

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

SENATE BILL NO. 2074
(Industry, Business and Labor Committee)
(At the request of the Municipal Bond Bank)

AN ACT to create and enact three new sections to chapter 6-09.4 of the North Dakota Century Code, relating to changing the name of the municipal bond bank to the public finance authority and authorizing the authority to issue bonds on behalf of other state bonding entities; and to amend and reenact sections 6-09.4-01, 6-09.4-03, 6-09.4-04, 6-09.4-05, 6-09.4-05.1, 6-09.4-06, 6-09.4-07, 6-09.4-08, 6-09.4-09, 6-09.4-10, 6-09.4-11, 6-09.4-12, 6-09.4-14, 6-09.4-15, 6-09.4-16, 6-09.4-17, 6-09.4-18, 6-09.4-19, 6-09.4-20, 6-09.4-21, 6-09.4-22, 6-09.4-23, 21-02-11, and 21-03-30, subsection 7 of section 26.1-05-19, subdivision I of subsection 2 of section 28-32-01, subsection 9 of section 40-33.3-06, sections 54-01-27 and 54-17-36, subsection 1 of section 61-28.1-12, and subsections 2 and 3 of section 61-28.2-01 of the North Dakota Century Code, relating to changing the name of the municipal bond bank to the public finance authority and to use of the reserve fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09.4-01 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-01. Title. This chapter must be known as the "North Dakota ~~Municipal Bond Bank~~ Public Finance Authority Act".

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

6-09.4-03. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. ~~"Bond bank"~~ means the North Dakota municipal bond bank created by section 6-09.4-04.
2. "Bondholder" or "holder" or any similar term when used with reference to a bond of the ~~bond bank~~ public finance authority means any person who is the bearer of any outstanding bond of the ~~bond bank~~ public finance authority.
3. ~~2.~~ "Bonds" or "bond" means evidences of indebtedness of the ~~bond bank~~ public finance authority issued pursuant to this chapter.
4. ~~3.~~ "Fully marketable form" means a municipal security duly executed and accompanied by an approving legal opinion of a counsel whose opinions are generally accepted by the ~~bond bank~~ public finance authority or other purchasers of municipal securities.
5. ~~4.~~ "Municipal security" means an evidence of indebtedness issued by a political subdivision, but does not include an evidence of indebtedness issued pursuant to chapter 40-57 other than an evidence of indebtedness that qualifies 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 facility.

- 6- 5. "Political subdivision" means:
- a. A local governmental unit created by statute or by the Constitution of North Dakota for local governmental or other public purposes.
 - b. The state department of health, or any other state agency or authority, or any member-owned association or publicly owned and nonprofit corporation:
 - (1) Operating any public water system that is subject to chapter 61-28.1.
 - (2) Operating any facility, system, or other related activity that is eligible for financial assistance under chapter 61-28.2.
 - c. The Bank of North Dakota, for purposes of the revolving loan fund program established by chapter 61-28.2.
 - d. The state water commission, for purposes of the revolving loan fund program established by chapter 61-28.1.
6. "Public finance authority" means the public finance authority created by section 6-09.4-04.
7. "Required debt service reserve" means the amount required to be on deposit in the reserve fund.
8. "Reserve fund" means the ~~North Dakota municipal bond bank~~ public finance authority reserve fund or funds created as provided in section 6-09.4-10.
9. "Revenues" means any or all fees, charges, moneys, profits, payments of principal or interest on municipal securities, investment income, revenues, appropriations, and all other income derived or to be derived by the ~~bond bank~~ public finance authority under this chapter.

SECTION 3. AMENDMENT. Section 6-09.4-04 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-04. Creation of ~~bond bank~~ public finance authority. A ~~bond bank~~ public finance authority is hereby established under the operation, management, and control of the industrial commission to be known as the "~~North Dakota municipal bond bank~~ public finance authority". The ~~bond bank~~ public finance authority is constituted as an instrumentality of the state exercising public and governmental functions, and the exercise by the ~~bond bank~~ public finance authority of the powers conferred by this chapter must be deemed and held to be an essential governmental function of the state.

