

**2015 HOUSE POLITICAL SUBDIVISIONS**

**HB 1194**

# 2015 HOUSE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee

Prairie Room, State Capitol

HB 1194

1/29/2015

22810

☐ Subcommittee

☐ Conference Committee

*Amanda Muscher*

### Explanation or reason for introduction of bill/resolution:

Relating to exemptions from statutory provision for bonds and the definition of revenues.

### Minutes:

Marilyn Foss Testimony #1  
Berry Haugen Testimony #2  
Scott Wagner Testimony #3

**Chairman Klemin:** Opened the hearing on HB 1194.

**Marilyn Foss:** Testimony #1

**Representative Kelsh:** On page 2, when you talk about, the loan must be authorized with a resolution and what money would be used to pay the loan and what collateral. Let's say they need money because a lot of snow removal and it says the collateral of the limited to the property that the loan is issued for, under the circumstances what would be the collateral if they were just going to need it for wages and repairs?

**Marilyn Foss:** If they are not purchasing any property with the loan proceeds then the loan is insecure. One of the things that were noted is that there is nothing in this bill that relieves the bill of its obligation to do credit analysis.

**Representative Kelsh:** Would they make that loan? You can't use anticipated tax revenues, so would they even make the loan?

**Marilyn Foss:** My understanding is that they have made those loans. Going through this will better educate everyone, and so banks will be still willing to do these kinds of lending because they now know explicit authority is needed. This is banks of various sizes that indicated that these are things they are willing to help out with and consider of course subject or credit analysis but yes the unsecured aspect of this was discussed by the committee and explicitly agreed upon by our legislative committee of bankers.

**Representative Beadle:** In section 3, (section four creates the new title 21 and that is what is alluded to in section 1 and 3 references to the new chapter) that is just the general bonding section of municipal finance, it is says the chapter is not applicable to title 21. Is it making it so that the entire chapter bonding does not tie into this one? The reason why I ask is 210304 rights after deals with the grant upon power and the limitations of

indebtedness referring to the amount of debt the municipalities would be able to take on in bonding? So would that say their ability to take bank loans is not subject to the level of indebtedness they have within the bonding sections?

**Marilyn Foss:** You are correct. This establishes a separate section for these bank loans that is why we thought it was appropriate to put a maximum dollar amount but it would be to make it clear that bank loans have their own chapter and I would look at it as it would be an addition to your bonding authority.

**Representative Beadle:** In that section and in the top paragraph 210304 it says no municipality may incur indebtedness in any manner or any propose an amount which with all other outstanding indebtedness of the municipality exceeds 5% of the assess value of taxable property they are in. So they would be able to with title 21 they could go over the 5% threshold?

**Marilyn Foss:** Yes

**Representative Beadle:** So if the dollar amount levels that we have limitations on within the bottom of this section 4 if that exceeds 5% then they are able to go over as long they are still infer that dollar amount?

**Marilyn Foss:** Yes

**Berry Haugen:** Testimony #2

**Blake Crosby:** I am the executive director of the North Dakota League of Cities and we do support the bill. This is the opportunity for local folks to work together and local money to stay local which provides a great deal of oversight. It puts another responsibility on local subdivision to make sure that the funds are invested in wisely, prudently, and there are watch dog mechanisms built in to the process.

**Representative Beadle:** In section 2, it is adjusting the definition of revenue, why has these sorts of things not been included before and is there any concerns for fiscal situations?

**Blake Crosby:** I don't want to wing it on that one.

**Terry Traynor:** With the association of counties, we support this bill. We have had difficulty at township levels waiting for federal FEMA funds and then only opportunity they really had is to go to the county and to ask the county to assume their matching requirement because they have no authority to go and borrow money.

**Scott Wagner:** Testimony #3. There was a question on debt limit. The loans we are talking about not would not go towards the limit. There are many types of borrowings that are not counted towards the debt limit.

**Representative Koppelman:** You said we would use this in one year horizon. In the bill it is a 5 year limit. Does the 5 year limit need to be that long?

**Scott Wagner:** Section 2 amends the indebtedness of the chapter that would create no maturity limit on those under 2102. You could do a 20 certificate of indebtedness. It wouldn't make since but you could. The rest of the bill would be a new chapter on bank loans that have that limit on maturity.

**Chairman Klemin:** Closed the hearing on HB 1194

**Chairman Klemin:** Opened the hearing on HB 1194

**Representative Zubke:** I would like to propose an amendment.

**Chairman Klemin:** Are credit union loans governed under title 21?

**Representative Beadle:** Section 4 created a new section of title 21. So section 4 would be what title 21 is and here it doesn't mention credit union anywhere.

**Chairman Klemin:** If you look at section one line 19 this does not to apply to bank loans authorized fewer than 21.

**Representative Beadle:** Yes in section 4 the bill creates title 21.

**Chairman Klemin:** Section 4 creates a new chapter in title 21

**Representative Oversen:** Chapter 21 is related to government and finance so I thin we would be okay there. Not specific to bank loans, it is just government and finance.

**Chairman Klemin:** Are you making a motion to amend this bill to wherever it says bank loans to have bank or credit union loans?

