

# MICROFILM DIVIDER

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



ROLL NUMBER

DESCRIPTION

20724

2005 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2074

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2074

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 01-12-05

Tape Number	Side A	Side B	Meter #
1	xxx		4538-end
1		xxx	0-423
1		xxx	3000-3700
Committee Clerk Signature <i>Lisa VanBerkon</i>			

Minutes: **Chairman Mutch** opened the hearing on SB 2074. All Senators were present.

**SB 2074** relates 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.

**Tim Porter, North Dakota Municipal Bond Bank**, introduced the bill. See attached testimony.

**Senator Heitkamp** : These two hundred million dollars in bonds, has anyone fallen delinquent?

Are people paying their bills?

**Tim**: We have not had anyone default on the bonds.

**End Tape 1, side A. Continue side B, beginning.**

**Chairman Mutch**: Then your agency sells the bonds?

**Tim**: We have an underwriter that sells the bonds to the public.

**Senator Fairfield :** I just caught the word "lease-leaseback" in your testimony. Can you tell me what your role is in the lease-leaseback legislation that we passed the last session and has it been used?

**Tim:** The lease-leaseback legislation, the reference to that is under the name change paragraph and there is very little detail about that. Shortly after the law was put into place, there was, Senator Grassly out of Iowa started making some noise about this type of contract because what you are doing is privatizing depreciation. They put a dollar amount to the amount that the federal government was losing because of these types of transactions and got enough support to take a look at it and fill some of the loop holes. We haven't heard from any of the leasing companies, since that time. Shortly after this whole story came out, South Dakota repealed their legislation, but their legislation was different than ours. It put the state on the hook for any deposit contract that we default. In our legislation, the state isn't financially responsible at all. So if one of those companies were to go broke, the cities would actually lose, not the state.

**Senator Fairfield :** This doesn't actually change anything in that legislation, it just mentions it?

**Tim:** There are no changes regarding lease-leaseback, I'm just mentioning it. The industrial commission has asked us to include that.

**Chairman Mutch :** In other words, you say the state has no obligation in the case of default of the bonds?

**Tim:** Under the lease-leaseback, the state doesn't have any obligation. The municipalities would suffer the loss.

**Senator Heitkamp :** The value of the lease-leaseback is that the loop hole has been closed. It's done. The only reason we don't need to repeal our legislation is because of the fact that we didn't tie anything to the state.

**Tim:** And the loop hole really affected the investor. Without the investor it doesn't make sense. There are no bonds sold for lease-leaseback. It all comes from inside the transaction and the assets that the municipality would put forth.

**End testimony. There was no opposition. Hearing closed.**

**Senator Klein moved a DO PASS. Senator Heitkamp seconded.**

**Roll Call Vote: 5 yes, 2 no, 0 absent.**

**Carrier: Senator Heitkamp**

**Committee discussion was opened to clarify information. The committee requested Karlene Fine, Executive Director and Secretary of the Industrial Commission of North Dakota, answer a few questions.**

**Senator Nething :** What about the limitation in the Constitution? I remember the amount at one time was fifty million, wasn't it?

**Karlene:** Let me talk a little about bonding. And John Fox is here from the Attorney General's office, could certainly talk about limitations to the constitution. The general obligation of debt of the state is very limited to two million plus ten, of general obligation debt.

**Senator Nething :** By statute?

**Karlene:** That's by constitution, yes. The other bonding that we do at the state, the statute, the legislature has established a limitation of how much general fund debt service you can pay for, which is 10 percent of one cent. In the area of the municipal bond bank, or what we would like to

be calling the Public Finance Agency, they have no limit, except based on the revenue source that is going to come in from the municipalities or political sub divisions or the irrigation districts. So their limitation is basically that of what the revenue sources will be. And the rating agency have placed a limitation on some of their programs because there is a moral obligation involved with municipal bond bank. You have the water commission that does bonding. Their limitation is the revenue source which is a direct response of the legislature and the revenues they receive from their pipelines, water users and those types of projects. Over time, we have appropriation debt and that is what the building authority is, is that every biennium we will look at the lease payments that are bound to the agency and that repays the debt. So what the rating agency, at one time didn't look fondly at appropriation debt, they now do. They are better rated than they have been in the past. So you have your general obligation bond, your appropriation bond, moral obligation bond. There is a whole series of bonds and then you have bonds that are done by your local school district and municipalities. In this bill, 2074, we are simply trying to do a name change on this bill so that we can reflect what the bond bank services are for the different entities that could utilize it. And allow them the ability to use their expertise with other agencies that infrequently are doing bonding. The water commission only goes out occasionally to do bonding. Building authority does it occasionally. I should mention that the Housing Bond that the Industrial Commission also does again, the sources of repayment, the state has no obligation but we do that through the Housing Finance Agency and the loans that we take from the home owners.