SECTION 4. AMENDMENT. Section 6-09.4-05 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-05. Participation voluntary - Agreement to participate. Participation by a political subdivision is entirely voluntary and no political subdivision may be required to sell its bond issues to the ~~bond bank~~ public finance authority. Notwithstanding any other state law applicable to the issuance of bonds, a political subdivision desiring to participate in the ~~bond bank~~ public finance authority may enter into an agreement with the ~~bond bank~~ public finance authority for the purchase by the ~~bond bank~~ public finance authority of a bond issue or issues of the political subdivision, including the purchase by the ~~bond bank~~ public finance authority of an issue or issues of refunding bonds, which refunding bonds may be required by the agreement to be issued at a rate or rates of interest higher or lower than that of the bond issue or issues to be refunded.

SECTION 5. AMENDMENT. Section 6-09.4-05.1 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-05.1. Administrative agreements with state agencies. The ~~bond bank~~ public finance authority and any state agency authorized by state or federal law to make an allocation of bonds or bonding authority or to make loans, or to issue bonds to obtain funds for the purpose of making loans, to political subdivisions may enter into an administrative agreement, which may authorize the ~~bond bank~~ public finance authority to administer the loan or bond program for the state agency. The agreement may delegate to the ~~bond bank~~ public finance authority the authority to make loans, or to issue bonds to obtain funds for the purpose of making loans, to political subdivisions.

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

The ~~bond bank~~ public finance authority 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~~ public finance authority issued under this chapter 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~~ public finance authority 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~~ public finance authority's obligations are obligations of the ~~bond bank~~ public finance authority.

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

SECTION 7. 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~~ public finance authority 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 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 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~~ public finance authority or pertaining to any loan to a political subdivision 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.
9. To purchase or hold municipal securities of political subdivisions at such prices and in such manner as the ~~bond bank~~ public finance authority 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~~ public finance authority deems advisable.
10. To invest any funds or moneys of the ~~bond bank~~ public finance authority not then required for loan to political subdivisions 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 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 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 to secure borrowed money from other sources and the costs thereof, and the particular public improvement or purpose to be financed by the municipal securities to be purchased by the ~~bond bank~~ public finance authority.
13. To impose and collect charges from a political subdivision for its costs and services in review or consideration of any proposed loan to a political subdivision or purchase of municipal securities of such political subdivision, 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~~ public finance authority, 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~~ public finance authority.

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~~ public finance authority, 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~~ public finance authority 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.
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 8. AMENDMENT. Section 6-09.4-08 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-08. Bonds of the ~~bond bank~~ public finance authority. Bonds of the ~~bond bank~~ public finance authority must be authorized by resolution of the industrial commission and may be issued in one or more series and must bear such date or dates, mature at such time or times, bear interest at such rate or rates of interest per year, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable from such sources in such medium of payment at such place or places within or without the state, and be subject to such terms of redemption, with or without premium, as such resolution or resolutions may provide. Bonds of the ~~bond bank~~ public finance authority, issued to provide funds to a municipal pipeline authority, are to mature not more than thirty years from the date of issue. Bonds of the ~~bond bank~~ public finance authority may be sold at public or private sale at such time or times and at such price or prices as the ~~bond bank~~ public finance authority determines.

SECTION 9. 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 made by the industrial commission as security for ~~bond bank~~ public finance authority 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~~ public finance authority bonds. The revenues or other moneys so pledged and thereafter received by the ~~bond bank~~ public finance authority 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~~ public finance authority, 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~~ public finance authority.

SECTION 10. AMENDMENT. Section 6-09.4-10 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-10. Reserve fund.

1. The ~~bond bank~~ public finance authority shall establish and maintain a reserve fund in which there must be deposited all moneys appropriated by the state for the purpose of the fund, all proceeds of bonds required to be deposited therein by terms of any contract between the ~~bond bank~~ public finance authority and its bondholders or any resolution of

the ~~bond bank~~ public finance authority with respect to the proceeds of bonds, any other moneys or funds of the ~~bond bank~~ public finance authority which it determines to deposit therein, any contractual right to the receipt of moneys by the ~~bond bank~~ public finance authority for the purpose of the fund, including a letter of credit or similar instrument, and any other moneys made available to the ~~bond bank~~ public finance authority only for the purposes of the fund from any other source or sources. 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 same become due and payable and for the retirement of bonds, including payment of any redemption premium required to be paid when any bonds are redeemed or retired prior to maturity. Moneys in the reserve fund may not be withdrawn therefrom 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 interest then due and payable on bonds and the principal of bonds then maturing and payable and sinking fund payments and for the retirement of bonds in accordance with the terms of any contract between the ~~bond bank~~ public finance authority and its bondholders and for the payments on account of which interest or principal or sinking fund payments or retirement of bonds, other moneys of the ~~bond bank~~ public finance authority are not then available in accordance with the terms of the contract. 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 ~~bond bank~~ public finance authority and its bondholders to be raised in the then current or any succeeding calendar year for the payment of interest on and maturing principal of outstanding bonds, and sinking fund payments required by the terms of any contracts to sinking funds established for the payment or redemption of the bonds.