**Representative Zubke:** I would make that motion yes.

**Representative Kelsh:** Seconded the motion

**Representative Koppelman:** I am supportive of the idea of the credit unions being able to do whatever the banks can do but their structure is a little bit different and those of you that may be a little more familiar create me, do you have to be a member of a credit union to borrow money from a credit union and if so can municipalities be members?

**Representative Zubke:** That addressed in other rate rules and regulations so yes that institution the subdivision would have to be a member of the credit union in whatever particular credit unions feel the membership it is.

**Representative Koppelman:** Are they eligible? Is a political subdivision eligible to be a member of a credit union?

**Representative Zubke:** Yes they are.

**Representative Beadle:** I am just wondering, and usually all the bank stuff goes through IBL so I am just trying to piece it all together, perhaps Mr. Clayber could answer the question. I am looking through title 6 which is the banks in banking chapter and I am trying to find when it deals with referencing bank loans if it ever says bank loans or credit union

loans or if the term loans comes from a financial institution that deals with banking via the bank or credit union and so I am trying to decide if it is even necessary because I am not seeing where it is in separate areas that reference credit union loans versus bank loans. I am just trying to see if a credit union loan is even necessary cause I am not seeing it when I look at other loans in the state.

**Rick Clayber:** President of the North Dakota Bankers Association and I was just trying to call Marilyn she drafted it, the credit unions have reviewed this and I don't know if Representative Zubke was approached by the credit unions but we have shared the legislation with the credit unions and I am assuming the language already includes it. I will verify it if you would hold the bill.

**Representative Zubke:** I withdraw my motion

**Representative Kelsh:** I withdraw the second

**Chairman Klemin:** Representative Zubke would you have a formal amendment on this drawn?

**Representative Zubke:** Yes I will after review.

# 2015 HOUSE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee Prairie Room, State Capitol

HB 1194  
1/30/2015  
22902

- ☐ Subcommittee  
☐ Conference Committee

*Ammonda Muscha*

### Explanation or reason for introduction of bill/resolution:

Relating to exemptions from statutory provision for bonds and the definition of revenues.

### Minutes:

Jack McDonald Testimony #1  
Representative Zubke Testimony #2

The hearing is inaudible

Chairman Klemin: Opened the hearing on HB 1194

Jack McDonald: Not present but handed in his testimony earlier (Testimony #1)

Representative Zubke: Here are proposed amendments for the bill (Testimony #2) and moved to adopt the amendments

Representative Hatlestad: Seconded the motion

A Voice Vote Was Taken: All in favor

Amendments were adopted

Representative Kelsh: Moved to do pass as amended

Representative Zubke: Seconded the motion

A Roll Call Vote Was Taken: Yes 11, No 1, Absent 2 (Representative Klein and Toman)

The bill was passed as amended

Representative Kretschmar will carry the bill

January 30, 2015

*Att*  
*1-30-1*

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1194

Page 1, line 19, after "bank" insert "or credit union"

Page 3, line 4, after "bank" insert "or credit union"

Page 3, line 16, after "bank" insert "or credit union"

Page 3, line 17, after "bank" insert "or credit union"

Page 3, line 18, after "bank" insert "or credit union"

Page 3, line 24, after "bank" insert "or a credit union"

Page 3, line 25, after "bank" insert "or credit union"

Page 3, line 27, after "bank" insert "or credit union"

Page 3, line 28, after "bank" insert "or credit union"

Page 4, line 8, after "bank" insert "or credit union"

Renumber accordingly

**2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1194**

House Political Subdivisions Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: 15.0587.03001

Recommendation: ☒ Adopt Amendment  
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Zubke Seconded By Hatlestad

Representative	Yes	No	Representative	Yes	No
Chairman Lawrence R. Klemin			Rep. Pamela Anderson		
Vice Chair Patrick R. Hatlestad			Rep. Jerry Kelsh		
Rep. Thomas Beadle			Rep. Kylie Oversen		
Rep. Rich S. Becker			Rep. Marie Strinden		
Rep. Matthew M. Klein					
Rep. Kim Koppelman					
Rep. William E. Kretschmar					
Rep. Andrew G. Maragos					
Rep. Nathan Toman					
Rep. Denton Zubke					
	Voice			Voice	

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

Amendments were adopted



**2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1194**

House Political Subdivisions Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: \_\_\_\_\_

Recommendation: ☐ Adopt Amendment  
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☒ As Amended ☐ Rerefer to Appropriations  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Kelsh Seconded By Zubke

Representative	Yes	No	Representative	Yes	No
Chairman Lawrence R. Klemin	x		Rep. Pamela Anderson	x	
Vice Chair Patrick R. Hatlestad	X		Rep. Jerry Kelsh	x	
Rep. Thomas Beadle	x		Rep. Kylie Oversen	X	
Rep. Rich S. Becker	X		Rep. Marie Strinden	x	
Rep. Matthew M. Klein	---				
Rep. Kim Koppelman	X				
Rep. William E. Kretschmar	x				
Rep. Andrew G. Maragos	---				
Rep. Nathan Toman		X			
Rep. Denton Zubke	X				

Total (Yes) 11 No 1

Absent 2 (Klein and Maragos)

Floor Assignment Kretschmar

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

Passed as amended

**REPORT OF STANDING COMMITTEE**

**HB 1194: Political Subdivisions Committee (Rep. Klemin, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 1 NAYS, 2 ABSENT AND NOT VOTING). HB 1194 was placed on the Sixth order on the calendar.

