2009 SENATE NATURAL RESOURCES

SB 2376

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2376

Senate Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: February 5, 2009

Recorder Job Number: 8774

Committee Clerk Signature	

Minutes:

Senator Lyson opened the hearing on SB 2376, relating to replenishing a reserve fund for a portion of bonds issued by the transmission authority. All members were present.

Representative Klein district 40, we started with a system to try and aid in expanding our electric transmission system. We then added transmission lines to try and move some of the oil and gas out of the state. This is a change to that. Originally there was no state commitment except for support. There was no support to the bonding system. This bill opens that up.

Senator Wardner district 37, introduced the bill and handed out an amendment (see attachment #1).

Sandi Tabor, North Dakota Transmission Authority, spoke in favor of the bill (see attached testimony #2).

Tim Porter, North Dakota Public Finance Authority, spoke in favor of the bill (see attached testimony #3).

Senator Hogue is there a formula that would be set for how high the reserves would have to be and would your agency have some negotiating authority to determine what those reserves are? If we had to add to those reserves what would the state get for that? Is that something that would be addressed in the bond document?

Tim Porter if the reserves are used to cover a default in the payments, the remedy would be to use any kind of revenues to recover as much as we could. There is also a remedy of selling the facility because the Transmission authority would actually hold the mortgage. The answer to the other question is that it is up to the rating agencies. The highest two years of debt service have to be held in reserve.

Senator Lyson closed the hearing on the bill.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2376

Senate Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: February 5, 2009

Recorder Job Number: 8827

Committee Clerk Signature	Kat. L -

Minutes:

Senator Lyson opened SB 2376, relating to replenishing a reserve fund for a portion of bonds issued by the transmission authority, up for discussion.

Senator Hogue moves a Do Pass on the amendment.

Senator Pomeroy seconds the motion.

A voice vote was taken

Senator Hogue moves a Do Pass as amended.

Senator Schneider seconds the motion

The bill received a Do Pass on a vote of 7 to 0.

FISCAL NOTE

Requested by Legislative Council
01/28/2009

Bill/Resolution No.: SB 2376

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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	$0	$0	$0	$0	$0	$0
Expenditures	$0	$0	$0	$0	$0	$0
Appropriations	$0	$0	$0	$0	$0	$0

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
$0	$0	$0	$0	$0	$0	$0	$0	$0

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2376 allows the Transmission Authority to issue moral obligation bonds. There is no fiscal impact to the State unless there is a request in a future biennium to replenish a reserve fund. The amount of the potential request would depend on the number of moral obligation bonds issued.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

There is no fiscal impact unless there is a request to replenish a bond reserve fund. A shortfall in a reserve fund would result only if there was a shortfall in the revenues from the entities transmitting power on the transmission lines.

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, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Karlene Fine	**Agency:**	Industrial Commission
Phone Number:	3283722	**Date Prepared:**	02/04/2009

Attachment #1

90982.0101
Title.

Prepared by the Legislative Council staff for
Senator Wardner
February 3, 2009

PROPOSED AMENDMENTS TO SENATE BILL NO. 2376

Page 3, replace lines 16 through 24 with:

"7. Any pledge of revenue made by the industrial commission as security for the authority's evidences of indebtedness is valid and binding from time to time when the pledge is made. The revenues or other moneys so pledged and thereafter received by the authority are immediately subject to the lien of any such pledge without any physical delivery thereof or further act, and the lien of any such pledge is valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, regardless of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be filed or recorded, except in the records of the authority."

Renumber accordingly

Date: Feb. 5, 2009

Roll Call Vote #: #1 2376

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 90982.0101

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Amendment

Motion Made By Sen. Hogue Seconded By Sen. Pomeroy

Senators	Yes	No	Senators	Yes	No
Senator Stanley W. Lyson, Chairman	✓		Senator Jim Pomeroy	✓	
Senator David Hogue, Vice Chairman	✓		Senator Mac Schneider	✓	
Senator Robert S. Erbele	✓		Senator Constance Triplett	✓	
Senator Layton W. Freborg	✓				

Total (Yes) 7 No 0

Absent

Floor Assignment

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

Voice vote; Amendment only

Date: Feb. 5, 2009

Roll Call Vote #: #2 2376e

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Amendment

Motion Made By Sen. Hogue Seconded By Sen. Schneider

Senators	Yes	No	Senators	Yes	No
Senator Stanley W. Lyson, Chairman	✓		Senator Jim Pomeroy	✓	
Senator David Hogue, Vice Chairman	✓		Senator Mac Schneider	✓	
Senator Robert S. Erbele	✓		Senator Constance Triplett	✓	
Senator Layton W. Freborg	✓				

Total (Yes) 7 No 0

Absent

Floor Assignment Sen. Hogue

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

REPORT OF STANDING COMMITTEE

SB 2376: Natural Resources Committee (Sen. Lyson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2376 was placed on the Sixth order on the calendar.

