the policies of the state.

SECTION 2. AMENDMENT. Subsection 5 of section 6-09.4-03 of the North Dakota Century Code is amended and reenacted as follows:

5. "Municipal security" means an evidence of indebtedness issued by a political subdivision and a revenue agreement entered into by a contracting party as those terms are used in chapter 40-57, but does not generally include an evidence of indebtedness issued pursuant to chapter 40-57 other than an evidence of indebtedness that qualifies as a qualified small issue bond as defined under 26 U.S.C. 144(a) [Pub. L. 99-514; 100 Stat. 2606], as amended, and regulations promulgated and officially proposed to be promulgated thereunder, or as an "exempt facility bond" as defined under 26 U.S.C. 142(a) (4), (5), or (6) [Pub. L. 99-514; 100 Stat. 2606], as amended, and regulations promulgated and officially proposed to be promulgated thereunder, issued to provide one of the following:

 - a. A facility for the furnishing of water.
 - b. A wastewater facility.
 - c. A ~~nonpoint source pollution control~~ solid waste disposal facility.

SECTION 3. AMENDMENT. Section 6-09.4-06 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-06. Lending and borrowing powers generally. The bond bank may lend money to political subdivisions or other contracting parties through the purchase ~~and~~ or holding of municipal securities which, in the opinion of the attorney general, are properly eligible for purchase or holding by the bond bank under this chapter or chapter 40-57 and for which the principal amount of any one issue does not exceed two hundred thousand dollars. However, the bond bank may lend money to political subdivisions or other contracting parties, through the purchase ~~and~~ or holding of securities issued by the political subdivisions or other contracting parties without regard to the principal amount of the bonds issued, if the industrial commission approves a resolution that authorizes the bond bank to purchase ~~and~~ or hold the securities. The authorizing resolution must state that the industrial commission has determined that private bond markets will not be responsive to the needs of the issuing political subdivision or other contracting party concerning the securities or, if it appears that the securities can be sold through private bond markets without the involvement of the bond bank, the authorizing resolution must state reasons for the bond bank's involvement in the bond issue. The bond bank may hold such municipal securities for any length of time it finds to be necessary. The bond bank, for the purposes authorized by this chapter or chapter 40-57, may issue its bonds payable solely from the revenues available to the bond bank which are authorized or pledged for payment of bond bank obligations, and to otherwise assist political subdivisions or other contracting parties as provided in this chapter or chapter 40-57.

The bond bank may lend money to the Bank of North Dakota under terms and conditions requiring the Bank to use the proceeds to make loans for agricultural improvements that qualify for assistance under the revolving loan fund program established by chapter 61-28.2.

Bonds of the bond bank issued under this chapter or chapter 40-57 are not in any way a debt or liability of the state and do not constitute a loan of the credit of the state or create any debt or debts, liability or liabilities, on behalf of the state, or constitute a pledge of the faith and credit of the state, but all such bonds are payable solely from revenues pledged or available for their payment as authorized in this chapter. Each bond must contain on its face a statement to the effect that the bond bank is obligated to pay such principal or interest, and redemption premium, if any, and that neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or the interest on such bonds. Specific funds pledged to fulfill the bond bank's obligations are obligations of the bond bank.

All expenses incurred in carrying out the purposes of this chapter or chapter 40-57 are payable solely from revenues or funds provided or to be provided under this chapter or chapter 40-57 and nothing in this chapter may be construed to authorize the bond bank to incur any indebtedness or liability on behalf of or payable by the state.

SECTION 4. AMENDMENT. Section 6-09.4-07 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-07. Powers. The bond bank has the following powers:

1. To sue and be sued.
2. To make and enforce bylaws, rules, and regulations for the conduct of its affairs and business and for use of its services.
3. To acquire, hold, use, and dispose of its income, revenue, funds, and moneys in accordance with law, this chapter or chapter 40-57, or legislative appropriations.
4. To acquire, rent, lease, hold, use, and dispose of other personal property for its purposes.
5. To borrow money and to issue its negotiable bonds or notes and to provide for and secure the payment thereof and to provide for the rights of the holders thereof, and to purchase, hold, and dispose of any of its bonds.