Page 1, line 19, after "bank" insert "or credit union"

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Page 4, line 8, after "bank" insert "or credit union"

Renumber accordingly

**2015 SENATE POLITICAL SUBDIVISIONS**

**HB 1194**

# 2015 SENATE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee

Red River Room, State Capitol

HB 1194

3/26/2015

Job Number 25451

☐ Subcommittee

☐ Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

Relating to exemptions from statutory provisions for bonds and the definition of revenues

### Minutes:

Written testimony # 1 Marilyn Foss  
Written testimony # 2 Blake Crosby  
Written testimony # 3 Barry Haugen

**Chairman Burckhard** opened the hearing for HB 1194. Senators Burckhard, Anderson, Bekkedahl, Dotzenrod and Grabinger were in attendance, Senator Judy Lee was not in attendance.

**Marilyn Foss** North Dakota Bankers Association. (1:14-7:58) written testimony # 1 Urged a do pass on HB 1194. She referred to Mr. Wagner who was the bond council and he also wanted to have the CI process made more flexible. So the part that effects CI's directly is in Section 2, the amendments are on page 2, line 10,11, and what they do is change the definition of revenues in the Certificate of Indebtness statute to expend the revenues that can be used to pay if a political subdivision to finance through a CID, this states the CI can be paid from a grant or a loan of state of federal funds or also from amounts received from an issuance in sale of obligation by a political subdivision to give them more flexibility and the revenues that could be used for CI. The CI statute is for short term lending and if I am recalling it correctly, has a \$100,000 limit.

**Chairman Burckhard** On your testimony on the 1<sup>st</sup> paragraph, it ends with "this bill passed the House with..". **Marilyn Foss** I left the House and didn't insert it. I think honestly it passed the House strongly, but I can't say it was unanimous I think there were a couple of dissenting votes in the House vote. The bill was amended in the House, to add credit unions to give them also authority to make loans to political subdivisions. I understood from the credit union league that wasn't a big issue but they did amend it in the House for that.

**Senator Bekkedahl** Why did this authority never exist in the past, and why is it timely now? Are we racking something different or was there specific reason many years ago they thought this was not a good thing to do?

**Marilyn Foss** The CI, the statutes for public financing are really old. I think it is fair to say and I say we have people from the political subs here, to say that they sometimes struggled

to work within those statutes. The CI limit of \$100,000 is really low now even in the 1930 or 1924 it might have been really a pretty good sum of money. Now it's the tire on a road grater or something. So, it was both from our perspective why not banks earlier. Honestly I don't know the answer to that other than to say that I got the distinct impression from speaking to our banks both individually over the years and at the legislative committee, I think there have been not a lot of loans to political subs for a very long time without understanding that you could do it, but it say they could do it and we wanted to clear that up. Honestly, when I brought this up to the Legislative Committee, if that authority is something that the legislature does not want political subs to have, we want to know that very clearly as well.

**Senator Bekkedahl** So, understanding that, the reason you don't just want to increase the limits under the CI chapter is because it is too cumbersome, and it doesn't involve the banks and credit unions as this addition of statue would, is that your thought?

**Marilyn Foss** Actually it is the cumbersomeness and how long the procedure takes. Banks can invest in CI's. So, they can and have helped political subs that way. But this is more flexible and more direct and straighter from me to you. We just think the process was clear. One of the issues that was raised to me very specifically is you can't seem to read the CI statutes and see exactly what you're supposed to do, so in this we put here you have the resolution and here is was is supposed to be in it, and here are the limits, here's where you can negotiate, here is where you can't.

**Senator Bekkedahl** So you don't think it's beneficial for us to entertain increasing the limits currently as they exist in CI as well on top of this, that is not necessary then?

**Marilyn Foss** I think that would actually be appropriate but I don't work with CI's enough to actually know that I work with banks and bank loans.

**Senator Dotzenrod**, On page 1, line 20 you've exempted the provisions of this from Title 21. Now I understand Title 21 is basically bonding authority. So, it sets up the provisions in law whereby a subdivision can go to the voters and get approval and not all subdivisions are given bonding authority. If I understand Chp. 21 right, there are some subdivisions that are provided by law the authority to use that Chp. 21, and others that are not. You can go to the voters under the procedures in this chapter Title 21, and we have had a fire department bill in the tax committee and that hooks up with the Fire Department. Are fire departments a political subdivision?

**Marilyn Foss** Yes, **Senator Dotzenrod** And ambulance districts? **Marilyn Foss**, Yes. **Senator Dotzenrod** So are all taxing districts political subdivisions or can you have a taxing district where revenues are collected and it may not be a subdivision?

**Marilyn Foss** it would be my view that if you have taxing authority you are a political subdivision.

**Senator Dotzenrod** Then you have this Section1, 11:11:18 that says that they would submit this proposition to the voters and if there is a feeling that they need this money, they would reference Line 16, "shall submit to the electors of the county through a regular

special election, a proposal. Are those terms they are going to submit to the voters going to be bound by the 5 year rule you have on page 3?