Page 3, replace lines 16 through 24 with:

"7. Any pledge of revenue made by the industrial commission as security for the authority's evidences of indebtedness is valid and binding from time to time when the pledge is made. The revenues or other moneys so pledged and thereafter received by the authority are immediately subject to the lien of any such pledge without any physical delivery thereof or further act, and the lien of any such pledge is valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, regardless of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be filed or recorded, except in the records of the authority."

Renumber accordingly

2009 HOUSE NATURAL RESOURCES

SB 2376

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2376

House Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: 3-5-09

Recorder Job Number: 10309

Committee Clerk Signature Nancy L. Gerhardt

Minutes:

Chairman Porter – Open the hearing on SB 2376.

Sandi Tabor – See **Attachment # 1**. Questons?

Tim Porter – ND Public Finance Authority – See **Attachment # 2**. Questions?

Rep. Keiser – When the authority was first being established there was some discussion about actually having to issue general obligation bonds, not moral. With contractual arrangements with the entities involved to make payments to the state. Is that not a possibility?

TP – The state's general obligation has not been considered for this project. I don't believe we could considerate it without some considerable revisions to our bonding cap. Just because of the size of this type of activity.

Rep. Pinkerton – I'm not sure of moral obligation, if it doesn't have binding consequences how could it have equity value?

TP – The state's moral obligation is an industry term. It has value to the investor looking at it. The state is actually saying they would replenish that reserve if there is a shortfall. Without any kind of obligation to replenish the reserves, there's a lot less enhancement there. That's where they get a single A credit rating on these bonds.

Rep. Keiser – The moral obligation is good for 2 years, it's not binding, what happens if the state decides not to bank.

TP – Obviously if there were a shortfall the legislature could decide not to pay. It would inhibit our future issuance of bonds. The investors are relying on what the state has done in the past. It's not saying it's a legal obligation. They are relying on the fact the state would step up and back this obligation.

Rep. Pinkerton – If the state should be put in a situation where they didn't feel like they could afford to make those obligations obviously we've seen lots of situation now we never imagined would happen. That would severely downgrade our bond rating for the next general obligation bond we tried to put out.

TP – That is exactly correct. It would severely affect our bond rating going forward and also effect the bond rating on our existing debt held by investors if they wanted to sell that, it would bring a lot lower price.

Rep. Pinkerton – If we were to do this the risk assumed would be our risk if we could not meet the obligation would be the risk to our general obligation bonds, both in the future and those currently held.

TP – That is correct. Looking at these bonds and the likelihood the state would back these bonds.

Rep. Pinkerton – I would think if we failed to meet this obligation on these transmission bonds we would suffer on those kinds of bonding ability too. It would not just be the transmission; it would be our general obligation bonds as well.

TP – That's exactly right.

Rep. Pinkerton – Our risk is not the bonds out with the transmission authority, but the risk is with our credit rating if we should fail to pay our moral obligation.

TP – That is correct also.

Rep. Pinkerton – The state is assuming this risk, what is the reward to the state.

TP – The reward to the state is the development of these types of transmission facilities that are going to move our energy from the state outside the state.

Rep. Pinkerton – You could put our risk ratio between what you have to pay for the moral bond and the double AA bond.

TP – If the transmission authority were to issue these bonds and get this interest rate benefit that would actually be a benefit to the company. They are still going to have to come up with 70% of the cost of the project whether it's through conventional financing or whatever else they can come up with.

Chairman Porter – Any further testimony in favor of 2376? Any opposition? Seeing none we will close the hearing on SB 2376.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2376

House Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: 3-5-09

Recorder Job Number: 10310

Committee Clerk Signature Nancy L. Gerhardt

Minutes:

Chairman Porter – Pull out SB 2376.

Rep. Keiser – This is just a small section of the transmission authority. There is another section that addresses the states name in good faith for bonding purposes. There's another section that requires a workout to be developed prior to this occurring where the companies getting the benefit of this would develop in a defined pattern under which the state would eventually move out of the position of being liable and not owning it. We did not want the authority to become an electrical transmission company. Wyoming, anyone else does this yet?

Sandi Tabor – Wyoming, South Dakota, Montana, New Mexico, Colorado, North Dakota and Kansas are the ones I know of.

Rep. Keiser – Basically what we trying to do is position ND to be able to get the power out of the state.

Rep. Keiser – Move Do Pass

Rep. DeKrey – 2nd.

Chairman Porter – We have a motion by Rep. Keiser and 2nd by Rep. DeKrey for a Do Pass on SB 2376. Discussion? Seeing none the clerk will call the roll.