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 bonds to be taxable under the Internal Revenue Code, then at the discretion of the ~~bond bank~~ public finance authority no reserve fund need be established prior to the issuance of bonds 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. No bonds may be issued by the ~~bond bank~~ public finance authority unless there is in the reserve fund the required debt service reserve for all bonds then issued and outstanding and the bonds to be issued. Nothing in this chapter prevents or precludes the ~~bond bank~~ public finance authority from satisfying the foregoing requirement by depositing so much of the proceeds of the bonds to be issued, upon their issuance, as is needed to achieve the required debt service reserve. The ~~bond bank~~ public finance authority may at any time issue its bonds or notes for the purpose of providing any amount necessary to increase the amount in the reserve fund to the required debt service reserve, or to meet such higher or additional reserve as may be fixed by the ~~bond bank~~ public finance authority with respect to such fund.
4. In order to assure the maintenance of the required debt service reserve, there shall be appropriated by the legislative assembly and paid to the ~~bond bank~~ public finance authority for deposit in the reserve fund, such sum, if any, as shall be certified by the industrial commission as necessary to restore the reserve fund to an amount equal to the required debt service reserve. However, the commission may approve a resolution for the issuance of bonds, as provided by section 6-09.4-06, which states in substance that this subsection is not applicable to the required debt service reserve for bonds issued under that resolution.
5. If the maturity of a series of bonds of the ~~bond bank~~ public finance authority is three years or less from the date of issuance of the bonds, the ~~bond bank~~ public finance authority may determine that no reserve fund need be established for that respective series of bonds. If

such a determination is made, holders of that respective series of bonds may have no interest in or claim on existing reserve funds established for the security of the holders of previously issued ~~bond bank~~ public finance authority bonds, and may have no interest in or claim on reserve funds established for the holders of subsequent issues of bonds of the ~~bond bank~~ public finance authority.

The industrial commission may determine that this section is inapplicable in whole or in part for bonds issued under section 23 of this Act.

SECTION 11. AMENDMENT. Section 6-09.4-11 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-11. Additional reserves and funds. The ~~bond bank~~ public finance authority may establish such additional and further reserves or such other funds or accounts as may be, in its discretion, necessary, desirable, or convenient to further the accomplishment of the purposes of the ~~bond bank~~ public finance authority to comply with the provisions of any agreement made by or any resolution of the ~~bond bank~~ public finance authority.

SECTION 12. AMENDMENT. Section 6-09.4-12 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-12. Participation by ~~bond bank~~ public finance authority in bonds held by ~~bank~~ Bank of North Dakota. The ~~bond bank~~ public finance authority may issue its bonds from time to time in an amount sufficient to purchase municipal securities held by the Bank of North Dakota at a price established by mutual agreement between the ~~bond bank~~ public finance authority and the Bank of North Dakota.

SECTION 13. AMENDMENT. Section 6-09.4-14 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-14. Purchase of bonds of ~~bond bank~~ public finance authority. The ~~bond bank~~ public finance authority has the power to purchase bonds of the ~~bond bank~~ public finance authority out of any funds or money of the ~~bond bank~~ public finance authority available therefor. The ~~bond bank~~ public finance authority may hold, cancel, or resell such bonds or notes subject to and in accordance with agreements with holders of its bonds.

SECTION 14. AMENDMENT. Section 6-09.4-15 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-15. Bonds as legal investments and security. Notwithstanding any restrictions contained in any other law, the state and all public officers, boards, and agencies, and political subdivisions and agencies thereof, all national banking associations, state banks, trust companies, savings banks and institutions, savings and loan associations, investment companies, and other persons carrying on a banking business, and all executors, administrators, guardians, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds issued by the ~~bond bank~~ public finance authority pursuant to this chapter, and the bonds are authorized security for any and all public deposits.