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Senate Industry, Business and Labor Committee

Bill/Resolution Number 2074

Hearing Date 1-12-05

**Senator Klein :** What you are saying is this would really be beneficial and you don't envision this opening up a big can of worms for all kinds of things to happen that we as legislatures cannot keep our finger on?

**Karlene:** No, this just to better identify what the bond bank can do and allowing the bond bank to assist other agencies.

End Questioning.

**FISCAL NOTE**  
**Requested by Legislative Council**  
12/17/2004

Bill/Resolution No.: SB 2074

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>						
<b>Expenditures</b>						
<b>Appropriations</b>						

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2. Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

If passed, this bill will have minimal fiscal impact. Expenditures to reprint letterhead, envelopes, and business cards are already anticipated in the 2005-2007 biennium. The only revenues realized would be the reimbursement to the Bond Bank for time spent by Bond Bank employees working on behalf of another state agency.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

<b>Name:</b>	Tim Porter	<b>Agency:</b>	ND Municipal Bond Bank
<b>Phone Number:</b>	328-7120	<b>Date Prepared:</b>	12/22/2004



Date: 1-12-05  
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2074

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass

Motion Made By Klein Seconded By Heitkamp

Senators	Yes	No	Senators	Yes	No
Senator Mutch, Chairman	<del>X</del>	X	Senator Fairfield	X	
Senator Klein, Vice Chairman	X		Senator Heitkamp	X	
Senator Krebsbach	X				
Senator Nething		X			
Senator Espegard	X	<del>X</del>			

Total (Yes) 5 No 2

Absent 0

Floor Assignment Heitkamp

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

**REPORT OF STANDING COMMITTEE (410)**  
January 12, 2005 11:45 a.m.

**Module No: SR-07-0336**  
**Carrier: Heitkamp**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2074: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends DO PASS (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2074 was placed on the Eleventh order on the calendar.**

2005 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2074

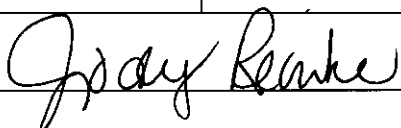
2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2074

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 3-15-05

Tape Number	Side A	Side B	Meter #
1	x		25-51.9
Committee Clerk Signature 			

Minutes:

**Chairman Keiser:** Opened the hearing on SB 2074

**Ed Sather, Senior VP, Bank of North Dakota:** Appeared on behalf of Tim Porter and provided a written statement by Tim Porter (SEE ATTACHED TESTIMONY).

**Representative Froseth:** Is that the only purpose of the bill is to change the name of the bond bank?

**Ed Sather:** It has 2 purposes, one is to change the name of the bond bank, and two to allow to enter into administrative agreements with other state agencies, to use the bond banks expertise to issue bonds.

**Representative Keiser:** Are we going into competition with the private sector again?

**Ed Sather:** No we are not, to utilize the bond bank program, there has to be approval from the industrial commission, and it has to be stated that this type of financing would not be available if it was done on their own.

**Representative Keiser:** We are allowing people to not go to bond council, to have that kind of coverage, is the state going to back that?

**Ed Sather:** if an agency utilizes the bond bank program to assist them in issuing debt, that is debt of the agency, it is not an obligation of the state of North Dakota, nor is it a moral obligation if the bond bank, so the state is not obligated.

**Representative Keiser:** but it is a state agency? And so if there is a mistake made on their bond, and they lose, who pays, the agency?

**Ed Sather:** Depends upon with the areas, if there are legal opinions, that were over turned, I would say there would be recourse to the bond council, to the law firm.

**Representative Keiser:** but there is no law firm, this is a state bond bank, the public finance authority.

**Ed Sather:** There will be a bond council involved in drafting the document, and they would be liable.

**Karlene Fine, Industrial Commission:** I stand in support of the bill on behalf the industrial commission, and provided a brief note (**SEE ATTACHED TESTIMONY**).

