MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M

ROLL NUMBER

DESCRIPTION

2156

2007 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2156

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **2156**

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: **January 17, 2007**

Recorder Job Number: **1275**

Committee Clerk Signature

Minutes:

Tim Porter – Executive Direcgor of ND Public Finance authority –*In Favor*

Allows to issue clean renewable energy bonds called CREBs. Goes into explanation.

[m:00-4:48]

S Andrus: Understand concept, why does the city of Fargo need this?

T Porter: City has own finance department. This is not providing monetary support, providing moral obligation.

S Andrist: Is the state's role guarantor?

S Hacker: this references CREBs, Sec. 1, understand testimony, how does it work in the bill?

T Porter: Land fill is doing something with methane gas.

S Hacker: Speaking of coal facilities, they fit on the 2nd part, where they can dothat bonding?

T Porter: The bill basically give us the authority to issue bonds for any qualifying energy project. [see page 2 of testimony]

S Heitcamp: [m 8:33] To include Federal. Fargo captures the methane gas, the wind tower that you made reference to, one off the things they were going to do at the wind tower. Going to try to put a wind tower by the landfill. Trouble with FAA because it's right in the flight plan of where they come in and land.

S Behm: We want this to keep up with the Federal Government, do the same thing as the Federal government to guarantee loans?

T Porter: No, the federal government has already allocated the tax credits for the program. They are providing the income to the investors in CREBS bonds in the form of tax credits. If we issued these bonds and you bought some as an investor, the federal government would give you a tax credit. They wouldn't pay the interest, the principal back, but not the interest [provides example m 10:17]

S Klein? Q Favor? Opposition?

CLOSE

S. Heitcamp Motion Do Pass

S Behm: Second

SB 2156 Passed 7-0. Floor carrier S. Heitkamp

[m 11:47 ends]

Date: 1-17-06.

Roll Call Vote : 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2156

Senate **INDUSTRY BUSINESS & LABOR** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 1

Action Taken DO PASS

Motion Made By Heitkamp Seconded By Behm

Senators	Yes	No	Senators	Yes	No
Chairman Klein, Jerry	✓		Senator Behm, Arthur	✓	
Senator Hacker, Nick VC	✓		Senator Heitkamp, Joel	✓	
Senator Andrist, John	✓		Senator Potter, Tracy	✓	
Senator Wanzek, Terry	✓				

Total Yes 7-0 No

Absent

Floor Assignment Heitkamp

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2156: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2156 was placed on the Eleventh order on the calendar.

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2156

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2156

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: February 27, 2007

Recorder Job Number: 4036

Committee Clerk Signature	Stephanie N Thomas

Minutes:

Chair Keiser opened the hearing on SB 2156.

Tim Porter, ND Public Finance Authority: See written testimony #1.

Rep. Ruby: If somebody wanted to invest in a project, they put their money into what you received prior to payback of that money over a period of time, but their amount that they would make over, and above that would be because of the credit that they would get on their future tax?

Tim: That is correct. The bonds are advertised over basically the useful life of the asset. During that period, the tax credit represents their interest payment.

Rep. Keiser: So, they get zero interest payment back from the bond? They get their principle back, and distribute their payment.

Tim: That's correct. So, the federal government is basically paying the interest on those bonds for the borrower.

Rep. Keiser: On the federal return, not on the state return.

Tim: That's correct.

Rep. Keiser: The federal government in the first round put aside $800, and various political entities could apply for those dollars. They have to come through you, and you become the issuer, the one the allocations are made to.

Tim: Any qualified issuer under that definition can get the allocations.

Rep. Keiser: They come to you and say I need $1.5 million. You go to the feds and see if there is any money left in the pool and if there is and they give it to them, there's zero interest on that, and they are going to simply have to pay back the principle over the period of the loan. They're going to go off and say we don't want to spend our money, we're going to get investors to put their money into it, and then they're going to be getting the tax credit, and that's what we're doing.

Tim: If we were to issue these, we would actually handle that sale for them, so it would get sold to the retail, or commercial market. They wouldn't have to worry about where the money was coming from.