SECTION 15. AMENDMENT. Section 6-09.4-16 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-16. Tax exemptions. All property of the ~~bond bank~~ public finance authority and all bonds issued under this chapter must be deemed to be serving essential public and governmental purposes and such property and such bonds so issued, their transfer and the income therefrom, including any profits made on the sale thereof, shall at all times be exempt from state, county, and municipal taxes of any and all kinds.

SECTION 16. AMENDMENT. Section 6-09.4-17 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-17. Exemption of property from execution sale. All property of the ~~bond bank~~ public finance authority is exempt from levy and sale by virtue of an execution and no execution or other judicial process may issue against the same nor may any judgment against the ~~bond bank~~ public finance authority be a charge or lien upon its property; provided, that nothing contained in this chapter applies to or limits the rights of the holder of any bonds to pursue any remedy for the enforcement of any pledge or lien given by the ~~bond bank~~ public finance authority on its revenues. Any action or proceeding in any court to set aside a resolution authorizing the issuance of bonds by the ~~bond bank~~ public finance authority under this chapter or to obtain any relief upon the ground that such resolution is invalid must be commenced within ten days after the adoption of said resolution by the industrial commission. After the expiration of such period of limitation, no claim for relief or defense founded upon the invalidity of the resolution or any of its provisions may be asserted nor may the validity of the resolution or any of its provisions be open to question in any court on any ground whatever.

SECTION 17. AMENDMENT. Section 6-09.4-18 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-18. Insurance or guaranty. The ~~bond bank~~ public finance authority is authorized and empowered to obtain from any entity of the state, any department or agency of the United States of America, or any nongovernmental insurer any insurance, guaranty, or liquidity facility, or from a financial institution a letter of credit to the extent such insurance, guaranty, liquidity facility, or letter of credit now or hereafter available, as to, or for, the payment or repayment of, interest or principal, or both, or any part thereof, on any bonds issued by the ~~bond bank~~ public finance authority, or on any municipal securities purchased or held by the ~~bond bank~~ public finance authority, pursuant to this chapter; and to enter into any agreement or contract with respect to any such insurance, guaranty, letter of credit, or liquidity facility, and pay any required fee, unless the same would impair or interfere with the ability of the ~~bond bank~~ public finance authority to fulfill the terms of any agreement made with the holders of its bonds.

SECTION 18. AMENDMENT. Section 6-09.4-19 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-19. Remedies on default of municipal securities. In the event of default by a political subdivision in the payment of interest on or principal of any municipal securities owned or held by the ~~bond bank~~ public finance authority, the ~~bond bank~~ public finance authority may proceed to enforce payment, pursuant to applicable provisions of law, of such interest or principal or other amount then due and payable.

SECTION 19. AMENDMENT. Section 6-09.4-20 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-20. Form of municipal securities and investments. All municipal securities held by the ~~bond bank~~ public finance authority as permitted or provided for under this chapter must at all times be purchased and held in fully marketable form, subject to provision for any registration in the name of the ~~bond bank~~ public finance authority. All municipal securities at any time purchased, held, or owned by the ~~bond bank~~ public finance authority must, upon delivery to the ~~bond bank~~ public finance authority, be in fully marketable form and accompanied by such documentation as shall from time to time be required by the ~~bond bank~~ public finance authority.

SECTION 20. AMENDMENT. Section 6-09.4-21 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-21. Presumption of validity. After issuance, all bonds of the ~~bond bank~~ public finance authority are conclusively presumed to be fully authorized and issued under the laws of the state, and any person or governmental unit is estopped from questioning their authorization, sale, issuance, execution, or delivery by the ~~bond bank~~ public finance authority.

SECTION 21. AMENDMENT. Section 6-09.4-22 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-22. Protection of service during term of loan.

1. The service provided or made available by a political subdivision through the construction or acquisition of an improvement, or the revenues therefrom, financed in whole or in part with a loan to the political subdivision from the ~~bond bank~~ public finance authority or any other state agency or enterprise, may not be curtailed or limited by inclusion of all or any part of the area served by the political subdivision within the boundaries of any other political subdivision, or by the granting of any private franchise for similar service within the area served by the political subdivision, during the term of the loan. The political subdivision providing the service may not be required to obtain or secure any franchise, license, or permit as a condition of continuing to serve the area if it is included within the boundaries of another political subdivision during the term of the loan.
2. Under the circumstances described in subsection 1, nothing prevents the two political subdivisions, with the ~~bond bank~~ public finance authority or other state agency or enterprise, from negotiating an agreement for the right or obligation to provide the service in question, provided that any agreement is invalid and unenforceable unless the ~~bond bank~~ public finance authority 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 bonds of the ~~bond bank~~ public finance authority issued to fund the loan.