**Marilyn Foss** The amendments to 11:11:18 is to the left that says the vote, the requirement for a vote doesn't apply to a bank or credit union loan under their Title 21. The whole point of this is that these are tend to be needing money for short term purposes we will not be submitting the loans to a vote of the public which is part of the reason why we didn't not have them payable with the anticipated tax revenues.

**Senator Dotzenrod** Lets say a fire department wants to buy a big fire engine and they are going to have to finance over 10 years and they saved up some money and they've got a down payment, and they contact the bank and the bank agrees to finance that fire engine. They are going come in with a down payment, and let the payments out for 10 years, and they'll be able to buy their truck. (cited example continued) Would the 5 year rule that you have on page 3, create problems for that 10 year loan?

**Marilyn Foss** I would say that the authority for that loan would have to come from some other place than this legislation. So when you're looking for authority, to do anything, you look to find it anywhere not necessarily in this bill.

**Senator Anderson** You also said this money cannot be paid back directly by taxing authority. In Senator Dotzenrods case where they are using their tax revenue to pay back the money that is not allowed by this?

**Marilyn Foss** This bill does not allow the loan to be made in anticipation of tax revenues. If the loan does go into default, this loan would allow the governing body, of the political subs to use tax revenues to repay it is in default. They don't have to do that. That is why I say, banks have to do credit analysis with this, you can't just assume somebody is going to tax if there's a problem.

**Senator Anderson** The concern of course from the public, is that we don't want elect this political subdivisions going into debt. Then they owe now and we have this debt so we you have to pay more taxes in the future to pay that off. Of course we had a big debate, on the Floor the other day, about how proud we were that North Dakota had to balance their budget every year. Others maybe didn't, so that is a concern here I think here for the public is that they don't get somebody who doesn't build up some debts and then expect it. One city council builds them up and then expects the next one to tax the city.

**Marilyn Foss** That concern, banks are taxpayers as well and pay property taxes and so that concern applies to us at all. Honestly that is exactly why the resolution has to state the real and anticipated revenue source to pay off this obligation, and why we did not included anticipated tax revenues as a permissible source at the outset.

**Senator Grabinger** Are there any discussions regarding the use of the bank? In our community we have quite a few banks and should there be a bidding process or something I can see favoritism happening here with a particular bank. Was there any discussion regarding that?

**Marilyn Foss** No we left that sort of thing to the negotiation process to find the most favorable rate. We do have some trust in the governing bodies as they are elected. It is their job and they are also taxpayers in the community and we thought the competition aspect would be that the governing body if they want competing could this but again, we expect this to be used for situations where you need the cash fairly quickly to deal with unexpected situations. Public bidding, publications and notices and all of that is not consistent with getting the problems resolved. With public bidding it is not going to happen very quickly. So the idea of both flexible and enabling yourself to come up with cash when you need fairly quickly was underlined, probably the biggest thing underlying in the bill. I would also note that another thing we discussed in committee and did not put in the bill was the tax exemption for the revenues. We were trying to treat this like a loan to a customer was.

**Senator Dotzenrod** I understand that there are subdivisions who may have revenue other than taxes. You can have an airport authority who's has hangar space facilities and they can charge rent, they can charge fees for their services. In a lot of subdivisions it seems to me is the only revenue they have is taxes and taxes on property. I was thinking about the fire departments again and it seems to me you're saying you can't borrow the money if you're anticipating to pay it off with tax revenue. So fire departments don't get to buy anything. In the ordinary case, I would not think that replacing a fire truck would be something that you did, or are doing it on an emergency basis typically or at least if it was explained to me, people expect the funding source to be a federal grant, or an emergency reimbursement or a state grant or something like that. We were trying to accommodate and to be truthful, the situation where you might have somebody buying a fire truck which seems to me to be something that you can plan for ordinarily and would only have taxing as the revenue source we didn't consider that. But we also were not thinking of this particular financing vehicle being used for things that I think you would ordinarily be budgeting for in the future.

**Senator Dotzenrod** I would like to know where in the bill, that distinction is made?

**Marilyn Foss** Which particular distinction? **Senator Dotzenrod** The distinction between the revenues that are emergency short term funding that is needed compared to something that would be planned?

**Marilyn Foss** I would say that it would in Section 4, lines 11-15 which is the definition of revenue for the purpose of this chapter.

**Senator Dotzenrod** I see what you're saying Marilyn and so if you had somebody who wanted to use the tax revenue and not these revenues identified in these lines but to use regular mill levy authority, as my earlier example of a fire truck, then they would be exempt from the requirements of this law?

**Marilyn Foss** I would say this law, if you have the authority to do that its somewhere other than this law. That's all.