Rep. Keiser: How much credit in the taxes do you get? Is there a limit?

Tim: There is a formula, and it goes through about 6 or 7 steps, and it's based upon what the federal government allows for this type of credit program.

Rep. Zaiser: Would that percentage be based on the environmental impact of the particular project that was being discussed, or proposed?

Tim: No. All of these projects would get the same rate, and I suspect that it would compete with what you could get on an investment, on a tax permissible bond.

Rep. Keiser: Can we utilize this for the Pipeline Authority, and the Transmission Authority providing funding for a project?

Tim: This bill would allow us to issue credits that would provide for the generation of the electricity, and then the Transmission Authority would be handling the transmission of that electricity. So, it would be two different entities.

Rep. Keiser: So, could the Transmission Authority come and apply for $100 million at zero percent to be sold to investors that then could get the tax credit?

Tim: The Transmission Authority can only issue debt to transmit, not to generate. So, these bonds are only for the generation for the plant itself.

Rep. Johnson: That generation would have to be clean; it would have to be renewable clean energy. Could it be coal?

Tim: It's very specific as to the types of projects that work for this. These are for quote on quote clean renewable energy type of projects.

Rep. Johnson: With the length of time the loan can use the bond for these, is that a specific timeframe?

Tim: There is. It's kind of based upon what they quote on quote use for the life of these projects, and they give like 12 to 15 years.

Rep. Gruchalla: I move a do pass.

Rep. Zaiser: Second.

Roll call vote was taken. 13 Yeas, 0 Nays, 1 Absent, Carrier: Rep. Johnson

Hearing closed.

Date: 2-27-07

Roll Call Vote #:

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2156

House **Industry Business & Labor** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass

Motion Made By Rep Gruchalla Seconded By Rep Zaiser

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		**Rep. Amerman**	X	
Vice Chairman Johnson	X		**Rep. Boe**	X	
Rep. Clark	X		**Rep. Gruchalla**	X	
Rep. Dietrich	X		**Rep. Thorpe**	X	
Rep. Dosch	X		**Rep. Zaiser**	X	
Rep. Kasper					
Rep. Nottestad	X				
Rep. Ruby	X				
Rep. Vigesaa	X				

Total Yes 13 No 0

Absent 1

Floor Assignment Rep Johnson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2156: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2156 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

SB 2156

Senate Industry, Business and Labor Committee
Testimony of Tim Porter
North Dakota Public Finance Authority
Senate Bill 2156
January 17, 2007

For the record, my name is Tim Porter and I am the Executive Director of the North Dakota Public Finance Authority. The Public Finance Authority is a state agency that operates under the supervision and authority of the Industrial Commission. It is a self-supporting state agency and receives no money from the General Fund. I am providing this testimony in support of Senate Bill 2156 to allow the Public Finance Authority to issue Clean Renewable Energy Bonds (CREBs).

CREBs are a form of tax credit bond (part of the Energy Tax Incentives Act of 2005) in which interest on the bonds is paid in the form of tax credits by the federal government. For investors, the tax credits represent the return on their investment for the term of the bond. Since the tax credit from the federal government provides the investor with the income on their investment, CREBs provide the issuers/borrowers with the opportunity to borrow money for qualified projects at a 0% interest rate.

The Energy Tax Incentives Act of 2005 (the Act) provides definitions for qualified issuers, qualified borrowers, and qualified projects as follows:
Qualified Issuer – is defined as a cooperative lender (such as CoBank or NRUC), a cooperative electric company, or a governmental body.
Qualified Borrower – is defined as any mutual or cooperative electric company and any State, territory, possession of the United States, the District of Columbia, Indian tribal government, and any political subdivision thereof.
Qualified Projects – include wind, biomass, geothermal, solar, small irrigation power, landfill gas, trash combustion, refined coal production, and qualifying hydropower facilities.