SECTION 22. AMENDMENT. Section 6-09.4-23 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-23. Evidences of indebtedness - Authority to withhold school district state aid.

1. If the ~~municipal bond bank~~ public finance authority or a paying agent notifies the superintendent of public instruction, in writing, that a school district has failed to pay when due the principal or interest on any evidences of indebtedness issued after July 31, 1999, or that the ~~bond bank~~ public finance authority or the paying agent has reason to believe a school district will not be able to make a full payment of the principal and interest when the payment is due, the superintendent of public instruction shall withhold any funds that are due or payable or appropriated to the school district under chapter 15.1-27 until the payment of the principal or interest has been made to the ~~bond bank~~ public finance authority or the paying agent, or until the ~~bond bank~~ public finance authority or the paying agent notifies the superintendent of public instruction that arrangements satisfactory to the ~~bond bank~~ public finance authority or the paying agent have been made for the payment of the principal and interest then due and owing. The notification must include information required by the superintendent of public instruction. State funds available to a school district under chapter 15.1-27 are not subject to withholding under this section unless the withholding is authorized by resolution of the district's school board.
2. Notwithstanding any withholding of state funds under section 15-39.1-23 or any other law, the superintendent of public instruction shall make available any funds withheld under subsection 1 to the ~~municipal bond bank~~ public finance authority or the paying agent. The ~~bond bank~~ public finance authority or the paying agent shall apply the funds to payments that the school district is required to make to the ~~bond bank~~ public finance authority or the paying agent.
3. If funds are withheld from a school district and made available to the ~~bond bank~~ public finance authority or a paying agent under this section and if tax revenues are received by the school district during the fiscal year in which the funds are withheld and are deposited in the district's sinking fund established in accordance with section 21-03-42, the district, with the consent of the ~~bond bank~~ public finance authority or the paying agent, may

withdraw from its sinking fund an amount equal to that withheld by the superintendent of public instruction and made available to the ~~bond bank~~ public finance authority or a paying agent under this section.

4. Any excess funds at the Bank of North Dakota escrowed pursuant to an agreement between the ~~municipal bond bank~~ public finance authority and the state board of public school education for the benefit of the ~~bond bank~~ public finance authority and a school district must be held by the Bank. With the approval of the superintendent of public instruction, those funds may be used to subsidize the debt service payments on construction loans that are made to school districts by the ~~bond bank~~ public finance authority and which are subject to the withholding provisions of this section or construction loans made to school districts under the state school construction program established by section 11 of chapter 2 of the 1989 Session Laws. Notwithstanding the existence of an escrow agreement between the ~~bond bank~~ public finance authority and the state board of public school education, those funds must be transferred to the ~~bond bank~~ public finance authority upon certification by the ~~bond bank~~ public finance authority that the funds are in excess of the amount needed to provide for the payment in full of the outstanding principal and interest, when due, on the ~~bond bank~~ public finance authority bonds issued to purchase the municipal securities for which the escrow fund was established.

SECTION 23. A new section to chapter 6-09.4 of the North Dakota Century Code is created and enacted as follows:

Public finance authority - Issuance on behalf of other state agencies. The public finance authority may issue bonds or other evidences of indebtedness on behalf of other state agencies, instrumentalities, or officers, including the farm finance agency, industrial commission, North Dakota building authority, student loan trust, and any other state agency, instrumentality, or officer authorized by law to issue bonds or other evidences of indebtedness and which elects to enter into an administrative agreement with the public finance authority under this chapter. The public finance authority may be assisted by any other official appointed by the industrial commission to aid the executive director or to serve as an authorized officer of the public finance authority from time to time. Notwithstanding any other provision of law, in issuing bonds or other evidences of indebtedness and in administering or managing any bond issue postissuance on behalf of any other state agency, instrumentality, or officer, the public finance authority may exercise any of the powers and authority of that state agency, instrumentality, or officer which the industrial commission determines to be necessary or expedient in the issuance of bonds or other evidences of indebtedness or in the administration or management of the issue. Any bonds or other evidences of indebtedness issued by the public finance authority on behalf of any other state agency, instrumentality, or officer, if so determined by the industrial commission, continues to be the obligation or liability of the state agency or instrumentality as otherwise provided by law and not an obligation or liability of the public finance authority.