Yes 12 No 1 Absent 0 Carrier Rep. Keiser

Date: 3-5-09
Roll Call Vote #:

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2376

House Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken ☑ Do Pass ☐ Do Not Pass ☐ As Amended

Motion Made By Keiser Seconded By DeKrey

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep Hanson	✓	
Vice Chairman Damschen	✓		Rep Hunskor	✓	
Rep Clark	✓		Rep Kelsh	✓	
Rep DeKrey	✓		Rep Myxter	✓	
Rep Drovdal	✓		Rep Pinkerton		✓
Rep Hofstad	✓				
Rep Keiser	✓				
Rep Nottestad	✓				

Total (Yes) 12 No 1

Absent 0

Floor Assignment Keiser

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

REPORT OF STANDING COMMITTEE

SB 2376, as engrossed: Natural Resources Committee (Rep. Porter, Chairman) recommends **DO PASS** (12 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Engrossed SB 2376 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

SB 2376

#2.

Testimony on SB 2376
Senate Natural Resource Committee

Presented by: Sandi Tabor
North Dakota Transmission Authority

Senate Switch to House

February 5, 2009

Senate Bill 2376 provides additional flexibility to the North Dakota Transmission Authority in facilitating the future construction of transmission infrastructure. Before I ask Tim Porter from the ND Public Finance Authority to explain the details of the bill, let me take a minute to review the mission of the ND Transmission Authority.

The Transmission Authority was created by the Legislature in 2005. Its mission is to "*assist in removing the electric transmission export constraint and to assist with upgrading and expanding the region's electrical transmission grid to facilitate the development of the state's natural resources.*" To accomplish this mission the Legislature provided the Transmission Authority with a wide array of powers ranging from entering into to contracts to selling revenue bonds to help finance transmission projects. The members of the ND Industrial Commission serve as the Transmission Authority. It receives no general fund appropriations and has no FTEs.

Presently, the Transmission Authority has the authority to issue up to $800 million in general revenue bonds. Revenues generated from the use of the transmission infrastructure would be used to pay the debt associated with any bonds sold. During the last year, several developers have asked about the feasibility of the Authority issuing bonds to help finance their projects. They did this in part because of the enormous expense associated with constructing transmission infrastructure. Presently, the estimated construction cost of a 345 kV transmission line is between $700,000 and 800,000 per mile.

In response to these inquiries we began a dialogue with representatives from the Bank of North Dakota. It was during these discussions that we learned of the difficulty the Authority will have in selling the bonds because the bonds are not guaranteed by the State of North Dakota. Senate Bill 2376 was introduced to provide the Transmission Authority with a way to enhance the value of future financing packages. Under the bill, up to 30% of the cost of a project could be financed by selling bonds that include the moral obligation of the State of North Dakota. The bill caps the total amount of bonds that may be sold with the moral obligation of the state at $240 million.

As I mentioned earlier, Tim Porter is here to provide more detail about the bill. Let me simply say that if the state is truly interested in facilitating the construction of transmission infrastructure in North Dakota, the Legislature must consider ways to enhance our ability to do so. SB 2376 represents an important improvement in our financing capabilities. It for that reason that the Transmission Authority, i.e. the

Industrial Commission, supports SB 2376, and encourages a "do pass" recommendation from the committee.

#3.

Senate Natural Resources Committee
Testimony of Tim Porter
North Dakota Public Finance Authority
Senate Bill 2376
February 5, 2009

For the record, my name is Tim Porter and I am the Executive Director of the North Dakota Public Finance Authority (PFA). The PFA 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. Within current law, the PFA can enter into an administrative agreement to provide assistance to any state agency that has been authorized by the legislature to issue evidences of indebtedness. At the request of the Transmission Authority, I am providing additional testimony in favor of Senate Bill 2376. Senate Bill 2376, if passed, would allow the Transmission Authority to issue bonds with the underlying credit enhancement of the moral obligation of the State for up to 30% of any given project with an aggregate cap of $240,000,000.

Under the current law passed in the 2007 Legislative Session, the Transmission Authority can issue up to $800,000,000 of debt to finance transmission projects throughout North Dakota. The law states "The evidences of indebtedness are not subject to taxation by the state or any of its political subdivisions and do not constitute a debt of the state of North Dakota within the meaning of any statutory or constitutional provision and must contain a statement to that effect on their face." This provision will remain in law.

Senate Bill 2376 proposes that a portion of the $800,000,000 could be sold with the State's moral obligation. The moral obligation of the State provides that if the debt service reserves are utilized to cover a shortfall in the debt payments, the legislature is morally obligated to replenish the reserve to its required level during the following legislative session. Even though the bonds issued by the Transmission Authority would be backed by the revenues produced by the project, without a credit rating or some form of credit enhancement, the bonds would not attract the attention of today's risk-conscious investor. Currently, bonds backed by the State's moral obligation are "A" rated, which provides an attractive interest rate structure for the underlying project being financed and an attractive risk profile for the investor.

