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Deanna Waller
Operator's Signature

10/22/03

Date

2003 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2335

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10/22/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2335

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 02-03-03

Tape Number	Side A	Side B	Meter #
1	xxx		4,810
1		xxxx	0
Committee Clerk Signature <i>Lisa Van Buren</i>			

Minutes: Chairman Mutch opened the hearing on SB 2335. All Senators were present. SB 2335 relates to investment of public pension funds in alternative and venture capital investments.

Testimony in support of SB 2335

Senator Grindberg introduced the bill.

Bruce Gjovig, Center for Innovation, Rural Technology Incubator, testified in support of SB 2335. See attached testimony.

Because of a need to hog house the bill, the hearing was recessed until later date.

Additional testimony was handed out but not read, as the hearing was postponed.

The hearing was closed. No action.

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Deanna Hall
Operator's Signature Date 10/22/03

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2335

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 02-12-03

Tape Number	Side A	Side B	Meter #
1		XXXX	2194
Committee Clerk Signature <i>Lisa VanBerkom</i>			

Minutes: Chairman Mutch opened the committee discussion on SB 2335. All Senators were present. SB 2335 relates to investment of public pension funds in alternative and venture capital investments.

The proposed amendments, as prepared by the Legislative Council, were considered by the committee. Senator Espgaard explained how the amendments would put a 5 million dollar limit on the investment of venture capital. It is decided that the Student Loan Trust Fund will not advance financially by loaning the money.

Carleen Fine, Student Loans of North Dakota, gives information to the committee regarding the ND Student Loan Trust at the request of the committee. See attached.

Senator Heitkamp states that 5 million dollars may not be inhibiting. The deals that go through this fund are probably going to be smaller deals.

Senator Klein asks Senator Espgaard if this bill will help ND move forward.

Senator Espgaard said it is a good bill to help with that.

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Dennis Walcott
Operator's Signature

10/22/03
Date

Page 2

Senate Industry, Business and Labor Committee

Bill/Resolution Number 2335

Hearing Date 02-12-03

Senator Heitkamp asks why banks can't coordinate their own private investors.

Senator Espegard explains that banks cannot market investors.

Senator Every asks how the sunset clause helps to evaluate how this is working.

Senator Espegard said that it will stop the program and force the fund to be looked at in the next session.

Senator Espegard moved to adopt the amendments. Senator Klein seconded.

Roll Call Vote: 7 yes. 0 no. 0 absent.

Senator Espegard moved a DO PASS AS AMENDED. Senator Krebsbach seconded.

Roll Call Vote: 6 yes. 1 no. 0 absent.

Carrier: Senator Espegard

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10/22/03

Date

FISCAL NOTE
Requested by Legislative Council
04/08/2003

Amendment to: SB 2335

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.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

2001-2003 Biennium			2003-2005 Biennium			2005-2007 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.*

Engrossed Senate Bill 2335 permits the Bank of North Dakota (BND) to either directly invest (or through the North Dakota Development Fund) up to \$5,000,000 in alternative and venture capital investments and early-stage capital funds.

Based on the BND's prior experience and on studies done on a national basis it is anticipated that BND could incur losses up to 33% of this \$5,000,000 on these types of investments. Impact to BND if the entire \$5,000,000 was invested and losses were experienced at the 33% level, would be \$1,667,000 over a four-year period.

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.*

Name:	Eric Hardmeyer	Agency:	Bank Of North Dakota
Phone Number:	701-328-5674	Date Prepared:	04/08/2003

FISCAL NOTE
Requested by Legislative Council
02/19/2003

Amendment to: SB 2335

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.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

2001-2003 Biennium			2003-2005 Biennium			2005-2007 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.

Engrossed Senate Bill 2335 permits the Bank of North Dakota (Bank) to either directly invest (or through the Development Fund) up to \$5,000,000 in alternative and venture capital investments and early-stage capital funds. SB 2335 further allows the Bank to request from the Student Loan Trust reimbursement for any losses incurred by the Bank in these types of investments.

Based on the Bank's prior experience and on studies done on a national basis it is anticipated that the Bank could incur losses up to 33% of this \$5,000,000 on these types of investments. Impact to the Student Loan Trust if the entire \$5,000,000 was invested and losses were experienced at the 33% level, would be \$1,650,000 over a four-year period. It should be noted that if there are gains on any of the \$5,000,000 in investments the Bank of North Dakota would retain those gains.

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.

Name:	Karlene K. Fine	Agency:	Industrial Commission
	328-3722		

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Deanna Waller
Operator's Signature

10/22/03

Date

Phone Number:

Date Prepared: 02/24/2003

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Operator's Signature

10/22/03
Date

FISCAL NOTE
Requested by Legislative Council
01/28/2003

Bill/Resolution No.: SB 2335

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.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

2001-2003 Biennium			2003-2005 Biennium			2005-2007 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.

TFFR and PERS currently meet the requirements imposed by the Internal Revenue Code to be qualified retirement plans. According to TFFR and PERS legal counsel and actuarial consultants, SB 2335, as currently written, violates the exclusive benefit rule, and the plans could be disqualified. As a result, the actuarial present value of benefits accrued by members would become immediately taxable. Also member contributions would no longer be sheltered from income tax. TFFR and PERS actuarial consultants are in the process of calculating the estimated federal income tax and FICA tax liability that would be incurred by members and employers should the plans lose their qualified status.

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.

Name:	Fay Kopp	Agency:	ND Retirement and Investment Officeret
Phone Number:	328-9895	Date Prepared:	01/31/2003

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10/22/03

Date

30715.0104
Title.

Prepared by the Legislative Council staff for
Senator Grindberg
February 7, 2003

PROPOSED AMENDMENTS TO SENATE BILL NO. 2335

Page 1, line 1, after "A Bill" replace the remainder of the bill with "for an Act to create and enact a new subdivision to subsection 4 of section 6-09-15, a new section to chapter 6-09, and a new subsection to section 10-30.5-04 of the North Dakota Century Code, relating to powers of the Bank of North Dakota and powers of the North Dakota development fund, incorporated; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subdivision to subsection 4 of section 6-09-15 of the North Dakota Century Code is created and enacted as follows:

In North Dakota alternative and venture capital investments and early-stage capital funds including the North Dakota development fund, incorporated, for the purpose of providing funds for investment in North Dakota alternative and venture capital investments and early-stage capital funds.

SECTION 2. A new section to chapter 6-09 of the North Dakota Century Code is created and enacted as follows:

Reimbursement of Bank losses. The Bank of North Dakota shall request from the Industrial commission a transfer from the student loan trust fund to reimburse the Bank for any losses incurred from investments in North Dakota alternative and venture capital investments and early-stage capital funds including the North Dakota development fund, incorporated.

SECTION 3. A new subsection to section 10-30.5-04 of the North Dakota Century Code is created and enacted as follows:

Borrow funds from the Bank of North Dakota for the purpose of investing in North Dakota alternative and venture capital investments and early-stage capital funds.

SECTION 4. EXPIRATION DATE. Sections 1 and 3 of this Act are effective through July 31, 2007, and after that date are ineffective."

Renumber accordingly

30715.0105
Title.0200

Prepared by the Legislative Council staff for
Senator Espgaard
February 11, 2003

JE3
2-12-03

PROPOSED AMENDMENTS TO SENATE BILL NO. 2335

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subdivision to subsection 4 of section 6-09-15, a new section to chapter 6-09, and a new subsection to section 10-30.5-04 of the North Dakota Century Code, relating to powers of the Bank of North Dakota and powers of the North Dakota development fund, incorporated; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subdivision to subsection 4 of section 6-09-15 of the North Dakota Century Code is created and enacted as follows:

In North Dakota alternative and venture capital investments and early-stage capital funds including the North Dakota development fund, incorporated, not to exceed five million dollars, for the purpose of providing funds for investment in North Dakota alternative and venture capital investments and early-stage capital funds.

SECTION 2. A new section to chapter 6-09 of the North Dakota Century Code is created and enacted as follows:

Reimbursement of Bank losses. The Bank of North Dakota shall request from the industrial commission a transfer from the student loan trust fund to reimburse the Bank for any losses incurred from investments in North Dakota alternative and venture capital investments and early-stage capital funds including the North Dakota development fund, incorporated.

SECTION 3. A new subsection to section 10-30.5-04 of the North Dakota Century Code is created and enacted as follows:

Borrow funds not to exceed five million dollars from the Bank of North Dakota for the purpose of investing in North Dakota alternative and venture capital investments and early-stage capital funds.

SECTION 4. EXPIRATION DATE. Sections 1 and 3 of this Act are effective through July 31, 2007, and after that date are ineffective."