SECTION 24. A new section to chapter 6-09.4 of the North Dakota Century Code is created and enacted as follows:

Administrative agreements with state agencies and instrumentalities to issue bonds and other evidences of indebtedness. The public finance authority and any state agency, instrumentality, or officer authorized by law to issue bonds or other evidences of indebtedness to obtain funds for any authorized purpose may enter into an administrative agreement. The agreement may delegate to the public finance authority the power and authority to issue bonds or other evidences of indebtedness on behalf of the state agency, instrumentality, or officer to obtain funds for any other purpose authorized by law and may contain such other necessary or expedient terms and conditions as the industrial commission and the parties to the administrative agreement approve to effect the issuance of the bonds or other evidences of indebtedness and to aid in the administration or management of any bond issue after issuance.

SECTION 25. A new section to chapter 6-09.4 of the North Dakota Century Code is created and enacted as follows:

Public finance authority as continuation of and successor in interest to municipal bond bank.

1. Beginning with the effective date of this Act, the public finance authority is deemed the continuation of and successor in interest to the municipal bond bank and any reference to the municipal bond bank or bond bank in any agreement, certificate, contract, covenant, indenture, resolution, recital, undertaking, bond, note, other evidence of indebtedness, or in any other document or instrument means the public finance authority.
2. The public finance authority as the continuation of and successor in interest to the municipal bond bank is deemed to:
 - a. Possess all rights, title, privileges, powers, immunities, property, assets, and claims of the bond bank; and
 - b. Fulfill and perform all obligations of the bond bank, including all bond bank obligations relating to outstanding bonds and notes.

SECTION 26. AMENDMENT. Section 21-02-11 of the North Dakota Century Code is amended and reenacted as follows:

21-02-11. Advertising for bids - When required - Procedure similar to bond sales. If the governing board of a political subdivision determines to borrow upon certificates of indebtedness, it shall follow the procedure and is subject to the penalties prescribed in the provisions relating to the sale of bonds in chapter 21-03. Certificates of indebtedness need not be advertised for bids:

1. If they are sold to the state board of university and school lands, the Bank of North Dakota, the ~~North Dakota municipal bond bank~~ public finance authority, or in case other trust funds administered by public officials are invested in them; or
2. If they do not exceed the total sum of one hundred thousand dollars.

SECTION 27. AMENDMENT. Section 21-03-30 of the North Dakota Century Code is amended and reenacted as follows:

21-03-30. Municipal bonds - Private sale to United States or state agencies. The procedure prescribed in this chapter relative to calling for bids upon the sale of municipal bonds is not required in the case of bonds issued under the authorization of subdivision b or c of subsection 7 of section 21-03-06, or in case bonds are sold to:

1. The state board of university and school lands.
2. The Bank of North Dakota.
3. The ~~North Dakota municipal bond bank~~ public finance authority.
4. Trust funds administered by public officials.
5. The United States of America, or any agency or instrumentality thereof.

SECTION 28. AMENDMENT. Subsection 7 of section 26.1-05-19 of the North Dakota Century Code is amended and reenacted as follows:

7. Bonds issued by the ~~North Dakota municipal bond bank~~ public finance authority pursuant to chapter 6-09.4.

SECTION 29. AMENDMENT. Subdivision I of subsection 2 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

- I. The industrial commission with respect to the activities of the Bank of North Dakota, North Dakota housing finance agency, ~~North Dakota municipal bond bank~~ public finance authority, North Dakota mill and elevator association, and North Dakota farm finance agency.

SECTION 30. AMENDMENT. Subsection 9 of section 40-33.3-06 of the North Dakota Century Code is amended and reenacted as follows:

9. May mortgage, pledge, and grant a security interest in any or all of its property or revenues to secure the repayment of moneys loaned to it or advanced to it by the ~~municipal bond bank~~ public finance authority as the result of a bond issue under chapter 6-09.4.