**Terry Traynor** Association of Counties ( 25:08-27:47) All I was going to do was support the bill, but now with some of the questions I felt it would be helpful to elaborate at least from

the counties perspective. Right now, in the years that I've worked with the counties, my understanding is that counties really have two options if they cannot pay for something today. First a Certificate of Indebtedness which is very limited and basically says you can borrow money if you have the revenues coming in this year, this budget year to pay for that. Or you can go to a vote. That has always been kind of the extreme. You really have to bond, well. The most common situation that I can imagine that counties are going to use this, is disasters. They have a snow disaster, they cannot fund that with current year revenues because all of a sudden their renting equipment there, hiring contractors they're responding to this and they don't have the revenue and the this would allow them to go to the bank and say, we need this amount of money. To me it's still fairly limited to \$500,000 particularly for a large county is not a lot of money, but I can understand that it's reasonable it's appropriate and it does give us another tool in the toolbox to try and respond to these sorts of situations. The way we've operated in the past in disasters is FEMA doesn't give local government money until you spend the money. You've got to pay the contractor, you've got to have the receipt to submit and some counties just frankly don't have the money. Townships are even in a worse situation, and then what happens there, two often is the county becomes the bank. They end having to cover the local match and the FEMA dollars for the township to pay those contractors and then wait for the FEMA money to come through. This would provide an option. I think it is a fairly restricted option, its reasonable and that's why we support it and the bankers are doing this. Our advice has always been to counties, if they ask, you can't borrow money. You can only do this certificated of indebtedness and that is very, very, limited, otherwise go to a vote. This opens that a little bit and we think it is appropriate and we are very supportive of that.

**Senator Anderson** This might be more rhetorical than it is a question. But as long as the Legislature keeps capping the ending fund balances for everybody it's harder and harder to make these things in the future too.

**Terry Traynor** That is correct and counties do have. I think most political subdivisions are familiar with counties. Counties do have an emergency fund where they can put 2 mills, 4 mills, or 6 mills depending upon the size of the county. The smaller the county the higher the mills and they can levy that until they reach in the small counties a balance equal to 15 mills. Once it's there they can't levy anymore. What we've seen though not so much since 2011, but really from 1997-2011 we have multiple disasters. Snow emergencies, flooding, and counties just couldn't get caught up again. They couldn't get enough money in that fund to handle their situations. Counties don't like to borrow money but sometimes they have too. I did look up while we were sitting there and the vote in the House was 86-6.

**Senator Dotzenrod** You mentioned the snow emergency. Sometimes they come up fairly quickly and the money has to be expended fairly quickly. Am I reading it correctly that on Line 9, and 10, page 1, that if you want to do this you have to go to the voters and submit this to the voters to get approval from the voters? Somehow I am missing something here because I don't understand this emergency and being able to get the money quickly and spend it and also how you go to the voters to get the approval. I must be missing something here.

**Terry Traynor** No you're not missing something. Under current law, a county can use the Certificate of Indebtedness process which basically allows them to borrow money with



revenues they have budget year. They have that authority on their motion. Other than that, counties do not have the ability to borrow money without going to a vote of the people. I am not even suggesting that some counties have done that, but it puts them in a very difficult position in those emergencies and this kicks the door open a little bit and allows them some wiggle room to actually borrow money on anticipated federal reimbursements.

**Senator Dotzenrod** You have to get the voters to say yes before you can do it?

**Terry Traynor** No, in this case because this exception is added in Lines 19-20, the requirement to vote does not apply to this new authority. It basically would put this \$500,000 5 year, borrowing authority outside of that vote requirement.

**Senator Dotzenrod** I see then in line 19-20 creates an exception to the voter requirement on page 1, the rest of that section 11:11:18 sets up the process where you have to get a vote. Then at the end you added these new words that create an exception and authorized by section 24:05:04. Then on section 4 you've got a new created section and you're not amending, but creating here. So, the reference on page 1 is to this new section 4 which allows you to operate outside of the requirements of 11:11:18.

**Terry Traynor** That is my understanding.

**Senator Grabinger** If I understand this right, I am looking at Stutsman County and the situation we had a few years back with FEMA. We ran out of money in some of those townships and this would allow us if I am understanding this our county commissioners could've gone to a bank got the money, done the project, waiting on that FEMA money to take care of it.

**Terry Traynor** Absolutely! That is my understanding as well.

**Blake Crosby** Executive Director North Dakota League of Cities, written testimony # 2. I want to reiterate that there were a number of cities that were looking to be able to be able to have the ability, authority to borrow funds from a local lending institution whether it is a bank, or a credit union and thus you have the bill before you because there was some question about that authority. I would like to reemphasize a point that Senator Anderson made, that with the legislature having some effect on ending fund balances and you tie that in to the increase cost of services and business that has been created with the oil boom, many cities were finding themselves with no reserve fund, no ending fund balance to be able to deal with an emergency and I am guess about 90% of the time here we're talking emergency snow removal. So, it's not something that pops up every year. But I do think this ability for a city to be able to go to their local bank or credit union and have the ability to borrow some funds to get the snow cleaned off the road, with the protections built in, I do believe that this is a good bill and I would urge a do pass on it. I would also like to emphasize that we are talking bank loans here and banks are not about to be giving out loans without going through some due diligence. So there is process here that takes part on the lending in and that process will apply to the political sub also.

**Senator Grabinger** We keep talking about emergency funding. Is that in here, because it is an emergency only or can they use it? Perhaps a city decides they want to put in an

infrastructure for a development, for a developer, can they borrow the money to do that under this?