**Representative Nottestad:** At what point would these organizations come for the dealings with the bond, there are different steps?

**Karlene Fine:** When you are dealing with the local political subdivisions there would be some discussions between what kind of programs you want, you would have to be there early so we could assist you to make sure everything was done appropriately, you can contact us at any point if you like, and before the industrial commission would approve we would have to be able to say

that you would have to have done the analysis, that could not have been done in the private sector.

**Representative Keiser:** What will this bill do that is different?’

**Karlene Fine:** What this bill will do is allow the public finance an agency, for another state agency, who doesn't go to the market very frequently, to call our office and say we really need your assistance to provide this service for us and assist to put together the financing, and then there are some things that happen with bond issues, particular disclosure that has to be done every year for the life of the bond issue, we can provide that for you so you don't have to do that, we will also be able to provide for you, if the capital market are down and the rates are lower, we would be able to say to you, we think it is prudent to look at the possibility of a refund.

**Representative Dosch:** I move a **DO PASS** on **SB 2074**

**Representative Ekstrom:** I **SECOND** the **DO PASS** motion on **SB 2074**.

Motion carried **VOTE: 9-YES 4-NO 1-Absent (BOE)**

**Representative Vigesaa will carry the bill to the floor.**

Date: 3-15-05  
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2074

House INDUSTRY, BUSINESS AND LABOR Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS

Motion Made By Rep. Dosch Seconded By Rep. Ekstrom

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman		X	Rep. B. Amerman	X	
N. Johnson-Vice Chairman	X		Rep. T. Boe	AB	
Rep. D. Clark	X		Rep. M. Ekstrom	X	
Rep. D. Dietrich		X	Rep. E. Thorpe	X	
Rep. M. Dosch	X				
Rep. G. Froseth		X			
Rep. J. Kasper	X				
Rep. D. Nottestad	X				
Rep. D. Ruby		X			
Rep. D. Vigesaa	X				

Total (Yes) 9 No 4

Absent (1) Rep. Boe

Floor Assignment Rep. Vigesaa

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

**REPORT OF STANDING COMMITTEE (410)**  
March 15, 2005 9:55 a.m.

**Module No: HR-47-4971**  
**Carrier: Vigesaa**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2074: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends DO PASS (9 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). SB 2074 was placed on the Fourteenth order on the calendar.**



2005 TESTIMONY

SB 2074

**Senate Industry, Business and Labor Committee**  
**Testimony of Tim Porter**  
**North Dakota Municipal Bond Bank**  
**Senate Bill 2074**

1-12-05

For the record, my name is Tim Porter and I am the Executive Director of the Municipal Bond Bank. I am providing this testimony in support of Senate Bill 2074 to rename the North Dakota Municipal Bond Bank as the North Dakota Public Finance Authority and to enable the Bond Bank to issue bonds or other evidences of indebtedness on behalf of any other state agency involved in the issuance of debt.

Senate Bill 2074 is an agency-sponsored bill presented by the Municipal Bond Bank with the approval of the Industrial Commission. The Bond Bank 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.

Currently, the Bond Bank issues debt under two active programs: the State Revolving Fund and the Capital Financing Program. Although most of the borrowers under these programs are municipalities, we are receiving more requests from other qualifying entities, such as irrigation districts and rural water districts, to issue debt on their behalf. We have also received some requests to become involved in issuing industrial revenue bonds (MIDA Bonds or IDR's). Current law specifically prohibits the Bond Bank from purchasing most kinds of MIDA Bonds or bonds covered under Chapter 40-57 of the Century Code, however legislation may be introduced to allow this type of financing. In addition, the Industrial Commission named the Municipal Bond Bank as the agency that will administer the lease-leaseback legislation (Senate Bill 2261) passed during the 2003 legislative session. Although federal legislation has filled the loophole for this type of transaction, leasing companies continue to lobby the federal legislators to allow some of these transactions. Considering the wide variety of borrowers under the Bond Bank's active programs, as well as the new programs that the Bond Bank is being asked to develop or administer, the proposed name change more accurately reflects the Bond Bank's broader scope in its capacity to issue debt and administer other programs.