Renumber accordingly

Date: 2-12-03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2335

Senate _____ Committee _____

☐ Check here for Conference Committee

Legislative Council Amendment Number 30715.0105

Action Taken Adopt Amend

Motion Made By Espegard Seconded By Klein

Senators	Yes	No	Senators	Yes	No
Sen. Jerry Klein, Vice Chairman	X				
Sen. Karen Krebsbach	X				
Sen. Dave Nething	X				
Sen. Joel Heitkamp	X				
Sen. Mike Every	X				
Sen. Duane Espegard	X				
Sen. Duane Mutch, Chairman	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

Put a 5 million dollar cap
on it.

Date: 2-12-03
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2335

Senate _____ Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

30715.0105

Action Taken

DO PASS AS Amended

Motion Made By

Espegard

Seconded By

Krebsbach

Senators	Yes	No	Senators	Yes	No
Sen. Jerry Klein, Vice Chairman	X				
Sen. Karen Krebsbach	X				
Sen. Dave Nething	X				
Sen. Joel Heitkamp	X				
Sen. Mike Every	X	X			
Sen. Duane Espegard	X				
Sen. Duane Mutch, Chairman	X				

Total (Yes)

6

No

1

Absent

0

Floor Assignment

Espegard

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

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Deanna Waller

Date

10/22/03

REPORT OF STANDING COMMITTEE (410)
February 12, 2003 4:56 p.m.

Module No: SR-27-2507
Carrier: Espgaard
Insert LC: 30715.0105 Title: .0200

REPORT OF STANDING COMMITTEE

SB 2335: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2335 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subdivision to subsection 4 of section 6-09-15, a new section to chapter 6-09, and a new subsection to section 10-30.5-04 of the North Dakota Century Code, relating to powers of the Bank of North Dakota and powers of the North Dakota development fund, incorporated; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subdivision to subsection 4 of section 6-09-15 of the North Dakota Century Code is created and enacted as follows:

In North Dakota alternative and venture capital investments and early-stage capital funds including the North Dakota development fund, incorporated, not to exceed five million dollars, for the purpose of providing funds for investment in North Dakota alternative and venture capital investments and early-stage capital funds.

SECTION 2. A new section to chapter 6-09 of the North Dakota Century Code is created and enacted as follows:

Reimbursement of Bank losses. The Bank of North Dakota shall request from the Industrial commission a transfer from the student loan trust fund to reimburse the Bank for any losses incurred from investments in North Dakota alternative and venture capital investments and early-stage capital funds including the North Dakota development fund, incorporated.

SECTION 3. A new subsection to section 10-30.5-04 of the North Dakota Century Code is created and enacted as follows:

Borrow funds not to exceed five million dollars from the Bank of North Dakota for the purpose of investing in North Dakota alternative and venture capital investments and early-stage capital funds.

SECTION 4. EXPIRATION DATE. Sections 1 and 3 of this Act are effective through July 31, 2007, and after that date are ineffective."

Renumber accordingly

Deanna Waller
Operator's Signature

10/22/03
Date

2003 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2335

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2335

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date March 17, 2003

Tape Number	Side A	Side B	Meter #
1	x		0.0-18.0
1		x	14.5-31.7
Committee Clerk Signature <i>Judith Hammer</i>			

Minutes: Chairman Keiser opened the hearing on SB 2335.

Senator Grindberg, District 41, introduced the bill and testified in support of SB 2335. This legislation involves the use of pension funds for venture capital purposes. Presently, funds managed by the Bank of North Dakota are sent out of state and contracted out as venture capital. There's one firm in Chicago that manages \$ 25 million of public employees' money in equity investments and the like. Their chief purpose is to provide a return to the investors. This bill was amended in the Senate to handle tax implications and the exclusive benefit rule. I invited various groups such as teachers organization and the public employee groups, to sit down with the Legislative Council to craft legislation that would accomplish the same thing but not challenge the tax status of our pension fund. The version before you is an endorsement for the Bank of North Dakota so that it can do a similar approach. This legislation rubber stamps this. The Hog House amendments were drafted that basically take the MATCH Program dollars available to BND for economic development, that's \$100 million of pension funds that can be used by BND.

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10/22/03
Date

Page 2

House Industry, Business and Labor Committee

Bill/Resolution Number SB 2335

Hearing Date March 17, 2003

To date, \$65 million has been distributed around the state for low interest loans funding such projects as the expansion of the Imation plant in Wahpeton, for example. If we use \$5,000,000, the ND Development Plan or another project can use that for seed and first stage financing. The handout I'm passing out will capture the evolution of the business cycle for you. This report is two years old but you can get the idea. The Governor's office noted the need for seed financing. (See attached #1)

Rep. Ekstrom: Looking at the fiscal note here, are we encumbering the student loan trust funds to make up for any losses, this says we could lose up to 33% on this investment. That \$1.65 million as a potential loss. Give us a broader perspective on this.

Rep. Grindberg: North Dakota is pretty risk adverse. The thinking behind having the student loan trust fund guarantee any losses to that \$5 million managed by the Bank would be a way to cushion that if there were any losses. Venture capitalists operate with profit in mind. The student loan trust fund at the end of the 2003-2005 biennium will have a balance of \$25 million. The \$5 million wouldn't be invested in the next two years. Small amounts per se could go out to entrepreneurs.

Rep. Ekstrom: Generally the size of these investments will be how much?

Rep. Grindberg: \$50,000-\$100,000 during the early stage of the program.

Rep. Ekstrom: To initially develop an idea that may become a business?

Rep. Grindberg: Yes.

Rep. Klein: So this bill directly uses the pension fund, or a portion of it, and now you'll cushion that by using the student loan trust fund to cover. This is a good start, but I see it's a good start because the initial efforts we had to directly touch that pension fund weren't received well.

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10/22/03
Date

Page 3

House Industry, Business and Labor Committee

Bill/Resolution Number SB 2335

Hearing Date March 17, 2003

Rep. Grindberg: There's a sunset clause in this as well.

Dana Bohn, Executive Director, Information Technology Council of North Dakota, testified in support of SB 2335. (See attached #2)

Rep. Ekstrom: Which businesses are in the pipeline?

Bohn: During the past two years, we've surveyed a lot of people asking them what they needed for their businesses to grow, develop and create more jobs in North Dakota. More often than not, the answers were seed venture capital and entrepreneurship. Those two items were identified repeatedly by the aerospace, information technology, food processing and tourism industries.

Dale Anderson, GNDA, testified in support of SB 2335. He stated that both GNDA and the Economic Development Association of North Dakota are wholeheartedly in support of this legislation.

Stan Benson, Bank of North Dakota, took the podium to answered questions from the committee.

Chairman Keiser: How will this fund be managed and operated by the Bank of North Dakota?

Benson: My understanding is that it will be managed through an existing program, the MATCH Program but. I am not prepared to give you a lot of detail about that.

Rep. Klein: How does the existing program work?

Benson: The MATCH Program has its own loan parameters that must be met to qualify. I can provide the details about them to you.

Rep. Klein: In general, would the parameters have to be widened or quite different?

Benson: They would have to be tweaked.

Page 4

House Industry, Business and Labor Committee

Bill/Resolution Number SB 2335

Hearing Date March 17, 2003

Rep. Severson: Would this be designated or defined rather than a MATCH Fund, a seed venture capital fund?

Benson: I think BND would be looking at that, there'd be a need to identify it separately on its books. As a management tool, that would make sense.

Rep. Ekstrom: Would BND be taking an equity position at this point, with this kind of a start up?

Benson: I believe so. We are receptive to looking at this and keep our programs open to it. I'll be happy to bring in those reports on our MATCH Program.

As there was no one else present to testify either in support of or in opposition to SB 2335, the hearing was closed.

Chairman Keiser called for committee work on SB 2335, in particular to discuss the fiscal note/no fiscal note issue and whose liability that would become.

Rep. Froseth: The potential to lose a third of \$ 1.65 million is there. It has to be addressed.

Karlene Fine, Student Loan Trust Fund Program, Bank of North Dakota, appeared before the IBL Committee to testify and answer questions. (See attached #3) We looked at national statistics for trends, what are the losses on start up companies, that's where we got the percentage of 33 1/3. The Industrial Commission at BND hasn't had a chance to determine all the parameters we'll be using. I gave you a broad area that could be up to \$ 1.6 million. To state that it is undeterminable wouldn't be fair to IBL Committee.

Chairman Keiser: We'll limit our questions to the fiscal note for Ms. Fine at this point in our discussion. So you're saying this could be higher?

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Deanna Wallin
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10/22/03

Date

Page 5

House Industry, Business and Labor Committee

Bill/Resolution Number SB 2335

Hearing Date March 17, 2003

Fine: That is correct. We could look at developing other parameters. We'll be working somewhat with the Development Fund and some of the track record of the areas they look at.