**Blake Crosby** When you're talking about putting in an infrastructure you're talking in the considerable more amount of money than the \$500,000, and you would want the ability to pay that off over much longer than 5 years. So that would be a bonding issue. I would hope that I would find it unusual that a city would borrow a large amount of money over a short period of time under this particular bill when it's limited to \$500,000. As you're aware you can hardly do an overlay for a block for \$500,000 anymore. The legislative intent here is pretty much to be used on an emergency basis. Even though it is not specified in here, I think we need to be careful because we start trying to define emergencies and then we're going to open up a whole different scheme and we need to have a certain amount of faith in the locally elected officials to do what is correct not over extend themselves as you asked about credit unions and banks getting into a bidding contest as to who can provide the lowest rate loan.

**Senator Grabinger** That is really where I am going. May we be allowing our smaller communities or whatever, to get themselves into a tight spot. For example we saw the oil go down and the situation changes in the west. Are we allowing them to get into a position and it was limited to \$100,000 on the Certificate for Indebtedness for a reason and I am wondering. I know that you say \$500,000 is small amount and it really is if you you're going to do a development and I probably used the wrong hypothetical example for that. But my point is would we probably as I know how the banks will show due diligence, to make sure that they have a way to recoup their monies, but, I know how the economy can turn quickly and I am worried that maybe some of these smaller communities might take this step and put themselves in a fragile position.

**Blake Crosby** If you wanted to amend something in there that tries to define emergency I am not so sure that I would be terribly opposed to that. However, I would urge some caution and I guess I would also like to hear from any affected parties, maybe such as bond council or the bankers association as to whether or not that would have any debilitating effect on the ability of the cities to have quick access to the funds, in case of a snow emergency. I guess I would defer that to them. With all due respect, nobody likes to borrow money and I have confidence that even some of the very small communities that I represent this, is going to be their last option. This is not something that they are going to grab onto right away because they understand what their tax base is. They understand what their ability to pay is and especially the local bank does.

**Barry Haugen** (40:21-42:25) President of the Independent Community Banks of North Dakota. We represent some 60 member banks across the state in various communities. Written testimony # 3. Our legislative committee supports HB 1194. We believe that it provides flexibility to the political subs and the communities in which our members and bankers operate. We think that this tool for the political subs makes sense for them to go directly to the banks and those bankers who live and work in those communities probably understand some of the funding needs and source issues as well as anyone. I think the limits are appropriate that we've talked about, the 5 years. I would make one clarification. The \$500,000 is a maximum principle outstanding of anyone political sub and it's not per loan. That is a maximum principle outstanding at any one time. I would also caution against

some emergency clause and how you define that. I think getting an opinion that both the potential debtor and potential creditor in this case are satisfied with; could defeat some of the purpose of this bill for timely funding needs.

**Jeff Olson** North Dakota Credit Union Association of the Dakotas. We too are here in support of this bill. We did add on to it, on the amendment process in the House side for the reason that credit unions have the ability to take public funds and many of them do serving townships, schools and counties and so forth. We think the provisions in here and the safe and sound issues are taken care, it's a bill that has come through the financial service industry and they want to protect their assets as well. You have the cities and counties supporting it and we think this is a good bill and we urge its passage.

**Larry Syverson** North Dakota Township Officers Association (43:19-43:51) I rise in support of HB 1194. I think it is a much needed source of funding for short term sudden needs. I urge a do pass.

**Chairman Burckhard** closed the hearing on HB 1194.

### **Committee Discussion**

**Senator Dotzenrod** On the bill we just heard, I think I would spend a little time kind of barking up the wrong tree on this because it looks if you read the way this bill is constructed it leave in place the requirement for voter approval. But it creates at the end a fairly narrow exception and then this exception is spelled out with some detail on page 3. If you look at page 3, line 11, revenue means any of the following; and they don't count in there mill levy authority. They don't count normal taxing authority and that's not considered revenue so then you look on line 17, a political subdivision may borrow against its anticipated revenue, well that can't be mill levy authority. It has to be these federal monies and state appropriation and they use revenue again on line 20. The resolution must identify the revenue, so it looks to me like what this does is really almost saying emergency almost confines the activity here to emergencies just by the way they have narrowed what revenue is going to be expected to make it work. So, it looks like it's pretty confined to that type of thing that we heard about in short term need to address an emergency. Also in that section 4, refers to board action. This line 18-19, the loan in terms must be authorized by resolution of the governing body where on page 1, it calls for a vote. The electors have to weigh in, so it makes that distinction. I can see where this would work with and how it would work with the board could act and not have to get voter approval and that the revenue would have to be confined and pretty restricted way so it looks to me like it does what we heard the witnesses say they would like to have happen. It appears that it would work.

**Senator Grabinger** My comments would be similar to that portion but also I do agree that it is due diligence on the part of the governing board and the bank in putting something like this together. I think that's expected if not we will revisit this in two years.

**Senator Anderson** I move a do pass on HB 1194.

**2<sup>nd</sup> Senator Dotzenrod**

**Chairman Burckhard** asked for a roll call vote

5 Yea 0 Absent, 1 Not voting

Chairman Burckhard asked the committee to leave the vote open for Senator Judy Lee to vote.

Carrier : Senator Anderson

Minutes:

Roll call vote:

5-0-1

**Senator Judy Lee** later votes "yea" on the "do pass" motion, changing the roll call vote to 6-0-0. Senator Judy Lee stated her vote on Job recording # 25541. The vote was taken on March 27, 2015.

