

2009 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1264

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1264

House Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: 01/23/09

Recorder Job Number: 7662

Committee Clerk Signature <i>Lou Engelson</i>
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Minutes:

**Chairman Grande** opened the hearing on HB 1264

**Chairman Grande:** I'm going to take up 1264.

**Rep. Klemin:** This house bill 1264 is a very simple change. It only changes the date on the bond validation . Scott Wagner who is a bond attorney here in Bismarck is here to tell you the reason for this change and explain it.

**Scott Wagner** offered testimony in support of HB 1264. See attachment #1. My name is Scott Wagner with Cook, Wagner and Wike Law Firm. North Dakota has a bond validating statute. This particular act dates back to 1961 but the state has had validation statutes back to the 30s. All this does is validate the past official proceedings of governmental entities relating to the issuance of bonds or notes or warrants. It only applies to past actions. What has happened in every session or every few sessions since 1961, is that the Legislature has come in and made this change to HB 1264. All this does is bring the date forward. The last update was in 1999. This will bring it up to 2009, and again this is only validating to the past. So this would only validate again, actions, bond issues, proceedings prior to July 1, 2009. It won't become effective until after that date. The idea is to protect bond holders and also the governmental entities that issue the bonds.

**Chairman Grande:** Committee are you okay with that? Anyone else who wishes to speak in favor of 1264. Opposed to 1264. Neutral to 1264. Close 1264.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. Committee Work One HB 1264

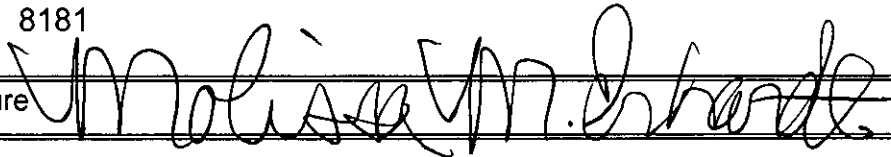
House Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: 01/29/2009

Recorder Job Number: 8181

Committee Clerk Signature



Minutes:

### COMMITTEE WORK ONE:

**CHAIRMAN GRANDE:** We will take up HB 1264. Not that I understood a thing that they said. I am hoping that somebody does because it has to do with the validity of the bonds and having to put back the date. I didn't understand why we date back like that. He does include the matters of validation language in his testimony. I am looking at Scott Wegner's testimony. That is why all defective, missings, irregulars, constitutional, calling, notice, conducting, or getting elected. The purpose of this act is to protect bondholders (both initial investors and secondary market investors) and political subdivisions. We have 1264 in front of us.

**Vice Chairman Randy Boehning:** Isn't that more of a clean-up language?

**Chairman Grande:** Updating the language so they can continue to do bonds forgiveness it looks like.

**Rep. Karls:** Do Pass motion.

**Rep. Dahl:** 2<sup>nd</sup>.

**Chairman Grande:** Discussion from the committee? Clerk will call the roll on a  
Do Pass motion?

**Clerk Erhardt:** Roll Call. Yes: 12. No: 0. Absent: 1. Rep. Schneider. Carrier:  
Rep. Karls.

Date: 1/29/09  
Roll Call Vote #: \_\_\_\_\_

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1264

House Government and Veterans Affairs Committee

Check here for Conference Committee

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

Action Taken Do Pass

Motion Made By Rep. Karls Seconded By Rep. Dahl

Representatives	Yes	No	Representatives	Yes	No
Chairman Grande	✓		Rep. Amerman	✓	
Vice Chairman Boehning	✓		Rep. Conklin	✓	
Rep. Dahl	✓		Rep. Schneider		
Rep. Froseth	✓		Rep. Winrich	✓	
Rep. Karls	✓		Rep. Wolf	✓	
Rep. Kasper	✓				
Rep. Meier	✓				
Rep. Nathe	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Rep. Karls

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

**REPORT OF STANDING COMMITTEE**

**HB 1264: Government and Veterans Affairs Committee (Rep. Grande, Chairman)**  
recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).  
HB 1264 was placed on the Eleventh order on the calendar.

2009 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1264



## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1264

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: 02/27/09

Recorder Job Number: 9871

Committee Clerk Signature

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Minutes:

**Scott Wagner:** Cook, Wagner, and Wike PLLP. See attached testimony #1.

**Senator Cook:** Revenue bonds, to what degree are the property owner obligated to remain tied to the bonds?

**Scott Wagner:** A bond holder is only entitled to revenues that are pledged. All the bond holder could demand is revenue from that system. If the revenue was short for whatever reason, a bond holder would have no right to compel any type of tax levy from that community and this would be the same if we are talking water, sewer, ect.

**Senator Cook:** Would the board go if they so desired to use other money sources to meet the obligation of the revenue bonds?

**Scott Wagner:** I think that would happen; there would be a reluctant to default on it. I think that they look where ever they can, not excess levy but try and find the money somehow.

**Senator Horne:** This law covers any errors except const errors.

**Scott Wagner:** The language in the act is broad; it is a kind of violation. Debt limit would not protect them, if they did something like

**Senator Horne:** Does this happen very often?

**Scott Wagner:** I would say it is very rare. I am not aware of any bond issues that are done and

then challenged; the challenges tend to come up in the process. There are a few assessments going on in the state. It is rare that an old bond issue would be challenged. I think that is good, by the time this becomes effective, any ongoing proceedings can be challenged.