Rep. Ekstrom: I want to see what's happening with the student loan trust fund and some more information on that. But there's conversation that we're already encumbering the student loan trust fund. There are schemes out there but I have a lot of concern about tacking on one more thing, as the basis. We encumber it and we go out and borrow in order to maintain that trust fund where it is because it's earning 9%. I don't know that it is Ms. Fine's role to find out what other encumbrances are sitting potentially against student loan trust funds.

Chairman Keiser: We have to deal with this bill specifically. For the committee's benefit, is the student loan trust fund a program at BND? Please outline it for us.

Fine: The Student Loan Trust Fund is a separate entity. I serve as its authorized officer. The loans that are purchased and go into the trust are all made at BND or purchased by BND from private lenders. They go to BND, BND will liquidate some of their loans and transfer them to the trust. We then go to the tax exempt market and get low cost funds that we are able to purchase. We hold them until the appropriate time when to move them to BND. The trust is a separate entity from the Bank of North Dakota proper.

Rep. Dosch: What is the equity of the student loan trust fund at present?

Fine: As of December 31, 2002, the equity in the student loan trust was approximately in the range of \$70 million. Within the trust there are two resolutions: the first resolution dates from 1979 when the program was first set up and then the second resolution came into being in 1996. When we talk about funds being withdrawn, we focus on the first resolution because that has \$52 million in it and it is more accessible than the 2nd resolution. The first resolution has within it

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House Industry, Business and Labor Committee

Bill/Resolution Number SB 2335

Hearing Date March 17, 2003

outstanding bonds of about \$4 million, in cash or held in student loans. The 2nd resolution has a much higher bond outstanding, approximately \$122 million. Both are guaranteed by AMBAC, the major insurers of these kinds of financing. They have to consent to any transfers we take out. What has been encumbered so far this session is approximately \$26 million that has shown up in various pieces of legislation.

Rep. Severson: In the parameters of the fiscal note mentioned by Senator Grindberg, BND, or the Venture Capital Fund with their seed capital, would take an equity position in that investment. To your knowledge, if that's the case, is your liability still at 33 1/3 %?

Fine: Yes, and we would lose the equity. But we hope to have some gains.

Rep. Froseth: Where do the gains come from? The interest terms on these loans send those earnings back to the Bank of North Dakota.

Fine: You're correct. The gains go to BND, not the Student Loan Trust. We try to look at the trust and the Bank of North Dakota as the state over all. So the state would gain as a total but the trust bears the risk.

Rep. Froseth: In essence, as far as the Student Loan Trust goes, you are taking all the risks and not receiving any of the return.

Fine: You're correct.

Rep. Ekstrom: So, referencing those national standards, 33 % loss is the average. What about gains? Do you have a sense of that?

Fine: We have seen some gains in venture capital from 15-20%.

Chairman Keiser: Reference was made earlier in the hearing that they would be using something similar to the MATCH Fund protocol for investing these dollars. And that is very

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Hearing Date March 17, 2003

different from ordinary typical venture capital. Venture capital, especially seed money and first stage money takes a majority equity position with an early out guarantee. But that's not what the MATCH Program is at all, am I right?

Fine: The MATCH program currently requires a company to acquire and maintain a high bond rating. We do that especially because we measure it with our pension fund. We want to be assured that we have established a type of loan that will provide good solid returns. This is a new type of venture and I think when they talked about the MATCH fund, they were talking about how it might be structured similarly. But I think the parameters will be quite different.

Chairman Keiser: Whatever motion is made for SB 2335, I suggest we refer this to the Appropriations Committee, even with the unusual fiscal note, because there is going to be a financial impact to the one fund and to the Bank of North Dakota. I want to be on record with this, I believe that we are going to have a higher loss rate than 33 1/3 percent. What North Dakotans want is love money, not venture capital. True venture capitalists are sharks, they're self serving and won't take a deal unless they are convinced it is going to work. BND is filled with nice people that want to help and venture capitalists want to help themselves. There's a big difference. It's a good plan, but we'll have some losses.

Rep. Klein: I've had a number of people suggest that we use a percentage of the pension funds, which are mostly going out of state to be managed. Shouldn't the people who are involved in this, North Dakota citizens, have an expectation of future risks? Why not invest within our state? I understand that there are failure rates with venture capital. Unless we do this type of thing, we're losing out on the action.

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Chairman Kelser: That's an excellent point, and it reinforces my earlier comments. There are venture capital firms to whom we are currently sending dollars out of state, they've looked at opportunities in North Dakota, and either they don't exist, or the companies don't like the parameters. If you are going to invest here, it is going to be under different standards than traditional venture capital standards.

Rep. Ekstrom: I move a Do Pass on the condition that it be referred to Appropriations.

Rep. Severson seconded the motion.

Results of the roll call vote were: 11-0-3.

Rep. Ekstrom will carry this on the floor.

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Date: 3/17/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2335

House INDUSTRY BUSINESS & LABOR Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass ReReferral to Appr

Motion Made By Ekstrom Seconded By Severson

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Boe	✓	
Vice-Chair Severson	✓		Ekstrom	✓	
Dosch	✓		Thorpe	✓	
Froseth	✓		Zaiser	✓	
Johnson	✓				
Kasper					
Klein	✓				
Nottestad	✓				
Ruby	✓				
Tieman	✓				

Total (Yes) 11 No 0

Absent 3

Floor Assignment Ekstrom -

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

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10/22/03
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REPORT OF STANDING COMMITTEE (410)
March 17, 2003 11:21 a.m.

Module No: HR-47-4889
Carrier: Ekstrom
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2335, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **DO PASS** and **BE REREFERRED** to the Appropriations Committee (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). Engrossed SB 2335 was rereferred to the Appropriations Committee.

(2) DESK, (3) COMM

Page No. 1

HR-47-4889

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2003 HOUSE APPROPRIATIONS

SB 2335

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2335

House Appropriations Committee

☐ Conference Committee

Hearing Date 4/4/03

Tape Number	Side A	Side B	Meter #
1	xx		0-36
Committee Clerk Signature <i>APenrose</i>			

Minutes: Chairman Svedjan called the hearing on SB 2335 to order. Roll call was taken.

Rep. Keiser: Let me say that when we heard this bill, even before we got through the bill, the concern was raised that it should be rereferred to Appropriations because this bill does have significant financial implications to the State, and we weren't sure how it fit into the big mix of things. The clerk is handing out a sheet which summarizes the various levels of funding available throughout the state for various programs. The bill is targeted at the first two columns, seed financing and startup financing. Sen. Grinberg turned the bill in, in an attempt, as everyone knows, that looked at a variety of ways to create venture capital, especially for the early phases of startup; either in the seed financing stage or in the startup financing stage. This money attempts to do it, it creates a \$5 million dollar fund to be administered the Bank of North Dakota for that level of project. The concern was that what happens if the investments don't materialize, the exposure to the State, according to the fiscal note, was that up to 33% of that \$5 million could be realistically considered at risk; which would be \$1.65 million, and rather than having the Bank of

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North Dakota absorb that loss, that loss would be guaranteed according to the Bill, by the Student Loan Trust Fund. As a result, that's where IBL committee members, not knowing what impact that would have on the Student Loan Trust Fund, nor what other bills were being targeted for coverage by the Student Loan Trust Fund might exist; we chose to rerefer it to Appropriations. We had a full hearing on this, the IBL committee obviously supports the concept of creating additional dollars for venture capital at both levels; but we are concerned about the guarantee being provided by the Student Loan Trust Fund to those dollars. So, that gives you an overview of our thoughts on it, and I would be happy to answer any questions.

Ch. Svedjan: Thank you. This is not a hearing. Is Sen. Grinberg here. Well, he knows about this, if he shows up, we may have to ask him some questions too. Are there any questions.

Rep. Timm: My only question would be, did you look at any alternative way to fund this, other than out of the Student Trust Fund.

Rep. Keiser: We did not. That was what was proposed to us and we had a lot of questions about the appropriateness of using that fund as the guarantee and in subsequent discussions with Sen. Grinberg, he said he would be happy to make amendments, although it was kind of late in the day, from where the Student Loan Trust Fund could also be a winner if this program were to be very financially successful. Right now, they can only either not be exposed or if they are exposed, they can only lose money. Any profits right now would be deposited in the Bank of North Dakota, from this development. We did not look at any other source of revenue.

Ch. Svedjan: I, too, have spoken with Sen. Grinberg about that, and he has indicated that because of planning right now, that he would be able to offer those amendments in conference committee. So we don't those, but I think it is a decent idea. Any other questions.

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Rep. Kempenich: So basically the Student Loan Trust Fund is a reinsurance type company or entity.

Rep. Keiser: That's the concept.

Ch. Svedjan: Just as a reminder to the committee, and I'm not saying this to advocate one way or the other on this, but a bill we're going to be hearing later this morning, SB 2232, is the bill that provides for a residual bonding to insure that we continue earning at 9.25% on the Student Loan Trust Fund, and that bill, as it is currently written, allows for bonding to the extent that is necessary, to ensure that that is not negatively impacted.