Date: 3.26.15  
Roll Call Vote: 1

2015 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1194

Senate Political Subdivisions Committee

☐ Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation: ☐ Adopt Amendment  
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Sen. Anderson Seconded By Sen. Dotzenrod

Senators	Yes	No	Senators	Yes	No
Chairman Burckhard	X				
Senator Anderson	X		Senator Dotzenrod	X	
Senator Bekkedahl	X		Senator Grabinger	X	
Senator Judy Lee	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Anderson

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

**REPORT OF STANDING COMMITTEE**

**HB 1194, as engrossed: Political Subdivisions Committee (Sen. Burckhard, Chairman)**  
recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
Engrossed HB 1194 was placed on the Fourteenth order on the calendar.

**2015 TESTIMONY**

**HB 1194**

TESTIMONY OF MARILYN FOSS  
NORTH DAKOTA BANKERS ASSOCIATION  
IN FAVOR OF HB 1194

Chairman Klemin, members of the committee, I am Marilyn Foss, General Counsel for the North Dakota Bankers Association. HB 1194 as it relates to authorizing political subdivisions to borrow money from banks, was introduced at the request of NDBA.

Over the years, banks have occasionally asked me if they can lend money to political subdivisions. I couldn't find any explicit authority for a political subdivision to borrow money from a bank and passed that along to the inquiring bank. Then, after the 2013 session, I had a call about this from the League of Cities which had members that wanted to know if they could borrow money from banks. These calls caused me to bring up the subject with the NDBA Legislative Committee members who are local bankers. There I learned that it is not at all uncommon for a political subdivision to ask its local bank about a loan. Our bankers told us these loan inquiries are typically made because the political sub needs money to address unanticipated events such as a particularly heavy snow fall or an equipment failure. The problem is not that the political sub won't eventually receive state or federal funds to cover the unanticipated expenditure, the problem is that those funds are paid on a reimbursement basis and are not available until after the immediate "emergency" has passed. I asked about why the needy political sub couldn't use the certificate of indebtedness process that is already in the code and was told that it can be too cumbersome and too slow to meet the need. During this point in our discussion I talked to the group about the apparent absence of authority for a political sub to borrow money directly from a bank. The motion was then made for a bill to be introduced. That's how our part of 1194 came to be.

The core provisions are in section 4 which establishes a new chapter for direct bank loans to political subdivisions and sets out the requirements and parameters for the loans. Here are the important points as we saw them:



1. There is authority for the political sub to borrow money from a bank against specific, anticipated revenues (which do not include anticipated tax revenues).
2. The loan must be from a bank that is located in North Dakota.
3. The loan must be authorized by a resolution that specifies the revenue that is to pay for the loan and also specifies any collateral. Collateral is limited to property that is purchased by loan proceeds.
4. Some terms such as interest rate, payment intervals are negotiated by the bank and the political sub. However, the maximum amount of loans that a political sub may have is limited to \$500,000 and the maximum payment term is five years from the loan origination date. Loan documents must follow the resolution in so far as anticipated source for repayment and may require a political subdivision to establish a reserve fund for those payments. As noted, collateral is limited.
5. If a loan becomes delinquent, the governing board for a political sub may authorize the use of tax proceeds to repay the loan. However, this is optional.

Those bankers who have reviewed the bill, tell us that it meets their needs because it says what has to happen, what can happen and what is limited or not allowed.

We have also discussed this bill with the Association of Counties, League of Cities and Township Officers Association. All have indicated the bill would meet an identified need of political subdivisions and would clear up the legal uncertainties that currently sound this subject.

NDBA thinks those are two very good reasons to adopt the legislation and for the committee to endorse HB 1194 with a strong Do Pass.

With that, I'd be pleased to respond to questions.

January 29, 2015

HOUSE POLITICAL SUBDIVISIONS COMMITTEE HB 1194
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Chairman Klemin and members of the committee:

Good morning. My name is Barry Haugen and I am President of the Independent Community Banks of North Dakota (ICBND). Our membership totals about 60 independent community banks throughout North Dakota.

Our legislative committee supports HB 1194 and urges the committee to issue a "Do Pass" regarding this legislation. We believe this bill provides the necessary flexibility for political subdivisions to address immediate and potentially unforeseeable expenditures when timing differences exist between funding needs and sources.

A significant part of the business of community banks is to provide prudent lending in the communities that they serve. Community banks stand ready to fulfill this need and welcome the opportunity to further those relationships they already have developed with their local governmental units and their constituents.

Passage of this bill would allow local political subdivisions and local bankers (all of whom might live and work in those communities and are familiar with the needs) to work together on prudent and competitive loan terms. The additional tools that this bill provides would benefit local residents. And, the interest paid to local banks will be reinvested in those same communities.

We believe the limitations that are outlined in the bill that relate to political subdivision authority, revenue sources of repayment, collateral, maximum outstanding principal borrowings and maximum maturities are prudent as well.

Thank you for the opportunity to testify on behalf of this bill.

**HB 1194**  
**House Political Subdivisions Committee**  
**January 29, 2015**

Mr. Chairman and members of the Committee:

My name is Scott Wegner. I am a member of the law firm of Amtson Stewart Wegner PC with offices in Bismarck & Fargo. We serve as bond counsel to state agencies & pol. subdivisions.