In addition to the name change, SB 2074 also enables other state agencies to enter into an administrative agreement with the Municipal Bond Bank to issue debt on their behalf. This enabling legislation would particularly benefit those agencies that issue debt infrequently and that do not have a finance staff within the agency. Current law permits the Bond Bank to enter into administrative agreements with other state agencies when the proceeds of the bond issue are used for the purpose of making loans to political subdivisions. Under the provisions of SB 2074, any state agency authorized by law to issue debt would be allowed to enter into an administrative agreement with the Bond Bank to issue the bonds on their behalf. As provided in the legislation, the bonds issued under any administrative contract would be the obligation of the state agency and not an obligation of the Bond Bank.

Although the fiscal note identifies an insignificant direct financial impact to the Municipal Bond Bank, indirectly, SB 2074 creates more efficient government by allowing the Bond Bank to issue debt on behalf of other state agencies. These efficiencies, in the form of existing expertise and manpower, would streamline government and result in measurable savings to those agencies that choose to take advantage of this opportunity. Therefore, I recommend that the Industry, Business and Labor committee consider a "do pass" on SB 2074.

The written testimony below describes the Municipal Bond Bank 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 Municipal Bond Bank was established to make low-cost loans to North Dakota political subdivisions at favorable interest rates. Loans are made to political subdivisions by the Municipal Bond Bank 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 Municipal Bond Bank under the programs described below. In certain instances, a direct loan may be made to a political subdivision from the Municipal Bond Bank'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 Municipal Bond Bank 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 Municipal Bond Bank 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 Municipal Bond Bank Act.

### **Required Debt Service Reserve**

Subsection 1 of §6-09.4-10 of the N.D.C.C. requires the Municipal Bond Bank 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 Bond Bank 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 Municipal Bond Bank'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 Municipal Bond Bank's reserve fund is not backed by the full faith and credit of the State. All bonds issued by the Municipal Bond Bank under any of its programs are moral obligation bonds. Under any of the Municipal Bond Bank 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 Municipal Bond Bank 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 \$50,000 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 Municipal Bond Bank has three loan programs: the Capital Financing Program, the State Revolving Fund Program, and the School Construction Financing Loan 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. One such requirement is that the Municipal Bond Bank may not purchase municipal securities issued under N.D.C.C. chapter 40-57 (Municipal Industrial Development Act (MIDA) Bonds). The Bond Bank supports legislation currently under consideration that would allow it to purchase certain tax-exempt MIDA bonds.

Through December 31, 2004, the Municipal Bond Bank has made \$83,153,016 of loans to political subdivisions under the Capital Financing Program. The outstanding amount of Capital Financing Program bonds is \$24,647,621. 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 Municipal Bond Bank 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 State in 1989. Since that time, \$95,790,000 of federal capitalization grants under the Clean Water SRF Program have been appropriated and awarded to the State through federal fiscal year 2004. Through December 31, 2004, 133 loans totaling \$149,974,402 have been approved under the Clean Water SRF Program. The Health Department's Clean Water Intended Use Plan for 2005 includes approximately \$70,000,000 of potential projects.

Federal capitalization grants for the Drinking Water SRF Program were first appropriated to the State in 1997. Since that time, \$50,742,500 of federal capitalization grants under the Drinking Water SRF Program have been appropriated and awarded to the State through federal fiscal year 2004. Through December 31, 2004, 37 loans totaling \$106,663,752 have been approved under the Drinking Water SRF Program. The Health Department's Drinking Water Intended Use Plan for 2005 includes approximately \$212,954,000 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 Municipal Bond Bank 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 Municipal Bond Bank'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 Municipal Bond Bank 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.

### **Annual Report**

The Municipal Bond Bank submits its Annual Report to the Legislative Council each year. The Annual Report provides a complete list of all loans made and bonds issued by the Municipal Bond Bank since its inception in 1975.

## State Bonding

### General Obligation Bonds

General obligation bonds are secured by the full faith and credit and the general taxing power of the state.

