

Fifty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1162

Introduced by

Appropriations Committee

(At the request of the Industrial Commission)

1 A BILL for an Act to amend and reenact sections 54-17.2-01, 54-17.2 -02.1, and 54-17.2-02.2,
2 subsection 16 of section 54-17.2-03, and sections 54-17.2-04, 54-17.2-06, 54-17.2-07,
3 54-17.2-08, 54-17.2.09, 54-17.2-10, 54-17.2-11, 54-17.2-16, 54-17.2-19, 54-17.2-20, and
4 54-17.2-23 of the North Dakota Century Code, relating to financing the acquisition of software,
5 equipment, or implementation services for the state by the building authority or any other
6 project authorized by the legislative assembly.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1. AMENDMENT.** Section 54-17.2-01 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **54-17.2-01. Definitions.** As used in this chapter, unless the context or subject matter
11 requires otherwise:

- 12 1. "Commission" means the industrial commission acting as the North Dakota
13 building and finance authority created under this chapter.
- 14 2. "Evidences of indebtedness" means bonds, notes, debentures, and other
15 evidences of indebtedness issued by the commission on behalf of the state of
16 North Dakota to evidence money owed or borrowed.
- 17 3. "Project" or "projects" means any:
 - 18 a. Legislatively authorized building or buildings primarily for the use of the state,
19 including related structures, parking facilities, equipment, improvements, real
20 and personal property or any interest therein, including lands under water,
21 space rights and air rights, and other appurtenances and facilities necessary
22 or convenient to the use or operation of the building or buildings, acquired,
23 owned, constructed, reconstructed, extended, rehabilitated, or improved by
24 the commission-;

b. Purchase or lease of software, equipment, or implementation services authorized by law; or

c. Any other financing authorized by the legislative assembly.

4. "Project cost" means the total cost of ~~acquisition and construction~~ of a project or projects and all costs of issuance, financing, and interest during construction included in the principal amount of evidences of indebtedness issued.

5. "State" means any branch of North Dakota government or any office, department, board, commission, bureau, division, public authority or corporation, agency, or instrumentality of the state.

SECTION 2. AMENDMENT. Section 54-17.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

54-17.2-02.1. Evidences of indebtedness conditions - Continued authority. The commission may issue evidences of indebtedness subject to the condition that, with respect to projects authorized under subdivision a of subsection 3 of section 54-17.2-01, lease rental payments shall begin no earlier than the first business day of the biennium following the biennium of issuance. Although the authority to issue evidences of indebtedness for specific projects may terminate, the commission may exercise all other powers granted to the commission under this chapter and may comply with any covenants entered into before the applicable termination date.

SECTION 3. AMENDMENT. Section 54-17.2-02.2 of the North Dakota Century Code is amended and reenacted as follows:

54-17.2-02.2. Continuing appropriation. The moneys received by the industrial commission from the sale of evidences of indebtedness and lease rental payments, and moneys received by the industrial commission or the state agencies and institutions from revenue generated by projects authorized by the legislative assembly, are hereby appropriated as a continuing appropriation for the ~~acquisition of these authorized projects and the payment of lease rentals for these~~ payment of debt service on any evidences of indebtedness issued to finance the projects.

SECTION 4. AMENDMENT. Subsection 16 of section 54-17.2-03 of the North Dakota Century Code is amended and reenacted as follows:

1 16. Notwithstanding any other provision of law, ~~issue evidences of indebtedness to~~
2 ~~implement the state facility energy improvement program under section 54-44.5-08~~
3 the commission may enter into loan agreements in lieu of acquisition and leasing
4 of any project.

5 **SECTION 5. AMENDMENT.** Section 54-17.2-04 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **54-17.2-04. Purpose of commission.** The public purpose of the commission is to
8 promote the general welfare of the citizens of this state by providing financing for projects for
9 use primarily by the state ~~in providing public services by altering, repairing, maintaining, or~~
10 ~~constructing buildings primarily for use by the state and making any improvements connected to~~
11 ~~those buildings or pertaining to those buildings and necessary to the use of those buildings in~~
12 ~~providing services to the public.~~

13 **SECTION 6. AMENDMENT.** Section 54-17.2-06 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **54-17.2-06. ~~Lease of facilities and sites~~ or financing projects to state agencies**
16 **authorized - Commencement of payments under lease or other financing arrangement.**
17 The commission may lease or enter into other financing arrangements for any project to the
18 state. The leases or other financing arrangements may be entered into contemporaneously
19 with any financing to be done by the commission and payments under the terms of the lease or
20 other financing arrangement shall begin at any time after execution of the lease or other
21 financing arrangement.

22 **SECTION 7. AMENDMENT.** Section 54-17.2-07 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **54-17.2-07. Terms, conditions, and rental under leases or other financing**
25 **arrangements - Automatic biennial extension provisions.** Leases or other financing
26 arrangements may be entered into by the commission:

- 27 1. Upon terms, conditions, and lease rentals or other repayment provisions, subject to
28 available appropriations, as in the judgment of the commission are in the public
29 interest; and
- 30 2. For an original term of not to exceed two years, with an automatic extension of the
31 term of the lease or other financing arrangement, unless specifically rejected by

the legislative assembly, for a term of two years from the expiration of the original term of the lease or other financing arrangement and for two years from the expiration of each extended term of the lease or other financing arrangement, until the original term of the lease or other financing arrangement has been extended for a total number of years to be agreed upon by the parties at a lease rental or other repayment which, if paid for the original term and for each of the full number of years for which the term of the lease or other financing arrangement may be extended, will amortize the total project cost of the project.

The lease rental or other repayment must be paid at the times agreed upon by the parties to the lease or other financing arrangement.