- NDCC Chapter 21-02 authorizes political subdivisions to borrow money through the issuance of Certificates of Indebtedness (CI).

There are 2 types of CI:

- A. Borrow against levied, but uncollected taxes – cash flow tool
- B. Borrow against distributions of federal or state funds

- Section 2 of HB 1194 amends the definition of "Revenues" to permit political subdivisions to borrow against:

- A. Amounts to be received from a grant or loan of state or federal funds
- B. Amounts to be received from the issuance and sale of obligations by a political subdivision

- Section 2 simply allows political subdivisions to use more flexible and cost effective options to meet their financing needs. For example:

A. use a CI as construction financing and refinance with bonds once the total cost of the project is determined;

B. due to current market conditions or availability of certain loan programs, may want to delay permanent bond financing but not the project, so use CI as interim financing.

Scott Wegner  
Amtson Stewart Wegner PC  
(701) 255-1008  
*swegner@aswbondlaw.com*

January 30, 2015

HOUSE POLITICAL SUBDIVISIONS COMMITTEE HB 1194
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CHAIRMAN KLEMIN AND COMMITTEE MEMBERS:

My name is Jack McDonald. I'm appearing on behalf of the North Dakota League of Cities. The League **supports** HB 1194 and urges you to give this a **Do Pass**.

This bill provides our cities with clear authority to borrow money from a local bank. This provides alternatives to using certificates of indebtedness. We expect the authority to be used to address situations that can't be fully anticipated, such as equipment breakdown (repair or replacement) or dealing with road repair or snow clearing.

The bill does include protections that apply to these bank loans:

- No more than \$500,000 outstanding at any time
- Collateral limited to property purchased
- No requirement for tax revenues to be used to repay debt (although a political sub may approve that if a debt is delinquent)
- Requires the political subdivision to have a non-tax source of revenue as the anticipated source for repayment.
- Clear process for approving the loan at the political sub level.

The biggest advantage is probably speed ... within the limits of the bill our cities can go to a local bank for a loan and get necessary funds quickly.

We support HB 1194 and urge you to give it a do pass. If you have any questions, I would be glad to try to answer them. Thank you for your time and consideration.

Proposed Amendment to HB 1194

Page 1, line 19, after "bank" insert "or credit union"

Page 3, line 4, after "bank" insert "or credit union"

Page 3, line 16, after "**bank**" insert "**or credit union**"

Page 3, line 17, after "bank" insert "or credit union"

Page 3, line 18, after "bank" insert "or credit union"

Page 3, line 24, after "bank" insert "or credit union"

Page 3, line 25, after "bank" insert "or credit union"

Page 3, line 27, after "bank" insert "or credit union"

Page 3, line 28, after "bank" insert "or credit union"

Page 4, line 8, after "bank" insert "or credit union"

TESTIMONY OF MARILYN FOSS  
NORTH DAKOTA BANKERS ASSOCIATION  
IN FAVOR OF ENGROSSED HB 1194

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NDBA thinks those are two very good reasons to adopt the legislation and for the committee to endorse HB 1194 with a strong Do Pass.

With that, I'd be pleased to respond to questions.

*U.B. 1194*  
*3.26.15*  
*#2*

March 26, 2015

SENATE POLITICAL SUBDIVISIONS COMMITTEE  
HB 1194

CHAIRMAN BURCKHARD AND MEMBERS OF THE COMMITTEE:

For the record my name is Blake Crosby. I am the Executive Director of the North Dakota League of Cities representing the 357 cities across the State.

This bill provides cities with the clear authority to borrow money from a local bank or credit union whereby providing alternatives to using certificates of indebtedness. The expectation is the authority will be used to address needs that can't be anticipated such as an emergency road repair or emergency snow removal.

Protections have been built into these loans that limit the exposure to the city while still providing the advantage of speed to address the need for quick access to funds.

On behalf of the North Dakota League of Cities, we respectfully ask for a Do-Pass on engrossed HB 1194.

THANK YOU FOR YOUR TIME AND CONSIDERATION. I will try to answer any questions.



N.B. 1194  
3.26.15  
#3

March 26, 2015

SENATE POLITICAL SUBDIVISIONS COMMITTEE HB 1194
--

Chairman Burkhard and members of the committee:

Good morning. My name is Barry Haugen and I am President of the Independent Community Banks of North Dakota (ICBND). Our membership totals about 60 independent community banks throughout North Dakota.

Our legislative committee supports HB 1194 and urges the committee to issue a "Do Pass" regarding this legislation. We believe this bill provides the necessary flexibility for political subdivisions to address immediate and potentially unforeseeable expenditures when timing differences exist between funding needs and sources.

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Passage of this bill would allow local political subdivisions and local bankers (all of whom might live and work in those communities and are familiar with the needs) to work together on prudent and competitive loan terms. The additional tools that this bill provides would benefit local residents. And, the interest paid to local banks will be reinvested in those same communities.

We believe the limitations that are outlined in the bill that relate to political subdivision authority, revenue sources of repayment, collateral, maximum outstanding principal borrowings and maximum maturities are prudent as well.

Thank you for the opportunity to testify on behalf of this bill.