Article X, Section 13 of the North Dakota Constitution provides for the issuance of general obligation bonds of the State as follows:

- The State may not incur general obligation debt unless evidenced by a bond issue authorized by law for clearly defined purposes.
- Every law authorizing a general obligation bond issue must:
  - Provide for a levying of an annual tax, or make some other provision, sufficient to pay the interest semiannually and the principal within 30 years from the date of issuance.
  - Specifically appropriate the proceeds of the tax levy, or such other provision, to the repayment of the principal of and interest on the bonds.
- The appropriation referred to above may not be repealed, or the tax or other provision discontinued, until both the principal of and interest on the bonds have been paid.
- General obligations bonds in excess of \$2,000,000 must be secured by a first mortgage upon either of the following:
  - A. A first mortgage on real estate for no more than 65% of the value of the real estate.
  - B. A first mortgage on real or personal property of State-owned utilities, enterprises or industries for no more than the value of the utilities, enterprises or industries.
- The State may not issue or guarantee bonds secured by property of State-owned utilities, enterprises or industries in excess of \$10,000,000.
- The State may not issue debt in excess of the limit set out in this section except for one of the following purposes:
  - A. Repelling invasion.
  - B. Suppressing insurrection.
  - C. Defending the State in time of war.
  - D. Providing for the public defense in case of threatened hostilities.

***Currently, there are no outstanding General Obligation Bonds of the State.***

### Appropriation Bonds

Appropriation bonds do not carry a moral obligation as defined below nor are they general obligations of the state; they are payable solely from biennial appropriations of a specific source or from pooled revenues from various sources. For example, the Water Commission was given authority to issue bonds for water development projects with the primary source of payment being appropriations from the Water Development Trust Fund. N.D.C.C. §61-02.1--04 [The Water Development Trust Fund has as its source of funding the monies received from the Tobacco Settlement Trust Fund. If there are insufficient funds available in the Water

Development Trust Fund from tobacco settlement payments, then funds are to be drawn from a) the Resources Trust Fund, b) other available current revenues, c) other revenues of the Water Commission and d) biennial earnings of the Bank of North Dakota.]

#### North Dakota Building Authority Lease Revenue Bonds

The North Dakota Building Authority issues lease revenue bonds which are a form of appropriation bonds. The Authority looks to the leases (which provide for a lease rental payment every six months) entered into between the Authority and the State Agency to repay the outstanding bonds. The leases are structured for successive two-year terms. In the case of the Building Authority the majority of the lease payment from the State Agency comes from the General Fund that is appropriated each biennium by the Legislature, (although some lease payments originate from federal or other funds available to a State Agency). These bonds are sold with the understanding that the lease rentals are repayable (primarily) from biennial appropriations and that the Legislature is not required to appropriate funds for the lease rentals in future biennia.

#### **Moral Obligation Bonds**

A moral obligation pledge will generally require that the state agency issuing the bonds must notify the Governor or other executive branch office by a certain date in the fiscal year that a bond reserve fund deficiency exists or is expected to occur. The Governor or other executive officer is then required to submit in the executive budget a request for an appropriation that will be sufficient to restore or cover the reserve fund deficiency. The State Legislature then has the discretion whether to provide the requested appropriation.

For example, bonds issued by the Municipal Bond Bank are (unless otherwise specified) moral obligation bonds. Subsection 1 of NDCC §6-09.4-10 requires the Bond Bank to establish and maintain a reserve fund equal to the maximum annual debt service on all outstanding Bond Bank bonds. Subsection 4 of NDCC §6-09.4-10 provides that the legislative assembly may appropriate and pay to the Bond Bank for deposit in its reserve fund such sum as is certified to the Legislature by the Industrial Commission as necessary to restore the reserve fund to an amount equal to the required debt service reserve.

#### **Revenue Bonds**

Revenue bonds are not general obligations of the State; they are payable solely from revenues from a specific source or from pooled revenues from various sources. There are different sources for repaying revenue bonds. State issued revenue bonds are as follows:

##### Mortgage Revenue Bonds

The North Dakota Housing Finance Agency issues mortgage revenue bonds. The proceeds from these bonds are used to buy home loans from lenders and

the repayment of these loans provides funds for the primary debt service on the bonds. HFA bonds are not debt of the State, but are full faith and credit obligations of the HFA (to the extent of available funds).

#### Other Revenue Bonds

- There are several other types of revenue bonds issued by the state. First, the Industrial Commission issues student loan revenue bonds (which are similar to mortgage revenue bonds). The proceeds from the student loan revenue bonds are used to purchase student loans primarily from the Bank of North Dakota. The payments made by students on the loans (the revenues) are then utilized to repay the bonds. The Industrial Commission issued student loan subordinate bonds during the 2003-2005 biennium. These bonds are subordinate to the outstanding student loan bonds but will have the same repayment source (student loan payments).
- The University System has issued several different types of revenue bonds. Parking lots are often financed by revenue bonds with the parking fees (revenues) used to repay the debt. The same applies for student housing, student unions and technology bonds.
- The Water Commission has issued revenue bonds for part of the Southwest Pipeline Project and for a small portion of the NAWIS Project. The main source of repayment is water user fees.