SECTION 8. AMENDMENT. Section 54-17.2-08 of the North Dakota Century Code is amended and reenacted as follows:

54-17.2-08. State's option to purchase - Conveyance on exercise of option. ~~The A~~ lease must provide that the state may, at the expiration of the original or any extended term, purchase the project at a stated price, which must be the balance of the total project cost not amortized by the payment of rents previously made by the state. The lease must provide that if the option to purchase the project has been exercised or if the lease has been extended for the full number of years which it may be extended, and all rents and payments provided for in the lease have been made and all project costs have been paid, the commission shall convey its interest in the project to the lessee.

SECTION 9. AMENDMENT. Section 54-17.2-09 of the North Dakota Century Code is amended and reenacted as follows:

54-17.2-09. Insurance and credit enhancements added to rental payments. ~~The A~~ lease may provide that the state shall provide insurance or, as additional rent for the leased project, pay the cost of insuring the project against loss or damage in such sum agreed to by the parties. The lease may also provide for payment of the cost of such credit enhancements as in the judgment of the commission may be required for sale of the evidences of indebtedness, including bond insurance or letters of credit.

SECTION 10. AMENDMENT. Section 54-17.2-10 of the North Dakota Century Code is amended and reenacted as follows:

1 **54-17.2-10. Appropriations and funds from which rent or other repayments**
2 **~~payable and right to project upon nonpayment~~ - Commission's power to use or sell**
3 **facilities for other purposes on nonpayment of rent.** ~~The A~~ lease or other financing
4 arrangement must provide that rents or other repayments, as the case may be, are payable
5 solely from appropriations to be made by the legislative assembly for the payment of the lease
6 rent or other repayments or money available to the ~~lessee~~ state not requiring appropriation,
7 money generated from charges made for use of the project, any revenues derived by the
8 commission from the operation of the project, or any combination of such moneys. The
9 commission upon nonpayment of any lease rents is immediately entitled to the peaceable
10 possession, access, and occupancy of the project and all appurtenances and easements
11 appertaining thereto, and may maintain and operate the project or execute leases for the
12 project or sell the project to political subdivisions of the state or private persons or entities for
13 any purpose.

14 **SECTION 11. AMENDMENT.** Section 54-17.2-11 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **54-17.2-11. Costs and reserves to be covered by rent and charges or other**
17 **repayments.** Lease rentals or other repayments for a project must be sufficient at all times to
18 pay ~~the~~ any maintenance and operation costs for the project, unless the maintenance and
19 operation costs are otherwise provided for under a lease or other financing arrangement, the
20 principal of and interest on any evidence of indebtedness, and a proportion of the administrative
21 expenses of the commission as provided for by each lease or other financing arrangement, and
22 the reserves as may be provided in the resolutions authorizing the issuance of evidences of
23 indebtedness.

24 **SECTION 12. AMENDMENT.** Section 54-17.2-16 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **54-17.2-16. Revenues, appropriations, funds, and income from which evidences**
27 **of indebtedness payable.** Evidences of indebtedness are payable solely from:

- 28 1. Revenues to be derived by the commission from the operation of a project or
29 projects;

2. Income to be derived from rentals or other repayments paid pursuant to leases or other financing arrangements to the state, or from leases to others as provided by this chapter;
3. Funds appropriated by the legislative assembly; and
4. Any other revenue, income, or funds available to the commission.

SECTION 13. AMENDMENT. Section 54-17.2-19 of the North Dakota Century Code is amended and reenacted as follows:

54-17.2-19. Restrictions on obligation stated on face of evidences of indebtedness. Evidences of indebtedness must state upon their face that they are payable solely from revenues derived by the commission as provided in this chapter, including revenues from the operation of projects acquired, constructed, completed, remodeled, or equipped in whole or in part with the proceeds of the sale of such evidences of indebtedness, including income to be derived from rental leases or other repayments as provided by this chapter. Evidences of indebtedness must state upon their face that they do not constitute an obligation of the state within the meaning of any statutory or constitutional provision.

SECTION 14. AMENDMENT. Section 54-17.2-20 of the North Dakota Century Code is amended and reenacted as follows:

54-17.2-20. Disposition of income - Building and finance authority fund. The proceeds of and any revenue derived from the sale of evidences of indebtedness, charges, fees, or rentals or other repayments, and all other revenue derived from any project undertaken pursuant to this chapter must be held in trust for the purposes of this chapter, in a special fund known as the building and finance authority fund. Disbursements shall be made from the fund upon the resolution of the commission. The building and finance authority fund established by this chapter may contain such accounts as authorized by the commission.

SECTION 15. AMENDMENT. Section 54-17.2-23 of the North Dakota Century Code is amended and reenacted as follows:

54-17.2-23. State building and finance authority lease payments - Limitation. The general fund amount of lease payments for a biennium associated with capital construction projects financed by the industrial commission acting as the state building and finance authority may not exceed the amount equal to a portion of sales, use, and motor vehicle excise tax collections equal to ten percent of an amount, determined by multiplying the quotient of one

1 percent divided by the general sales tax rate that was in effect when the taxes were collected,
2 times the net sales, use, and motor vehicle excise tax collections under chapters 57-39.2,
3 57-40.2, and 57-40.3. The computation for the authorized general fund lease payments for a
4 biennium must be based on the projected sales, use, and motor vehicle excise tax collections
5 presented to the legislative assembly at the close of the most recently adjourned regular
6 legislative session. Lease payment amounts for any particular project must be calculated as of
7 the date the related bonds are issued. The limitation provided in this section does not apply to
8 repayments allocable to the state facility energy improvement program under section
9 54-44.5-08.