Rep. Skarphol: Rep. Keiser, in the testimony in committee, was there anyone there that indicated there was any real shortage of capitol to borrow, as far as the need for this particular bill. Were there entities that were having trouble getting financing.

Rep. Keiser: The only testimony in light of that question, came from the Information Technology Council of ND, testimony from Dana Bond, suggesting that this would be a tremendous addition to that program. So, other than that testimony, there was no other testimony.

Rep. Kempenich: If you were putting an interest rate on these types of loans, what kind of % for the risk involved, what are we looking at, are they better than a 50-50 chance of them working, or is this 60-40, or 67-33, or what are we looking at.

Rep. Keiser: That question was either asked directly or indirectly in our committee. The Bank of North Dakota would manage these funds. The broader question was would the bank of North Dakota manage these funds in the traditional manner in which venture capitol funds are managed. Venture capitol funds, generally speaking, are not based on the rate of return from

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interest, but rather return on the rate of investment for a short period of time. That is if you can look at an investment opportunity and you believe that it will appreciate in value over the first three years of the operation by 60%, then you invest in it, and you are not to worry about the interest rate at that point. However, those kinds of ventures are the high risk ventures; in a way you may have a winner, and have that kind of appreciation in your investment, but you also run a much higher risk, and at this rate, 33% risk, of having a loser. The interest rate is not the regular kind of commercial loan that a bank would make. This is a venture capital pool to be used in that manner. The Bank said it would managing, and they can testify and answer that question more directly, but if my memory serves, I believe the Bank said it would be managing these investments in the traditional venture capital mode.

Rep. Carlson: What is the definition of alternative investments.

Rep. Keiser: I'm not sure what that definition is, perhaps the Bank of North Dakota people could answer that. I think it means anything else.

Rep. Skarphol: Just to go back to my original question about the problem with getting financing, you talk about the Information Technology Council, can you give us examples of companies that conceivably wanted to start up and didn't, and probably went to some other state.

Rep. Keiser: No.

Rep. Gulleason: I can think of some situations that were, right now looking at, the attraction of some major companies. You heard the press on Alien Technologies. That's an example of a company that's very interested in looking at North Dakota and where a package of financing will need to be put together and presented to them. This bill, I think, just gives us one more tool in a potential portfolio that we can offer.

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Rep. Deizer: Didn't we used to have a venture capitol type fund in the Bank of North Dakota, that kind of got us in trouble, and we finally closed that out, and if we did, how does this differ from that.

Rep. Kelsner: Yes we did, and I can't give you all the specifics on it, but if you will recall, I think we contracted with an out-of-state firm to manage our venture capitol fund, which was private investors I believe, and those private investors, using some cash incentives at that time, were primarily investing through out-of-state firms and I believe most of the investments eventually ended up in out-of-state companies rather than being reinvested in the state of North Dakota. I agree with you, I don't believe that was very successful. This program, as I understand it, would be managed by the Bank of North Dakota and obviously, although it may not be that clear in the bill as written, it's for North Dakota companies or opportunities in North Dakota.

Rep. Wald: As I understand it, you don't need a local lead lender, this could be a direct North Dakota loan.

Rep. Kelsner: I think that Sen. Grinberg tried to craft the bill, so that it could be as flexible as possible, and I believe that is correct.

Ch. Svedjan: You didn't make any changes to this bill in your committee as it came over from the Senate, did you.

Rep. Kelsner: No. That is correct.

Ch. Svedjan: So that raises the question, that if anybody wants this to go to conference...

Rep. Kelsner: You would have to have amendments.

Ch. Svedjan: That is correct.

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Rep. Kempenich: That is one of the things about this, it doesn't give the Student Loan Trust Fund any chance to recoup any of their losses, if they do guarantee. That's kind of the whole thing of reinsurance. You have to have a chance to recoup some of your losses, too. At least have a say in how you are going to lose that money.

Rep. Skarphol: What was the vote coming out of committee on this bill. Was this a fairly non-contentious issue in your committee.

Rep. Keiser: I believe it was very fairly unanimous coming out of committee, but that was on the condition that it would be rereferred here to see what implications that would have on the Student Loan Trust Fund.

Rep. Skarphol: That wouldn't, by any chance, be, let's send it to Appropriations, and hopefully it gets killed, type of scenario was it?

Rep. Keiser: No. However, this is clearly one of those bills that, there is a policy issue. But there is also a financial impact here that does affect a much broader issue than we had the information to make an informed decision on it.

Rep. Skarphol: I'm not particularly sure I like this; but in the event that I'm not successful in getting rid of this, would you have a suggested amendment that we can make to ensure that it does go to conference committee.

Rep. Keiser: I'm not sure. I think that if you put the amendment that has been discussed so far on this, that basically it is Sen. Grinberg's amendment, and clearly the Senate would concur.

Rep. Delzer: First let me ask before I make a suggestion, why to 2007, why not just for two years. Was there a reason in testimony that they needed four years.

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Rep. Keiser: That was part of the discussion, we asked why it couldn't be shortened. Venture capitol options takes a reasonable amount of time to develop. It's conceivable that it could be a venture capitol opportunity waiting in the wings, waiting for this to pass. Although there is no testimony to support that. On the other hand, occasionally these projects take a year or two to develop, to find the financing and put together the business plan and do everything up, and when asked, I believe it was Sen. Grinberg that said, from an economic development standpoint, a four year window would be a more fair test of the concept, than a two year.

Rep. Deizer: I guess I have some real problems with the whole idea of putting that kind of risk out to the State of North Dakota, whether it's the Bank, general fund or the student loan fund; because in essence, they all come down to tax payer dollars and general funds. I think we should look at, at the very minimum, changing that to two year, which in essence does change the bill. And then I think I will probably oppose it in the end anyway.

Rep. Kempenich: I guess it depends on what the committee feelings are, but I'm not going to vote for it unless we drop the window down, drop the money down, and give the student loan fund a chance to recoup their money.

Rep. Wald: Just to pick up from my previous question, someone walks in to see their local banker and it looks like kind of, you know, I'd like to make you the loan, you're a nice guy, but it looks kind of shaky on your business plan, or whatever, your assets or whatever you're throwing into the pot here, is this an opportunity for the local banker to say that we have this fund down at the Bank of North Dakota. Why don't I coop with them 50-50, or some such arrangement.

Rep. Keiser: I think the Bank of North Dakota, as the bill was written, could certainly do that. Again, the commercial bank, for profit banks within our state, are very interested in any

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economic opportunity that might be presented to them. Venture capitol, as this committee has already suggested, are higher risks options. There is, just speaking from my own personal perspective, there is more than adequate venture capitol dollars available in the state; however, from the private sector, people in the state of North Dakota don't like that option. That option is that they want 51% ownership or they want a guaranteed return, and if it's not received within two or three years, they have the requirement that they take over operation of the company. Most North Dakotans get a little bit squeamish when those kind of hard-lined tactics are used on their good idea. This would allow the Bank of North Dakota to develop a program that would be between love money (which is the money you go to get from your relatives and friends if you want to start something) and the hard-line venture capitol world that is out there, that will make investments but they take a very tough position on the transaction, and as a result we have venture capitol opportunities that may not be being funded currently, that are above and beyond the risk level that regular, commercial loans will be developed under.

Rep. Carlson: This isn't a question for Rep. Keiser, but I don't have my house bill in front of me, we did a \$1 million dollars worth of venture capitol money and I don't remember how we tagged it when we sent it off to the Senate. Remember the Governor had \$2 million in his budget for venture capitol and we lowered that to a \$1 million, but I'm not sure exactly where it is sitting today. I don't remember the bill and I don't have the information here, but I know we have addressed some amount of venture capital.

Ch. Svedjan: Allen, can you help us.

Rep. Carlisle: She's looking it up right now Mr. Chairman.

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Rep. Carlson: I just want to know what we would do as a legislative body, if they asked us for \$5 million dollars of general fund money to put in the pool that stands a real good chance of losing 33-50% of it. But again, we are attacking a fund that's been established for a purpose because the money is there. I just question that, if it's so important to us, maybe it should be general fund dollars that fund it, and we're not worried about losing it or not, but it seems to okay if we lose the money in the fund. I know that at one point in time, there was a movement afoot, where they met with the public employees, talking about their retirement funds, to see if they could get into those funds and use some of those as investment dollars. So, I do believe there has been a slight bit of osmosis to this thing as it has gone along. I have some concerns and I guess I prefer to see it, if it's that important to address it in the conference committee in the Commerce budget, where we have all the tools for economic development.

Ch. Svedjan: Allen, were you able to find that information.

Rep. Carlson: The House did add a section to the Commerce bill. They increased the seed capital investment tax credit. I don't know if that is what you are referring to or not. I believe the Governor recommended, that all of the development fund, up to \$1 million dollars be used to seed an early stage and then that the development fund manage a \$10 million dollar new venture fund.