#### **Payment Sources**

Each type of issue reflects a different source of repayment should there be a default. The only bonds that require that a tax be levied to pay for debt service are the general obligation bonds. The State has no general obligation bonds outstanding at this time.

All the other bonds must clearly state in the legal documents and official statements that the bonds are not a general obligation of the State of North Dakota and the bondholder can only rely on the revenue or other sources that are pledged. Typically an official statement for the bond issue will include a paragraph that states something similar to the following:

"The Bonds do not constitute debt of the State or any agency or political subdivision thereof, neither the faith or credit nor the taxing powers of the State or political subdivision thereof are pledged to the payment of the principal or interest on the bonds."

#### **Bonding Authority**

Attached is a chart which shows what entities have authority to issue bonds, the security and repayment sources for each type of bonds, any limitations, amounts outstanding and the statutory reference.

Karlene Fine  
328-3722

01/14/05



Is	Type of Bond	Security Source*	Source of Repayment	Various Limitations**	Amount Outstanding as of 6/30/03	Statutory Reference
Ind. Commission/ Agricultural Bonds	Revenue Bonds	Agricultural loans	Loan Repayments	***	\$0	4-36
North Dakota Building Authority	Lease Revenue/ Appropriation Bonds	Deed/lease held on the facilities either constructed or rehabilitated	Biennial appropriations (including General Fund, Local Match Funds & for ConnectND – student fees)	<b>General Fund</b> appropriation cannot exceed 10% of 1% of the sales use, motor vehicle tax ****	\$115,968,000 as of 6/30/04	54-17.2
State Fair Association	Revenue Bonds	Revenues and earnings	Revenues	***	\$2,250,000	4-02.1
Housing Finance Agency	Mortgage Revenue Bonds	Revenues from Mortgages held on homes and multi-family facilities	Mortgage loan repayments and reserve/ investment income	***	\$670,859,000	54-17
Industrial Commission/ Lignite Research Program	Revenue Bonds	Letter of Credit from Bank of North Dakota	Biennial appropriations from the Lignite Research Fund	No limitations except to the extent of funds available in the Lignite Research Fund for debt service payments	\$2,860,000 as of 6/30/04	54-17.5
Municipal Bond Bank	Moral Obligation Revenue Bonds	Political Subdivision bonds	Loan repayments from political subdivisions	Capital Financing Program has rating agency & IC limitation of \$75,000,000. SRF Program ***	\$153,245,000 as of 12/31/04	6-09.4
Natural Resource Bonds	General Obligation	Taxing Authority of the State	Loan repayments	Together with all GO debt 5% of full and true value of all taxable property	\$0	21-11-08
Governor & Treasurer – Real Estate Bonds	General Obligation	Real Estate mortgages & a commitment to levy a statewide mill levy	Payments from Real Estate Loans and Statewide Mill levy	\$150,000,000/65% of the value of real estate mortgages	\$0	54-30
Industrial Commission/ Student Loan Program	Revenue Bonds Residual Bonds	Student Loans guaranteed by Guarantee Agency and Federal Government	Student Loan payments	*** The residual (subordinate) bonds are statutorily limited to \$23,000,000. The residual bonds are subordinate to all other student loan bonds—they are not issued on parity with other SLT bonds.	\$125,388,000 as of 6/30/04	54-17
University System	Revenue Bonds	Revenues from the fees	Parking Fees, Housing Fees, Student Fees	Each project must be approved by the Legislature. No overall limitation	\$87,143,000	15-55
Water Commission	Revenue Bonds Appropriation Bonds	Revenues and earnings	Collection of User Fees; Water Development Trust Fund appropriation	Statutory limitation of an aggregate of \$2 million unless Legislature authorizes a higher amount for a specific project (SW pipeline has a limitation of \$25,000,000; Northwest Area Water Supply project does not have such a limitation. Water development bonds limited to \$60,000,000.)	\$46,111,602 as of 6/30/04	61-24.3, 61-24.6, 61-02, 61-02.1

\*Security Sources also include reserve funds and other invested funds and accounts that are provided for in each bond issue. Generally these reserve funds represent up to one year's debt service or 10% of the bond issue. Balances in the reserve funds are generally used to make the final debt service payment.