6. To fix and revise from time to time and charge and collect fees and charges for the use of its services or facilities.
7. To do and perform any acts and things authorized by this chapter or chapter 40-57 under, through, or by means of its officers, agents, or employees or by contracts with any person, firm, or corporation.
8. To make, enter into, and enforce all contracts or agreements necessary, convenient, or desirable for the purposes of the bond bank or pertaining to any loan to a political subdivision or other contracting party or any purchase or sale of municipal securities or other investments or to the performance of its duties and execution or carrying out of any of its powers under this chapter or chapter 40-57.
9. To purchase or hold municipal securities of political subdivisions or other contracting parties at such prices and in such manner as the bond bank shall deem advisable, and to sell municipal securities acquired or held by it at such prices without relation to cost and in such manner as the bond bank deems advisable.
10. To invest any funds or moneys of the bond bank not then required for loan to political subdivisions or other contracting parties and for the purchase of municipal securities in the same manner as permitted for investment of funds belonging to the state or the Bank of North Dakota.
11. To fix and prescribe any form of application or procedure to be required of a political subdivision or other contracting party for the purpose of any loan or the purchase of its municipal securities, and to fix the terms and conditions of any such loan or purchase and to enter into agreements with political subdivisions or other contracting parties with respect to any such loan or purchase.
12. To consider the need, desirability, or eligibility of such loan, the ability of such political subdivision or other contracting party to secure borrowed money from other sources and the costs thereof, and the particular public improvement, project, or purpose to be financed by the municipal securities to be purchased by the bond bank.
13. To impose and collect charges from a political subdivision or other contracting party for its costs and services in review or consideration of any proposed loan to a political subdivision or other contracting party or purchase of municipal securities of such political subdivision or other contracting party, and to impose and collect charges therefor whether or not such loan has been made or such municipal securities have been purchased.
14. To fix and establish any and all terms and provisions with respect to any purchase of municipal securities by the bond bank, including dates and maturities of such bonds, provisions as to redemption or payment prior to maturity, and any and all other matters which in connection therewith are necessary, desirable, or advisable in the judgment of the bond bank.
15. To procure insurance against any losses in connection with its property, operations, or assets in such amounts and from such insurers as it deems desirable to pay the premiums on such insurance.
16. To the extent permitted under its contracts with the holders of bonds of the bond bank, to consent to any modification with respect to rates of interest, time, and payment of any installment of principal or interest, security, or any other term of bond, contract, or agreement of any kind to which the bond bank is a party.
17. To do all acts and things necessary, convenient, or desirable to carry out the powers expressly granted or necessarily implied in this chapter or chapter 40-57.

18. To do and perform any act and thing authorized by section 54-01-27 or 54-17-36 under, through, or by means of its officers, agents, or employees or by contracts with any person to assist the state, or any agency or institution of the state, in making, entering, and enforcing all contracts or agreements necessary, convenient, or desirable for the purposes of leasing all or part of, or an undivided or other interest in, property.

SECTION 5. AMENDMENT. Section 6-09.4-09 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-09. Pledges. Any pledge of revenue or of a revenue agreement under chapter 40-57 made by the industrial commission as security for bond bank bonds is valid and binding from time to time when the pledge is made. The industrial commission may also pledge assets of the Bank of North Dakota as security for bond bank bonds. The revenues or other moneys so pledged and thereafter received by the bond bank 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 bond bank, regardless of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be filed or recorded, except in the records of the bond bank.

SECTION 6. AMENDMENT. Section 6-09.4-13 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-13. Personal liability. Neither the members of the industrial commission nor any person executing bonds issued pursuant to this chapter or chapter 40-57 is liable personally on such bonds by reason of the issuance thereof.

SECTION 7. AMENDMENT. Subsection 1 of section 40-57-02 of the North Dakota Century Code is amended and reenacted as follows:

1. "Municipality" means counties as well as municipalities of the types listed in subsection 4 of section 40-01-01 and, in the case of parking projects, municipal parking authorities created pursuant to section 40-61-02 and the municipal bond bank or any successor in interest to the municipal bond bank for the purpose of issuing revenue bonds under this chapter. In acting as a municipality under this chapter, the municipal bond bank or its successor in interest shall follow the provisions of this chapter to the extent applicable or practicable but it need not comply with the notice and hearing provisions contained in sections 40-57-04 and 40-57-04.1 or the provisions of section 40-57-10. In the event of a conflict between the provisions of this chapter and chapter 6-09.4, the provisions of chapter 6-09.4 govern.

SECTION 8. MUNICIPAL BOND BANK PROGRAM LIMITS. Any qualified small issue bonds or municipal industrial revenue bonds purchased or issued by the municipal bond bank under this Act may not exceed two million dollars per political subdivision or other contracting party, as the case may be, and twenty million dollars in total for the biennium beginning July 1, 2005, and ending June 30, 2007, except that these limits do not apply to revenue bonds issued by the municipal bond bank under chapter 40-57 if the industrial commission approves a resolution under the second sentence of subsection 4 of section 6-09.4-10 making that subsection inapplicable to bonds issued under the resolution.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2276.

Senate Vote: Yeas 44 Nays 3 Absent 0

House Vote: Yeas 91 Nays 0 Absent 3

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,
at _____ o'clock _____ M.

Secretary of State