Ch. Svedjan: That was the original version there right.

Rep. Carlson: That was in the Governor's recommendation. But there was a \$1 million dollars somewhere. Maybe we can get that.

Rep. Koppelman: Dean is here, and I'm sure that he has followed this and can tell us.

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Dean Reese, CEO of ND Development Fund: When initially, we didn't bring it to the committee to find appropriation for that \$1 million, but based out of the funds of the development fund already has in its management. We just wanted to ask, we had the ability, under the statute, to use creative financial tools from venture capital to debt as equity. When you look at that, I think we completed that two years ago, you get into the first stage and early stage, I think there is ample amount of programs that are needed, but the biggest gap you see is in the seed stage. We had the ability, we funded some of those in the past from development funds, that we wanted to at least get some response back from you, to take a \$1 million dollars of that money that is already in the development fund and set it aside so that if we have this fund here, and people come to it, that we would invest more in those early stages, and that risk obviously, is going to be higher in the early stage companies than as you move down the line. But it's not new dollars, we just use what we already had in the fund. There could be a larger loss rate in that early stage fund, than in the normal type of investing that we've done in the past.

Ch. Svedjani: So if I'm following what you said, are you saying that there is a \$1 million dollars in the development fund.

Mr. Reese: Yes, we have dollars in the fund, that has turned into basically a revolving loan fund and we were just going to set aside these dollars that were already in the fund to be used in the early stage funding.

Rep. Carlson: What is the balance, today, \$7.8 million, or something, in the development fund. We didn't add any new money into this time, what is the balance of the fund.

Mr. Reese: Approximately the balance in development fund today is about \$10 million dollars but we do have commitments out there of roughly about \$3.5 million, so it would be about \$6.5

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million as of today, because we still have to make the rent dollars for this commitment that we have outstanding.

Rep. Carlson: If you look at this bill, can you do the things in this bill within your fund, if we didn't give you the extra money, do you have the authority to do what they requested here.

Mr. Reese: Based on the fact that the government has the ability to do venture capital investment, yes.

Rep. Carlson: How about alternatives, whatever that is investments?

Mr. Reese: Based on the factors that we are under, we can use some creative possibilities, partner with any other programs that are out there to be able to come up with some alternative sources, and so yes we could.

Rep. Carlson: Is that what it means, alternative sources?

Mr. Reese: I guess to me, alternatives are other funding programs that are out there, it could be the Kodak fund, or some other type of venture capital funds that are out there as alternative sources rather than conventional financing that we could invest those dollars into to basically manage those dollars.

Rep. Wald: Would this be a new vehicle to access SBA or maybe in some cases, FHA, or some other federal programs out there, would this be another opportunity to access those kinds of programs.

Mr. Reese: That could be a possibility based under SBA, you can take those dollars and there has to be matching abilities through the federal programs. There could be some possibilities to partner with those other programs to get additional funding.

Rep. Wald: In view of what you just said, would we need this bill to do what you just said.

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Mr. Reese: I guess my understanding is, I guess I would say no. I don't think it would be necessary to access some of those fundings.

Rep. Wald: This would be another tool.

Mr. Reese: Yes, it would be another tool.

Rep. Skarphol: As a tool, can you think of any scenario that has come before you that you haven't been able to do, that this bill would enable you to do and what you would want to do, I guess you probably get some really off the wall things.

Mr. Reese: We see the number of interested applicants over the past years, based on the fact that it is a state fund, when you talk about venture capital, we're here to hopefully create jobs, and not so much as looking to a return on the investment, and hopefully to move this company down the road to get additional financing, expand to create additional jobs for the state of North Dakota. I guess we look at it a little different, but we can still attract them, but we're not looking so much at the return and I don't know the workings of this one, because probably the policy hasn't been spelled out.

Rep. Skarphol: But I understood your answer to Rep. Wald, was that in the current environment you can pretty much do anything this bill would allow you to do, yes or no.

Mr. Reese: Yes, we can make equity investments.

Rep. Aarvold: How do you, as a financier of various projects define a venture capital as opposed to a more conventional sort of loan. Are there thresholds that you must achieve before you are considered a venture capital risk.

Mr. Reese: From a venture capital standpoint, you are dealing with various stages, early stage, first stage, etc. you get into the early stage is idea, then you have a prototype. Based under

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conventional lending from a banking standpoint, they want to make sure that company is in existence, it has revenue, they have collateral, so that it can loan itself. Based on venture capital, they are trying to take an idea and move it along and they obviously think it is a great idea, if we put our money into it, that thing is going to move into the market, sales are going to be there, and we are going to see that return based on how that company moves forward.

Rep. Aarvold: You are suggesting that if there is essentially no equity, that we are talking about a venture situation.

Mr. Reese: Correct.

Rep. Wald: I move that in Section 4 we change the expiration date to 1/1/06.

Ch. Svedjan: January 1, 2006.

Rep. Wald: Right.

Rep. Gulleon: Seconded.

Ch. Svedjan: Why January 1?

Rep. Wald: I think that gives him another six months, as was previously stated by somebody, sometimes these things need to gel on development, and doing one biennium may not be enough time, and the real reason is to get it to a conference committee if it passes.

Ch. Svedjan: Any further discussion on the motion.

Voice vote: Carried.

Rep. Timm: I will further amend to make sure that it gets to conference committee, I move that we amend out Section 2 out of the bill.

Rep. Skarphol: Seconded.

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House Appropriations Committee
Bill/Resolution Number SB 2335
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Rep. Timm: There has been some concern shown here that the Student Loan Trust Fund guarantee, reimbursement losses, has been some concern about that. I guess the other parts of the bill can stand on their own, but I think this one should be discussed. I want to make sure that it does go to a conference committee if the bill does pass.

Voice vote: Carried.

Rep. Skarphol: I move a Do Not Pass as amended.

Rep. Carlisle: Seconded.

Ch. Svedjan: Any further discussion.

Rep. Gulleason: I would oppose that motion. I would hope that we could pass this bill. I do think it is a pretty important tool. If you look at what we have options for in terms of finance, and I'm no banker, investment person, but I do know that we are limited in the areas of those types of investments that would require more risk and that a lot of people, really, from looking at North Dakota very seriously, one of the issues we have just talked about all year, is the reality is that we just aren't attracting that level of companies who have the salaries and benefits, and all of those types of things that really can retain our young professionals. We lose them to Minneapolis and the Twin Cities and other areas of the country. I just think we need some additional tools. I think that this bill is a reasonable bill. I don't think it will put the state of North Dakota in jeopardy financially, and I think we just need to do a little bit more. We can't be so risk-averse, as we look at these types of things. I would hope that we would oppose this motion.

Rep. Wald: I agree with Rep. Gulleason, which seldom happens. Can you imagine if Mr. Gates had walked into a banker in Seattle, 20 years ago, and I have this bright idea and the banker looks at him and says I don't know if I want to invest the depositors' money in your venture. This is

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Deanna Hall
Operator's Signature

10/22/03
Date

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House Appropriations Committee
Bill/Resolution Number SB 2335
Hearing Date 4/4/03

kind of obviously a stretch, but there are a lot of ideas floating around out there, with the young entrepreneurs of North Dakota, and life is not without risk. Many institutions are in the business of taking some risk and I really think this is something we ought to give a shot to. I hope we would resist the Do Not Pass motion.

Rep. Carlson: Just so I understand the bill in its present form, the Student Loan Trust Fund is completely out of the bill, and the fund for this venture capital can be borrowed directly from the Bank of North Dakota.

Ch. Svedjan: That's correct, and the sunset changed.

Rep. Carlson: Sunset changed to...

Ch. Svedjan: Changed to January 1, 2006. I, too, am one who believes that we ought to give this a further look. It's easy to look at the downside of these things. It's not that looking at the downside should be neglected; but one also needs to look I believe at the positive potential of this in this case. There was reference made earlier to Alien Corporation. I will admit my bias on this, but I have seen the product of the research being done at NDSU as it relates to mineral technology and it's that that has the interest of Alien Corporation and to me, the potential of that research as it relates to the commercialization of that product is immense. So maybe Alien is not the best example to use here, because they are a company that has established themselves fairly well, but not necessarily in regard to the example I gave you. It just seems to me that we ought to look at least at the positive side of this and for that reason I will oppose the motion.