\*\*The Federal Government has established an overall volume cap for Private Activity Bonds that is \$233,800,000 for calendar year 2004. The Student Loan Revenue Bonds and the Housing Finance Agency Revenue Bonds fall within the Private Activity Bond Volume Cap.

\*\*\*The issuance of bonds is subject to adherence to bond document requirements and satisfactory program cash flows.

\*\*\*\*North Dakota Building Authority Bonds issued for Energy Conservation Projects and ConnectND, by law, are not under the 10% of 1% sales tax limitation.

**Revised 1/14/05**

**House Industry, Business and Labor Committee**  
**Testimony of Tim Porter**  
**North Dakota Municipal Bond Bank**  
**Senate Bill 2074**

For the record, my name is Tim Porter and I am the Executive Director of the Municipal Bond Bank. I am providing this testimony in support of Senate Bill 2074 to rename the North Dakota Municipal Bond Bank as the North Dakota Public Finance Authority and to enable the Bond Bank to issue bonds or other evidences of indebtedness on behalf of any other state agency involved in the issuance of debt.

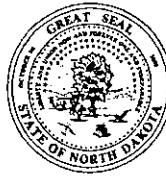
Senate Bill 2074 is an agency-sponsored bill presented by the Municipal Bond Bank with the approval of the Industrial Commission. The Bond Bank is a state agency that operates under the supervision and authority of the Industrial Commission. It is a self-supporting state agency and receives no money from the General Fund.

Currently, the Bond Bank issues debt under two active programs: the State Revolving Fund and the Capital Financing Program. Although most of the borrowers under these programs are municipalities, we are receiving more requests from other qualifying entities, such as irrigation districts and rural water districts, to issue debt on their behalf. We have also received some requests to become involved in issuing industrial revenue bonds. Considering the wide variety of borrowers under the Bond Bank's active programs, as well as the new programs that the Bond Bank is being asked to develop or administer, the proposed name change more accurately reflects the Bond Bank's broader scope in its capacity to issue debt and administer other programs.

In addition to the name change, SB 2074 also enables other state agencies to enter into an administrative agreement with the Municipal Bond Bank to issue debt on their behalf. This enabling legislation would particularly benefit those agencies that issue debt infrequently and that do not have a finance staff within the agency. Current law permits the Bond Bank to enter into administrative agreements with other state agencies when the proceeds of the bond issue are used for the purpose of making loans to political subdivisions. Under the provisions of SB 2074, any state agency authorized by law to issue debt would be allowed to enter into an administrative agreement with the Bond Bank to issue the bonds on their behalf. As provided in the legislation, the bonds issued under any administrative contract would be the obligation of the state agency and not an obligation of the Bond Bank.

Although the fiscal note identifies an insignificant direct financial impact to the Municipal Bond Bank, indirectly, SB 2074 creates more efficient government by allowing the Bond Bank to issue debt on behalf of other state agencies. These efficiencies, in the form of existing expertise and human resources, would streamline government and result in measurable savings to those agencies that choose to take advantage of this opportunity. Therefore, I recommend that the Industry, Business and Labor committee consider a "do pass" on SB 2074.

The written testimony below describes the Municipal Bond Bank and its financing programs.



# INDUSTRIAL COMMISSION OF NORTH DAKOTA

John Hoeven  
Governor

Wayne Stenehjem  
Attorney General

Roger Johnson  
Agriculture Commissioner

Rep. Keiser and Members of the House Industry Business and Labor Committee

This is to follow-up the discussion that took place today in regards to Senate Bill 2074. When Ed Sather and I appeared before you we suggested that the legislation would allow the Public Finance Authority to enter into administrative agreements with local jurisdictions to assist in the issuance of bonds. Senate Bill 2074 **does not** broaden the ability of the Authority to work with local jurisdictions.

What is new authority in SB 2074 is the ability of the Public Finance Authority to assist, through an administrative agreement, state agencies, instrumentalities or officers with the issuance of bonds. Currently the Municipal Bond Bank is limited to assisting only the State Health Department and the Bank of North Dakota for certain purposes. With the passage of SB 2074, as noted in Sections 23 and 24 of SB 2074, the Public Finance Authority would be able to assist other state agencies when those state agencies so request.

We apologize for any confusion we may have created in discussing Senate Bill 2074.

Karlene Fine  
March 15, 2005

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