SECTION 31. AMENDMENT. Section 54-01-27 of the North Dakota Century Code is amended and reenacted as follows:

54-01-27. Lease of state-owned property. Notwithstanding any other provision of law, the state, or any agency or institution of the state, may enter agreements to lease all or part of, or an undivided or other interest in, any real or personal property belonging to the state, or any agency or institution of the state, to and, or, from any agency or institution of the state or any person for such compensation and upon such terms and conditions as the parties under such agreement may stipulate. Such agreements must be authorized by the board, if any, or commissioner or other executive officer of the commission, agency, or institution holding, controlling, possessing, or owning the property or on whose behalf the property is held, and must be approved by the industrial commission. For purposes of this section, the agreements include any lease, sublease, purchase agreement, lease-purchase agreement, installment purchase agreement, leaseback agreement, or other contract, agreement, instrument, or arrangement pursuant to which any rights, interests, or other property are transferred to, by, or from any party to, by, or from one or more parties, and any related documents entered or to be entered, including any operating agreement, service agreement, indemnity agreement, participation agreement, loan agreement, or payment undertaking agreement entered as part of a long-term lease and leaseback transaction. A lease obligation under this section may not exceed a term of ninety-nine years. A lease obligation entered into under this section is payable solely from revenues to be derived by the state, or any agency or institution of the state, from the ownership, sale, lease, disposition, and operation of the property; any funds or investments permitted under state law, and any earnings thereon, to the extent pledged therefor; revenues to be derived by the state, or any agency or institution of the state, from any support and operating agreement, service agreement, or any other agreement relating to the property; funds, if any, appropriated annually by the legislative assembly or received from federal sources; and income or proceeds from any collateral pledged or provided therefor. A lease obligation under this section does not constitute an indebtedness of the state, or any agency or institution of the state, or a pledge of the full faith and credit or unlimited taxing resources of the state, or any agency or institution of the state. Notwithstanding any other law, the state, or any agency or institution of the state, may solicit and accept one or more proposals for a lease transaction, including the arrangement thereof, under this section, and accept any proposal that is determined to be in the public interest. The ~~bond bank~~ public finance authority, on behalf of the state, or any agency or institution of the state, may do and perform any acts and things authorized by this section, including making, entering, and enforcing all contracts or agreements necessary, convenient, or desirable for the purposes of this section.

SECTION 32. AMENDMENT. Section 54-17-36 of the North Dakota Century Code is amended and reenacted as follows:

54-17-36. Lease of municipal waterworks and sewage systems. Notwithstanding any other provision of law, the state, acting by and through its industrial commission, may enter agreements to lease all or part of, or an undivided or other interest in, the plant or equipment of any waterworks, mains, or water distribution system and any property related thereto pursuant to subsection 5 of section

40-33-01, subsection 12 of section 61-24.5-09, or subsection 23 of section 61-35-12 or any sewage system and all related property for the collection, treatment, purification, and disposal in a sanitary manner of sewage pursuant to section 40-34-19 or subsection 23 of section 61-35-12 to or from a municipality or other political subdivision or agency of the state, or to or from any person, for such compensation and upon such terms and conditions as the parties under such agreement may stipulate. For the purposes of this section, such agreements include any lease, sublease, purchase agreement, lease-purchase agreement, installment purchase agreement, leaseback agreement, or other contract, agreement, instrument, or arrangement pursuant to which any rights, interests, or other property are transferred to, by, or from any party to, by, or from one or more parties, and any related documents entered or to be entered, including any operating agreement, service agreement, indemnity agreement, participation agreement, loan agreement, or payment undertaking agreement. Any lease obligation entered under this section is payable solely from revenues to be derived by the state or any agency or institution of the state from the ownership, sale, lease, disposition, and operation of the plant or equipment of any waterworks, mains, or water distribution system and any property related thereto or sewage systems and all related property for the collection, treatment, purification, and disposal in a sanitary manner of sewage; any funds or investments permitted under state law, and any earnings thereon, to the extent pledged therefor; revenues to be derived by the state from any support and operating agreement, service agreement, or any other agreement relating to the waterworks, mains, and water distribution system or sewage system; funds, if any, appropriated annually by the legislative assembly; and income or proceeds from any collateral pledged or provided therefor. A lease obligation entered under this section does not constitute an indebtedness of the industrial commission, the state, or any agency or officer or agent thereof, or a pledge of the full faith and credit or unlimited taxing resources of the industrial commission, the state, or any agency or officer or agent thereof. The industrial commission may authorize the ~~bond bank~~ public finance authority or another agency or institution of the state to do and perform any acts and things authorized by this section, including making, entering, and enforcing all contracts or agreements necessary, convenient, or desirable for the purposes of this section.