Rep. Carlson: I acknowledge the bill sits in the form where the loss will be incurred by the Bank of North Dakota, and they assume that it could be as high as 33-50%, but what we're saying is, we're setting them up to lose between a \$1.5-3 million dollars on this venture. So that

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Page 16
House Appropriations Committee
Bill/Resolution Number SB 2335
Hearing Date 4/4/03

is the end result of our work. And if the Senate concurs, that's what we are going to get. And that goes back to my original point, do we view it differently if it is a trust fund we don't have to pay back, or if it's general fund dollars that we use as profits to fund their next biennium. So make your choice, with the bill in the present form, it now shifts the burden to the profits of the Bank of North Dakota and I believe that the development fund has a lot of latitude already and about \$7 million in the fund. Whether it passes or dies, I don't think this is by any means over, but now we are digging into general fund revenues.

Ch. Syedjan: Any further discussion, hearing none, we will take a roll call vote, on the Do Not Pass as amended for SB 2335.

8 YES 14 NO Motion fails.

Rep. Gullason: I move a Do Pass as amended.

Rep. Kennelman: Seconded.

16 YES 6 NO Motion passes. Carrier: Rep. Wald.

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10/22/03
Date

30715.0201
Title.0300

Prepared by the Legislative Council staff for
House Appropriations
April 4, 2003

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2335

Page 1, line 1, remove ", a"

Page 1, line 2, remove "new section to chapter 6-09,"

Page 1, remove lines 13 through 18

Page 1, line 1, replace "Sections 1 and 3 of this" with "This" and replace "are" with "is"

Page 2, line 2, replace "July 31, 2007" with "December 31, 2005" and replace "are" with "is"

Renumber accordingly

Page No. 1

30715.0201

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10/22/03
Date

REPORT OF STANDING COMMITTEE (410)
April 7, 2003 9:04 a.m.

Module No: HR-62-0004
Carrier: Wald
Insert LC: 30715.0201 Title: .0300

REPORT OF STANDING COMMITTEE

SB 2335, as engrossed: Appropriations Committee (Rep. Svedjan, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (16 YEAS, 6 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2335 was placed on the Sixth order on the calendar.

Page 1, line 1, remove ", a"

Page 1, line 2, remove "new section to chapter 6-09,"

Page 1, remove lines 13 through 18

Page 2, line 1, replace "Sections 1 and 3 of this" with "This" and replace "are" with "is"

Page 2, line 2, replace "July 31, 2007" with "December 31, 2005" and replace "are" with "is"

Renumber accordingly

(2) DESK, (3) COMM

Page No. 1

HR-62-0004

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2003 SENATE INDUSTRY, BUSINESS AND LABOR

CONFERENCE COMMITTEE

SB 2335

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10/22/03

Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2335

Senate Industry, Business and Labor Committee

☒ Conference Committee

Hearing Date 04-15-03

Tape Number	Side A	Side B	Meter #
1	xxxx		0
Committee Clerk Signature <i>Lisa VanBerkem</i>			

Minutes: Chairman Espegard called the conference committee to order. Senators Espegard, Krebsbach, and Heitkamp were present. Representatives Skarphol and Carlisle were also present. Representative Gulleason was absent.

Senator Espegard: Would someone from the House explain the amendments?

Rep. Skarphol: The House removed the section that had the Student Loan Trust Fund as the potential cushion for the Bank of North Dakota. We thought that the bank should take the risk and not the Student Loan Trust Fund.

Senator Espegard: And you changed the expiration date a little bit?

Rep. Skarphol: Yeah, maybe we did.

Senator Heitkamp: Instead of a four year deal, it's a two year deal.

Eric Hardmeyer, President, Bank of North Dakota, spoke to the committee. Some of the concerns we have with the removal of section 2 are as follows. We had a combined with the Industrial Commission and put together a fiscal note based on information that we had from the

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10/22/03

Date

Page 2
Senate Industry, Business and Labor Committee
Bill/Resolution Number 2335
Hearing Date 04-15-03

center of innovation that we had on venture capital early stage. Up to a third could be at risk of the full investment. Contrary to some belief that up to 80% of these projects fail, they are coming back with information that only one third (33%) fail. The price tag we look at is \$1,700,000. The risk for the bank with removal of the Student Loan Trust is I can see where the BND will be involved in perhaps the equity side and the loan side and there would be a natural conflict of interest. What would help us through that is that the Student Loan Trust would be backing us up on that.

Senator Espgaard: So you are saying that in section 2, by using the Student Loan Trust Fund is the way you have to cover loss because it's not a bank deposit that you are losing?

Eric: PERS puts money in the bank like they do with the match program. We give them back a CD. They are guaranteed their principle and a return. They are not exposed to the project. We take that as funding source. The bank bites the loss and the investment board gets made whole, regardless of the loss.

Rep. Carlisle: No matter WHO backs it, the risk is still there.

Eric: Correct, when we first put this together, there was no upside potential for the Student Loan Trust. I worked with Senator Grindberg on an amendment to protect them from loss.

Senator Espgaard: Here are some amendments that Senator Krebsbach and myself had written yesterday if the committee would look at them at this time.

Rep. Skarphol: Eric, venture capital is normally high risk with high potential gain. How would you envision this project having significant gain? How would you recoup this loss?

Eric: Allen Project in Fargo has potential. The risk is substantial, but the upside is tremendous as well. It is a risk.

Page 3
Senate Industry, Business and Labor Committee
Bill/Resolution Number 2335
Hearing Date 04-15-03

Dean Reese, ND Development Fund, spoke to the committee. We have seen more equity investments in the last year and a half. We invest to cover the gap that the company is not covering. Our investment rates have been anywhere from 6.5%-12%. It creates revenue and jobs in North Dakota. We focus on that more than getting a 35% return.

Senator Espgaard: If a successful company can pay you out at maybe 15%, but the principles ought to be the same.

Dean: Yes, we use preferred stock, we sometimes put conversion rights on that to piggyback if the company is successful.

Rep. Carlisle: There are venture capital funds out there now, is this going to make it sweeter?

Dean: The only true venture capital company in North Dakota is in Fargo. Only one. This is an additional tool for projects.

Senator Heitkamp: I was under the impression that there wasn't an availability for venture capital around and that is why we have this bill.

Dean: Yes, that is the intent.

Senator Espgaard: We need to have a chance at the home run here.

The House members request time to review the amendments. No action is taken at this time. Meeting recessed.

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2335

Senate Industry, Business and Labor Committee

☒ Conference Committee

Hearing Date 04/16/03

Tape Number	Side A	Side B	Meter #
Tape 1	x		0-2135
Committee Clerk Signature <i>Lisa VanBeek</i>			

Minutes:

Senator Espegard calls the conference committee on SB 2335 to order. Senators Espegard,

Krebsbach, Heitkamp and Representatives Carlisle, Skarphol, and Gulleason all present.

Senator Espegard goes over the questions that were brought up before in the previous committee

hearing regarding Where does the money go and Who manages the process. Senator Espegard

hands out an amendment for everyone to take a look at and goes through it. He states if this is

successful then the legislature can put in the more money later.

Representative Skarphol: I like the language after line 18 but the house doesn't want Section 2

back in and don't like 7 million.

Senator Krebsbach: Their could be a conflict of interest for the bank to handle this with other

loans.

Rep. Skarphol: I think they said they couldn't do both.

Page 2

Senate Industry, Business and Labor Committee

Bill/Resolution Number SB 2335

Hearing Date 04/16/03

Rep. Carlisle: TFR had it and didn't like it and then it went to Student Loans and they didn't like it.

Senator Heitkamp: The reason for the Student Loan Trust fund is because that is where the money is.

Senator Espegard: This will effect the profits less.

Senator Heitkamp: when this got bumped from 7 to 7.5 they are taking a risk.

Senator Espegard: Hopefully this will create some jobs too.

Rep. Gulleson: That is my thoughts, the bank is highly secured. We just need the pool of dollars to help this.

Rep. Skarphol: In the event that there is a transfer from student loans trust fund where is it coming from?

Senator Espegard: The 79 resolution that is earning about 91/2. 26 million will remain in the 79 resolution

Senator Krebsbach motions to adopt the amendment 30715.0203

Senator Heitkamp 2nd

yes-- Sen Espegard, Krebsbach Heitkamp, and Rep. Gulleson

no-- Rep. Carlisle Skarphol.

Motion fails

Senator Heitkamp asks Rep. Skarphol if changing the Student Loan Trust fund and moving the 5 million to 7.5 million is what is bothering him.

Rep. Skarphol says yes.

Senator Espegard recesses meeting to give committee time to think this over some more.

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2335

Senate Industry, Business and Labor Committee

☒ Conference Committee

Hearing Date 04-21-03

Tape Number	Side A	Side B	Meter #
1	xxx		0
Committee Clerk Signature <i>Lisa VanBerkom</i>			

Minutes: Chairman Espgaard called the conference committee to order. Senators Espgaard and Krebsbach were present. Senator Heitkamp was absent. Representatives Skarphol, Carlisle and Gulleson were all present.

Rep. Skarphol: This increases the amount from 5 to 7.5 million dollars also this amendment puts the Student Loan Trust Fund back in there. Is there any potential tie between the dollars we are talking about here and retirement fund?