In order to issue CREBs, a qualified issuer must obtain an allocation of bond volume authority from the Secretary of the Treasury. The Act originally approved up to $800 million of CREBS for the 2006-2007 calendar years, of which up to $500 million could be used by governmental issuers. Two North Dakota projects received part of this original $800 million allocation. The City of Fargo was granted the authority to issue up to $3.94 million of CREBs for a wind project and a landfill project. Great River Energy also received approval to issue up to $14.5 million of CREBs to create a coal drying facility. In December, the Tax Relief and Health Care Act of 2006 was passed which extended the CREBs program to 2008 and expanded the allocation by an additional $400 million.

As North Dakota expands its capacity to create and transmit energy, it will be important to have the ability to utilize these federal programs that provide incentives to build energy infrastructure. Senate Bill 2156 allows the Public Finance Authority to issue CREBs for those projects where the underlying issuers/borrowers do not have the internal resources to access this important program.

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The written testimony below describes the Public Finance Authority and its financing programs.

Mission

To develop rural and urban North Dakota by providing political subdivisions and other qualifying organizations access to flexible and competitive financing options for their local qualifying projects.

The Public Finance Authority was established to make low-cost loans to North Dakota political subdivisions at favorable interest rates. Loans are made to political subdivisions by the Public Finance Authority through the purchase of municipal securities issued by the political subdivisions in accordance with state and federal law. Loans are primarily made with the proceeds of bonds issued by the Public Finance Authority under the programs described below. In certain instances, a direct loan may be made to a political subdivision from the Public Finance Authority's operating fund or from the federal grants or loan repayments held under the State Revolving Fund Program.

The municipal securities issued by a political subdivision to the Public Finance Authority may be either tax-exempt or taxable obligations. A political subdivision must retain bond counsel to assist in the preparation and adoption of its bond resolution and other necessary documents. The Public Finance Authority may purchase municipal securities only if the Attorney General issues an opinion that states the municipal securities are properly eligible for purchase under the North Dakota Century Code (N.D.C.C.) chapter 6-09.4, the Public Finance Authority Act.

Required Debt Service Reserve

Subsection 1 of §6-09.4-10 of the N.D.C.C. requires the Public Finance Authority to establish a debt service reserve in an aggregate amount equal to at least the largest amount of money required in the current or any succeeding calendar year for the payment of the principal of and interest on its outstanding bonds.

Subsection 4 of §6-09.4-10 of the N.D.C.C. of the N.D.C.C. provides as follows:

> "In order to assure the maintenance of the required debt service reserve, there shall be appropriated by the Legislative Assembly and paid to the 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."

In the written opinion of the Attorney General, this provision does not constitute a legally enforceable obligation of the State. In the written opinion of the Public Finance Authority's bond counsel, there is no applicable provision of state law that would prohibit a future Legislative Assembly from appropriating any sum that is certified by the Industrial Commission as necessary to restore the reserve fund in an amount sufficient to meet the required debt service reserve amount. The legislative obligation imposed by the Legislative Assembly in subsection 4 of §6-09.4-10 is referred to as a moral obligation because the obligation to provide an appropriation for the Public Finance Authority's reserve fund is not backed by the full faith and

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credit of the State. All bonds issued by the Public Finance Authority under any of its programs are moral obligation bonds unless the Industrial Commission approves a resolution to allow the Public Finance Authority to issue bonds under section 40-57 as a conduit issuer. Under any of the Public Finance Authority programs, there has never been the need to request an appropriation to cover a shortfall in a reserve fund.

Advisory Committee

The Industrial Commission, by policy, has established a Public Finance Authority Advisory Committee. The Committee is made up of three members appointed by the Commission. The Committee reviews each loan application for the purpose of making a recommendation concerning the loan to the Industrial Commission, which must give its approval before a loan may be made under each Program. However, if the loan is for $200,000 or less, the Committee may authorize the approval of the loan, then submit a report describing the loan and the action taken to the Commission at its next meeting.

At the present time, the Public Finance Authority has four loan programs: the Capital Financing Program, the State Revolving Fund Program, the School Construction Financing Loan Program, and the Industrial Development Bond Program.

Capital Financing Program

The Capital Financing Program, established in 1990, makes loans to political subdivisions for any purpose for which political subdivisions are authorized to issue municipal securities, subject to certain statutory requirements.