SECTION 33. AMENDMENT. Subsection 1 of section 61-28.1-12 of the North Dakota Century Code is amended and reenacted as follows:

1. To apply for and accept grants of money from the United States environmental protection agency or other federal agencies which must be deposited in the drinking water treatment revolving loan fund to be used for purposes authorized under the Safe Drinking Water Act, including the following:
 - a. To provide loans or loan guaranties, or other financial assistance, to community water systems and nonprofit noncommunity water systems eligible for assistance from the revolving loan fund.
 - b. As a source of revenue and security for the payment of principal and interest on bonds issued by the state through the ~~North Dakota municipal bond bank~~ public finance authority if the bond proceeds are deposited in the revolving loan fund.
 - c. To buy or refinance debt obligations issued after July 1, 1993, to finance a project eligible for assistance from the revolving loan fund.
 - d. To guarantee or purchase insurance for debt obligations issued to finance a project eligible for assistance from the revolving loan fund.
 - e. To provide other financial and technical assistance and to make any other expenditure authorized under the Safe Drinking Water Act.
 - f. To earn interest before the disbursement of financial or technical assistance.
 - g. To pay administrative expenses associated with the revolving loan fund as authorized under the Safe Drinking Water Act.

SECTION 34. AMENDMENT. Subsections 2 and 3 of section 61-28.2-01 of the North Dakota Century Code are amended and reenacted as follows:

2. There is established the water pollution control revolving loan fund, which must be maintained and operated by the state department of health. Grants from the federal government or its agencies allotted to the state for the capitalization of the revolving loan fund, and state matching funds when required, must be deposited directly in the revolving loan fund in compliance with the terms of the federal grant. Money in the revolving loan fund must be expended in a manner consistent with terms and conditions of the grants received by the state and may be used to offer loan guarantees; to provide payments to reduce interest on loans and loan guarantees; to make bond interest subsidies; to provide bond guarantees on behalf of municipalities, other local political subdivisions, and intermunicipal or interstate agencies; to provide assistance to a municipality, other local political subdivisions, or intermunicipal or interstate agencies with respect to the nonfederal share of the costs of a project; to finance the cost of facility planning and the preparation of plans, specifications, and estimates for construction of publicly owned treatment works or public water supply systems; to provide financial assistance for the construction and rehabilitation of a project on the state priority list; to secure principal and interest on bonds issued by a public trust having the state of North Dakota as its beneficiary, or the ~~North Dakota municipal bond bank~~ public finance authority if the proceeds of such bonds are deposited in the revolving loan fund and to the extent provided in the terms of the federal grant; to provide for loan guarantees for similar revolving funds established by municipalities, other local political subdivisions, or intermunicipal agencies; to purchase debt incurred by municipalities or other local political subdivisions for wastewater treatment projects or public water supply systems; to improve credit market access by guaranteeing or purchasing insurance or other credit enhancement devices for local obligations or obligations of a public trust having the state of North Dakota as its beneficiary or the ~~North Dakota municipal bond bank~~ public finance authority; to fund other programs which the federal government authorizes by the terms of its grants; to fund the administrative expenses of the department associated with the revolving loan fund; and to provide for any other expenditure consistent with the federal grant program and state law. Money not currently needed for the operation of the revolving loan fund or otherwise dedicated may be invested. All interest earned on investments must be credited to the revolving loan fund.

3. The department shall administer the revolving loan fund. The department may enter into contracts and other agreements in connection with the operation of the revolving loan fund, including contracts and agreements with federal agencies, political subdivisions, public trusts having the state of North Dakota as beneficiary or the ~~North Dakota municipal bond bank~~ public finance authority, and other parties to the extent necessary or convenient for the implementation of the revolving loan fund program. The department shall maintain full authority for the operation of the revolving loan fund in accordance with applicable federal and state law.

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. 2074.

Senate Vote: Yeas 38 Nays 9 Absent 0

House Vote: Yeas 90 Nays 0 Absent 4

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