Senator Espgaard: There is a tie, but the Student Loan Trust Fund will cover that. That is the reason that there is not a conflict of interest.

Rep. Skarphol: Our leadership has expressed that they are not willing to go to 7.5 million dollar cap, but the other provisions are okay. It stays at 5 million and the SLTF wording gets put back in. So I would move that the House recede and further amend.

Senator Krebsbach seconded.

Roll Call Vote: 5 yes. 0 no. 1 absent.

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10/22/03
Date

30715.0203
Title.

Prepared by the Legislative Council staff for
Senators Espgaard and Krebsbach
April 15, 2003

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2335

That the House recede from its amendments as printed on page 1227 of the Senate Journal and pages 1341 and 1342 of the House Journal and that Engrossed Senate Bill No. 2335 be amended as follows:

Page 1, line 4, remove "and" and after "date" insert "; and to declare an emergency"

Page 1, line 10, replace "five" with "seven" and after "million" insert "five hundred thousand"

Page 1, line 18, after the period insert "Any gains from investments in North Dakota alternative and venture capital investments and early-stage capital funds, including the North Dakota development fund, incorporated, must first be applied to offset any losses reimbursed by the student loan trust fund under this section. Once the student loan trust fund has been made whole, the Bank and the trust fund must share any additional revenue on a mutually agreed-upon formula as determined by the industrial commission."

Page 1, line 21, replace "five" with "seven" and after "million" insert "five hundred thousand"

Page 2, after line 2, insert:

"SECTION 5. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Date: 4-16-03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2335

Senate Industry Business & Labor Committee

☒ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken adopt amendment 30715.0203

Motion Made By Krebsbach Seconded By Heitkamp

Senators	Yes	No	Representatives	Yes	No
Sen. Espgaard	✓		Rep. Skarphol		✓
Sen. Krebsbach	✓		Rep. Carlisle		✓
Sen. Heitkamp	✓		Rep. Gulleason	✓	

Total (Yes) 4 No 2

Absent motion fails

Floor Assignment _____

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

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10/22/03
Date

30715.0204
Title.0400

Adopted by the Conference Committee
April 21, 2003

JB
4-21-03

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2335

That the House recede from its amendments as printed on page 1227 of the Senate Journal and pages 1341 and 1342 of the House Journal and that Engrossed Senate Bill No. 2335 be amended as follows:

Page 1, line 4, remove "and" and after "date" insert "; and to declare an emergency"

Page 1, line 18, after the period insert "Any gains from investments in North Dakota alternative and venture capital investments and early-stage capital funds, including the North Dakota development fund, incorporated, must first be applied to offset any losses reimbursed by the student loan trust fund under this section. Once the student loan trust fund has been made whole, the Bank of North Dakota and the trust fund shall share any additional revenue on a mutually agreed formula as determined by the Industrial commission."

Page 2, after line 2, insert:

"SECTION 5. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

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Operator's Signature

10/22/03

Date

Date: 04-21-03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2335

Senate Conference Committee Committee

☒ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken House Recede from the House Amendments and further amend.

Motion Made By Rep. Skarphol Seconded By Sen. Krebsbach

Senators	Yes	No	Representative	Yes	No
Sen. Espgard	x		Rep. Skarphol	x	
Sen. Krebsbach	x		Rep. Carlisle	x	
Sen. Heitkamp	A		Rep. Gulleeson	x	

Total (Yes) _____ 5 No _____ 0

Absent _____ 1

Floor Assignment _____

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

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10/22/03
Date

REPORT OF CONFERENCE COMMITTEE (420)
April 22, 2003 8:35 a.m.

Module No: SR-73-8053

Insert LC: 30715.0204

REPORT OF CONFERENCE COMMITTEE

SB 2335, as engrossed: Your conference committee (Sens. Espeland, Krebsbach, Heltkamp and Reps. Skarphol, Carlisle, Gulleason) recommends that the **HOUSE RECEDE** from the House amendments on SJ page 1227, adopt amendments as follows, and place SB 2335 on the Seventh order:

That the House recede from its amendments as printed on page 1227 of the Senate Journal and pages 1341 and 1342 of the House Journal and that Engrossed Senate Bill No. 2335 be amended as follows:

Page 1, line 4, remove "and" and after "date" insert "; and to declare an emergency"

Page 1, line 18, after the period insert "Any gains from investments in North Dakota alternative and venture capital investments and early-stage capital funds, including the North Dakota development fund, incorporated, must first be applied to offset any losses reimbursed by the student loan trust fund under this section. Once the student loan trust fund has been made whole, the Bank of North Dakota and the trust fund shall share any additional revenue on a mutually agreed formula as determined by the industrial commission."

Page 2, after line 2, insert:

"SECTION 5. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Engrossed SB 2335 was placed on the Seventh order of business on the calendar.

2003 TESTIMONY

SB 2335

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Operator's Signature

10/22/03

Date

Didn't testify

TESTIMONY OF SCOTT A. MILLER, ASSISTANT ATTORNEY GENERAL
BEFORE THE SENATE INDUSTRY, BUSINESS AND LABOR COMMITTEE
FEBRUARY 3, 2003

My name is Scott Miller. I am the Assistant Attorney General assigned by Attorney General Stenehjem to represent the Public Employees Retirement System, the Teachers' Fund for Retirement and the State Investment Board. I am here to provide technical and legal comments on SB 2335.

SB 2335, as written, does several things relating to the investment of monies held by the State Investment Board on behalf of PERS and TFFR. If SB 2335 passes as written, the SIB would be required to "attempt to invest" five percent of the PERS and TFFR funds in "North Dakota alternative and venture capital investments." The SIB would also have to "allocate one-quarter of one percent of the five percent" for a "fund of funds." SB 2335 creates a "Seed capital investment board" which has the responsibility of investing that one-quarter percent in the "fund of funds" in "early-stage capital funds." The Seed capital investment board would also have the responsibility of creating a small business investment company "to maximize leverage . . . for investment." In order to get around what is called the exclusive benefit rule, SB 2335 modifies the applicable investment restrictions to allow the five percent carved out for investment in North Dakota to be exempt from the exclusive benefit rule. I see two legal problems with SB 2335 as written.

First, that exemption would violate 26 U.S.C. sec. 401(a)(2) and terminate the qualified status of the plan. In order for a pension trust to be a "qualified trust," 26 U.S.C. sec. 401(a)(2) requires it to be "impossible, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, for any part of the corpus or income to be . . . used for, or diverted to, purposes other than for the exclusive benefit of his employees or their beneficiaries." That is the exclusive benefit rule. The exclusive benefit rule is the cornerstone of the prudent investor rule.

By mandating economically targeted investments, SB 2335 would require the PERS and TFFR trusts monies to be invested in a manner inconsistent with the exclusive benefit requirement for two reasons. First, the investments would no longer be invested in vehicles the trust's fiduciaries have determined are appropriate because of their risk versus return characteristics. Instead, the fiduciaries would be required to invest in vehicles without regard to the risk and return characteristics, as long as the investments are in North Dakota.

Second, the investments may result in "prohibited transactions" in violation of the exclusive benefit rule. Essentially, a prohibited transaction is one that is not entered into at arms length. In a state as economically small as North Dakota, the possibility of connecting an investment in North Dakota to a fiduciary responsible for approving that investment is much greater than in a state like California. The result may be a prohibited transaction that would violate the exclusive benefit rule.

Deanna Hall
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10/22/03
Date

If the investments were made in a manner inconsistent with the exclusive benefit rule, the trust would no longer be qualified under section 401(a) of the Internal Revenue Code. Disqualification would result in severe tax implications. Those implications include not only federal and state income tax, but also FICA tax, affecting every state employee, every public school teacher, and several thousand political subdivision employees. Further, the FICA taxation would be an additional burden on not only the state's general fund, but every public school district in the state as well as every political subdivision that participates in PERS.

The second legal issue with SB 2335 is that the bill may be unconstitutional under the contract clauses of both the United States and North Dakota constitutions. The contract clause prohibits a legislature from passing a law that inhibits the rights of any party to a preexisting contract. See U.S. Const. art. 1, § 10; N.D. Const. art. I, § 18. In this case, N.D.C.C. § 54-52-14.3 states that "[a]ny provision of law relating to the use and investment of public employee retirement funds must be deemed a part of the employment contracts of the employees participating in any public employee retirement system." State laws currently provide for a qualified retirement plan. Senate Bill 2335's modification of the exclusive benefit rule, and the subsequent disqualification of the plan and the resulting tax liability, would materially alter those preexisting employment contracts. As such, SB 2335, as written, would violate the contract clauses of the United States and North Dakota constitutions.