Through December 31, 2006, the Public Finance Authority has made $84,538,016 of loans to political subdivisions under the Capital Financing Program. The outstanding amount of Capital Financing Program bonds is $20,199,764. Recognizing the strength of the State's moral obligation pledge, Standard and Poor's (S&P) has assigned a rating of "A" to the Capital Financing Program Bonds.

State Revolving Fund Program

Under the State Revolving Fund (SRF) Program, federal capitalization grants are received by the State through the Health Department from the Environmental Protection Agency (EPA), and are deposited and held under the Program's Master Trust Indenture for the purpose of making below-market interest rate loans to political subdivisions for qualified projects and for other authorized purposes. The projects are subject to the approval by the State Health Department under appropriate state law and the Federal Clean Water Act and the Federal Safe Drinking Water Act. The federal capitalization grants are available to states on the basis of an 80-20 federal-state match. A portion of the SRF Program bonds issued by the Public Finance Authority provides the 20% state match. The federal capitalization grants must be held by the state in a revolving loan fund and are available only for purposes authorized under the Federal Clean Water Act and the Federal Safe Drinking Water Act.

The SRF Program consists of a Clean Water SRF Program and a Drinking Water SRF Program. Federal capitalization grants for the Clean Water SRF Program were first appropriated to the

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State in 1989. Since that time, $108,729,600 of federal capitalization grants under the Clean Water SRF Program have been appropriated and awarded to the State through federal fiscal year 2006. Through December 31, 2006, 161 loans totaling $166,145,092 have been approved under the Clean Water SRF Program. The Health Department's Clean Water Intended Use Plan for 2007 includes approximately $145,000,000 of potential projects.

Federal capitalization grants for the Drinking Water SRF Program were first appropriated to the State in 1997. Since that time, $83,687,700 of federal capitalization grants under the Drinking Water SRF Program have been appropriated and awarded to the State through federal fiscal year 2006. Through December 31, 2006, 85 loans totaling $125,542,571 have been approved under the Drinking Water SRF Program. The Health Department's Drinking Water Intended Use Plan for 2007 includes approximately $258,746,000 of potential projects.

A project must be on the appropriate Intended Use Plan to be able to apply for a loan under the SRF Program. The current interest rate on loans under the SRF Program is 2.5% with a 0.5% annual administrative fee on the outstanding balance. Bonds issued by the Public Finance Authority under the SRF program are rated "Aaa" by Moody's Investors Service, Inc. (Moody's), which is Moody's highest possible rating.

State School Construction Financing Program

The Public Finance Authority's State School Construction Financing Program provides loans to North Dakota school districts. This program has been assigned an "A+" rating by S&P, which allows the school districts, which generally do not have a credit rating, to borrow at lower interest rates. Bonds issued under this Program will be moral obligation bonds of the State and will also be supported by the state school aid intercept provision adopted by the Legislature in 1999. The state aid intercept provision is found in §6-09.4-23 of the N.D.C.C. A school district will be required to authorize the withholding of state school aid payments which are due and payable to the district under N.D.C.C. chapter 15-40.1 in order to participate in the Program. If a school district defaults on its loans under this Program, the Department of Public Instruction is notified by the Public Finance Authority to withhold aid payments to the defaulting school district until such time that principal and interest have been paid or satisfactory arrangements have been made to make the payment.

Industrial Development Bond Program

The Public Finance Authority's Industrial Development Bond Program provides loans to North Dakota manufacturers that meet the IRS definition for small issue manufacturers. This program has been assigned an "A" rating by S&P, which allows those manufacturers that qualify to finance fixed assets at attractive tax-exempt rates. Bonds issued under this Program will be moral obligation bonds of the State unless the borrower has the financial strength to request that the Public Finance Authority issue the bonds on a conduit basis. The 2005 Legislature passed the legislation allowing the Public Finance Authority to issue industrial revenue bonds with program limits of $2,000,000 per project and $20,000,000 for the entire program. For conduit issuance when the state's moral obligation is not used as a credit enhancement there are no project or program limits. The Public Finance Authority has made one loan under this program in the amount of $1,360,000 that closed in September 2006.

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