**Senator Dever:** The constitution says that the state cannot go over 2 million of bonded debt.

**Scott Wagner:** That is correct. But it is more in the way of general obligation debt.

A motion for a do pass was made by Senator Cook with a second by Senator Oehlke. There was no discussion and the motion passed 5-0 with Senator Cook carrying the bill.



**REPORT OF STANDING COMMITTEE**

**HB 1264: Government and Veterans Affairs Committee (Sen. Dever, Chairman)**  
recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1264  
was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

HB 1264

**HB 1264**  
**House Government and Veterans Affairs Committee**  
**January 23, 2009**

Madam Chairman and members of the Committee:

My name is Scott Wegner. I am a member of the law firm of Cook Wegner & Wike PLLP in Bismarck. We serve as bond counsel to political subdivisions. I am appearing this morning in favor of House Bill 1264.

The purpose of HB 1264 is to extend the Bond Validating Act to cover bonds issued since the last update in 1999.

In 1961 the Legislature adopted the Bond Validating Act, found at NDCC Chapter 21-09. The Act is attached to my testimony. Validating acts cure defects in the past official proceedings of governmental entities. The Act validates and approves all bonds and all proceedings relating to the bonds, notwithstanding lack of power, or any defects or irregularities, other than constitutional matters, which may not be cured. The Act applies to all political subdivisions.

The purpose of the Act is to protect bondholders (both initial investors and secondary market investors) and political subdivisions.

An example of a defect that would be validated is a school district failing to publish a notice of a bond sale in their official newspaper.

An example of a constitutional defect would be bonds issued in excess of a city's constitutional debt limit.

The Act applies only to events occurring before its effective date. Prospective application is logical, since the legislature would not want to validate future bond issues and proceedings. Accordingly, the Act needs to be updated on a regular basis because it only applies to bond issues and proceedings before a certain date. The Legislature has updated the effective date of the Act every session or every few sessions since 1961.

We ask you to give House Bill 1264 a Do Pass recommendation.

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Attachment #1

**CHAPTER 21-09  
BOND VALIDATING ACT**

*Same  
handout  
given to  
Senate.*

**21-09-01. Citation.** Repealed by S.L. 1981, ch. 277, § 2.

**21-09-02. Definitions.** The following terms, as used or referred to in this chapter, have the following meanings:

1. "Bonds" includes bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates, and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money, or evidencing or representing a charge, lien, or encumbrance on specific revenues, income, or property of a public body, including all revenue bonds, special improvement warrants, refunding improvement bonds and warrants, and, without limitation by the enumeration of the foregoing, all other instruments and obligations, whether payable from a special fund or supported by a pledge of the full faith and credit of the public body issuing the same.
2. "Public body" includes any county, city, township, school district, irrigation district, drainage district, special improvement district, and any other political or governmental subdivision of the state of North Dakota, and any board, commission, agency, or officer thereof.

**21-09-03. Validation of bonds and incidental proceedings.** All bonds heretofore issued by any public body for any purpose and in any manner consistent with the constitution of the state, and all proceedings heretofore taken by any such body for the authorization, issuance, sale, exchange, execution, and delivery of its bonds, and for the performance of any conditions precedent thereto, and for the provision of taxes, special assessments, and other funds to pay such bonds and interest thereon, are hereby validated, ratified, approved, and confirmed, notwithstanding any lack of power of such public body, or of the governing board, council, commission, or officers thereof, to authorize, issue, sell, exchange, execute, or deliver the same, and notwithstanding any defects, irregularities, or omissions in such proceedings or in such authorization, issuance, sale, exchange, execution, or delivery; and all bonds heretofore issued by such public bodies, and all bonds hereafter issued by them under the authority of proceedings heretofore taken are binding, legal, and enforceable obligations of such public bodies respectively.

**21-09-04. Matters validated.** It is the intent hereof that, without limiting the generality of the foregoing:

1. This chapter applies to all defects, irregularities and omissions, other than constitutional, in the calling, notice, or conduct of any election, any public hearing, or any meeting of a governing board, council, or commission held for the purpose of authorizing bonds or any project financed by bonds; in the creation of an improvement district, the determination of the necessity and the making of contracts for the acquisition or construction of such project; in the levy of any tax or special assessment appropriated for the payment of bonds; in the establishment of rates and charges for the service of any project; in the pledge of net revenues derived therefrom to the payment of bonds, and in the making of covenants securing such payment.
2. This chapter applies notwithstanding any lack of power, other than constitutional, to engage in a project or any portion thereof, or to finance the same by issuing bonds; to combine two or more projects or bond issues in the same proceedings; to conduct proceedings in the sequence actually followed; or to exercise jurisdiction over the site at which any project is located, within or without the corporate limits of the public body or of the county in which it is situated or of the state of North Dakota.

**21-09-05. Application of chapter.** The provisions of this chapter relating to validation apply to all bonds issued and proceedings taken by any public body prior to July 1, 1999.



**HB 1264**  
**Senate Government and Veterans Affairs Committee**  
**February 27, 2009**

Mr. Chairman and members of the Committee:

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