The interest savings for a project backed by the moral obligation of the State are significant. Based upon information from the PFA's financial advisor, 20 year taxable bonds issued with the moral obligation of the State would get an average rate of 7.20% and 30 year taxable bonds issued with the moral obligation would get an average rate of 7.40%. Without the moral obligation, for a "Baa" rated company, the interest rate would be approximately 9.20% under both scenarios.

How much is the State risking by using its moral obligation for transmission-related projects? On a $100,000,000 project with $30,000,000 (.30 X $100MM) of moral obligation bonds and a 25 year maturity, the maximum exposure to the State would be approximately $5.5 million per biennium. The amount of exposure to the State would be reduced by the net revenues realized by the project and collected during the respective biennium. Since these projects are designed to

produce sufficient revenues to cover costs and profit expectations, I would anticipate that the State's overall exposure would be reduced substantially by the revenue stream of the transmission project being financed.

As we consider infrastructure needs across the country, additional transmission continues to be discussed as a vital need. Tax incentives for these projects have been discussed within the provisions of the economic stimulus package, including the use of tax exempt bonds to fund these projects. Senate Bill 2376, if passed, provides the State of North Dakota with an opportunity to facilitate the development of additional transmission of our energy. By using the State's moral obligation as a credit enhancement on up to 30% of a transmission project, we are providing an additional incentive for infrastructure investment in North Dakota.

Attachment #2

House Natural Resources Committee
Testimony of Tim Porter
North Dakota Public Finance Authority
Engrossed Senate Bill 2376
March 5, 2009

For the record, my name is Tim Porter and I am the Executive Director of the North Dakota Public Finance Authority (PFA). The PFA 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. Within current law, the PFA can enter into an administrative agreement to provide assistance to any state agency that has been authorized by the legislature to issue evidences of indebtedness. At the request of the Transmission Authority, I am providing additional testimony in favor of Engrossed Senate Bill 2376. Engrossed Senate Bill 2376, if passed, would allow the Transmission Authority to issue bonds with the underlying credit enhancement of the moral obligation of the State for up to 30% of any given project with an aggregate cap of $240,000,000.

Under the current law passed in the 2007 Legislative Session, the Transmission Authority can issue up to $800,000,000 of debt to finance transmission projects throughout North Dakota. The law states "The evidences of indebtedness are not subject to taxation by the state or any of its political subdivisions and do not constitute a debt of the state of North Dakota within the meaning of any statutory or constitutional provision and must contain a statement to that effect on their face." This provision will remain in law.

Engrossed Senate Bill 2376 proposes that a portion of the $800,000,000 could be sold with the State's moral obligation. The moral obligation of the State provides that if the debt service reserves are utilized to cover a shortfall in the debt payments, the legislature is morally obligated to replenish the reserve to its required level during the following legislative session. Even though the bonds issued by the Transmission Authority would be backed by the revenues produced by the project, without a credit rating or some form of credit enhancement, the bonds would not attract the attention of today's risk-conscious investor. Currently, bonds backed by the State's moral obligation are "A" rated, which provides an attractive interest rate structure for the underlying project being financed and an attractive risk profile for the investor.

The interest savings for a project backed by the moral obligation of the State are significant. Based upon information from the PFA's financial advisor, 20 year taxable bonds issued with the moral obligation of the State would get an average rate of 7.20% and 30 year taxable bonds issued with the moral obligation would get an average rate of 7.40%. Without the moral obligation, for a "Baa" rated company, the interest rate would be approximately 9.20% under both scenarios.

How much is the State risking by using its moral obligation for transmission-related projects? On a $100,000,000 project with $30,000,000 (.30 X $100MM) of moral obligation bonds and a 25 year maturity, the maximum exposure to the State would be approximately $5.5 million per biennium. The amount of exposure to the State would be reduced by the net revenues realized

by the project and collected during the respective biennium. Since these projects are designed to produce sufficient revenues to cover costs and profit expectations, I would anticipate that the State's overall exposure would be reduced substantially by the revenue stream of the transmission project being financed.

As we consider infrastructure needs across the country, additional transmission continues to be discussed as a vital need. Tax incentives for these projects have been discussed within the provisions of the economic stimulus package, including the use of tax exempt bonds to fund these projects. Engrossed Senate Bill 2376, if passed, provides the State of North Dakota with an opportunity to facilitate the development of additional transmission of our energy. By using the State's moral obligation as a credit enhancement on up to 30% of a transmission project, we are providing an additional incentive for infrastructure investment in North Dakota.