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Operator's Signature

10/22/03

Date

Testimonial Exhibit on SB 2335

February 3, 2003



Steve Cochrane, CFA
Executive Director, NDRIO

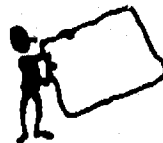
Economically Targeted Investments in North Dakota

It all starts with....



an investment idea!

The idea is presented to the State Investment



Board.



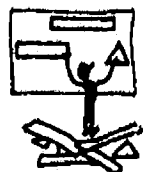
The idea is economically targeted to benefit the state
of North Dakota in some way.

The idea may be intrinsically



appealing and command
serious attention.

If so, the SIB
"investment fit".



looks inward for policy compatibility and

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Deanna Wallis

Date

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On to the NDCC and plan sponsor guidelines...



The SIB is charged with the responsibility of investing in accordance with the policies set by the legal authority of the participating funds as well as any applicable state law.

NDCC 21-10-07. Legal Investments stipulates that all investment activity be in accordance with the "prudent investor rule" and states that, "retirement funds belonging to the teachers' fund for retirement and the public employees retirement system must be invested exclusively for the benefit of their members and in accordance with the respective funds' investment goals and objectives."

NDCC 54-52-14.3. Public employee retirement funds-Use and investment states that, "All moneys from any source paid into any public employee retirement system fund created by the laws of this state must be used and invested only for the exclusive benefit of the members, retirees, and beneficiaries of that system, including the payment of system administrative costs".

To augment the NDCC's exclusivity requirement, PERS has given the SIB the following directive:

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"V. RESTRICTIONS



- F. Economically targeted investing is prohibited unless the investment meets the Exclusive Benefit Rule.

For the purpose of this document, economically targeted investment is defined as an investment designed to produce a competitive rate of return commensurate with risk involved, as well as to create collateral economic benefits for a targeted geographic area, group of people, or sector of the economy."

Source: *Statement of Investment Goals, Objectives and Policies* approved by NDPERS Board, 11-21-96, 2-23-98, 7-27-00 and accepted by State Investment Board (SIB), 11-22-96, 7-28-00, 1-24-03.

And the TFFR says:



"The Fund must be invested exclusively for the benefit of the members and their beneficiaries in accordance with this investment policy."

Source: *Investment Policy Statement* approved by the TFFR Board on 11-22-95, 9-9-97, 7-27-00 and accepted by SIB on 2-23-96, 9-26-97, 7-28-00,



So, how do we test to see if an investment idea that could be beneficial to North Dakota meets these exclusive benefit requirements?

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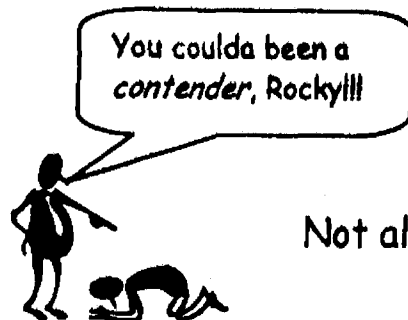
Deanna Dally
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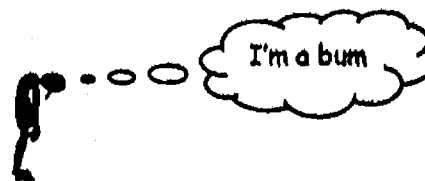
The Exclusive Benefit Rule
is met if the following four conditions are satisfied:

1. The cost does not exceed the fair market value at the time of investment.
2. The investment provides the Fund with an equivalent or superior rate of return for a similar investment with a similar time horizon and similar risk.
3. Sufficient liquidity is maintained in the Fund to permit distributions in accordance with the terms of the plan.
4. The safeguards and diversity that a prudent investor would adhere to are present.

These conditions are reasonable and allow for flexibility in assessing comparable investment benchmarks and alternatives. For example, the free market expected rate of return on commercial real estate investments in North Dakota could be considered the applicable return target, as opposed to that of similar investments in other locations.



Not all investments ideas meet the requirements
of the Exclusive Benefit Rule.



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You betchalll



Others make fine investments AND lend economic assistance to North Dakota ventures.

Yo, look at me now, Adrienne!



One big winner is the SIB investment in the Bank of North Dakota's "Match Loan" program.

In cooperation with the Bank of North Dakota's "match loan program", the SIB has formally earmarked \$100,000,000 in funds to be made available to promote the expansion of free enterprise in the state. Currently, BND has committed \$64,106,000 of this allocation and continues to seek additional opportunities to fund private businesses.

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BND also manages the short-term investment portfolio in the Insurance Trust which facilitates the lending of approximately \$35,000,000 by BND within their standard operational framework. Additionally, SIB also holds an unrestricted CD in the amount of \$10,000,000.

The net result is that the SIB has made approximately \$145,000,000 available to BND for lending in the state.

That's a lot of cabbage, man!

Speaking of BND, they also manage fixed-income portfolios for the Pension and Insurance Trusts. In fact, with \$326,813,831 under management in bonds, BND weighs in as the SIB's #1 manager by size of account. This relationship netted BND \$187,792 in fees during FY 2002!



In addition to the BND effort...



Our venture capitalists are on the lookout for exciting homegrown deals.

The SIB has also worked to initiate and maintain a communications link between the Department of Economic Development and Finance and the venture capital investment firms under retention. Adams Street and The Coral Group are both aware of our interest in identifying prospective start-ups in North Dakota and have indicated their commitment to analyze such opportunities.

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The SIB has also initiated a relationship with Lewis & Clark Private Equities, a venture capital firm with an office in Fargo and a geographic target investment area concentrated in the Heartland. To date, this is the only bona fide institutional private equity firm identified by the SIB. The SIB has committed \$7,500,000 to this venture firm.



In total, the existing commitment to ND economic development is

\$152,500,000!

So, that's where we stand currently on economically targeted investments in North Dakota. As always, the SIB remains vigilant in assuring that the pension assets are invested exclusively for the benefit of the members and their beneficiaries while maintaining a sensitivity to homegrown opportunity and responsiveness to client guidelines.



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Operator's Signature

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2335

Information on The North Dakota Student Loan Trust

Background

In 1971 the Legislature authorized the Industrial Commission to "acquire and hold in one or more trusts [1] all unpaid United States government guaranteed or reinsured student loans and [2] North Dakota guaranteed student loans, belonging to the state of North Dakota or to any of its agencies . . ." (NDCC 54-17-24. See also NDCC 54-17-25). The creation of the North Dakota Student Loan Trust enabled the State of North Dakota to obtain low cost funds (through the sale of tax-exempt bonds) and use those funds for purchasing student loans originated or acquired by the Bank of North Dakota. Since 1971 the Industrial Commission has issued over \$900,000,000 in student loan bonds. The Student Loan Trust had just over \$125,751,000 in bonds outstanding as of September 30, 2002.

Structure of the Trust

The Student Loan Trust is composed of funds held under two General Bond Resolutions. These General Bond Resolutions determine the use and flow of funds within the Student Loan Trust.

The First General Bond Resolution (1979) includes funds from the 1979, 1988, 1989 and 1992 student loan bond issues. The following is a chart showing the assets and liabilities held under the First General Bond Resolution as of September 30, 2002 (unaudited):

	1979	1988	1989	1992	Total
Assets	3,576,727	27,314,915	24,049,376	10,398,399	65,339,417
Bonds Outstanding					
09/30/02	0	0	3,887,115 ²	0	3,887,115
Other Liabilities	0	9,000,000 ¹	1,340	0	9,001,340
Fund Balance	3,576,727	18,314,915	20,160,921	10,398,399	52,450,962

¹ The 57th Legislative Assembly directed the Student Loan Trust to make a transfer of \$9,000,000 to the North Dakota General Fund during the 2001-2003 biennium with certain conditions. It is anticipated that this transfer will be made within the next 60 days.

² Non-callable; final maturity in 2005.

The non-callable 1989 bond issue is insured by Ambac Assurance Corporation (Ambac). The assets of the First General Bond Resolution include \$42,298,454 of student loans.

The Second General Bond Resolution (1996) includes funds from the 1996, 1997, 1998 and 2000 Student Loan Bond Issues. The following chart shows the assets

and liabilities held under the Second General Bond Resolution as of September 30, 2002 (unaudited):

	1996	1997	1998	2000	Total
Assets	20,867,865	21,615,274	34,962,833	65,259,453	142,705,425
Bonds Outstanding (09/30/02)	13,550,000 ¹	15,400,000 ²	29,914,416 ³	63,000,000 ⁴	121,864,416
Other Liabilities	261,563	332,213	1,252,822	1,364,002	3,210,600
Fund Balance	7,056,302	5,883,061	3,795,595	895,451	17,630,409

¹ Bond maturities extend to 2006, 2014
² Bond maturities extend to 2027
³ Bond maturities extend to 2006
⁴ Bond maturities extend to 2025, 2035

All bond issues under the Second General Bond Resolution are insured by Ambac. The assets of the Second General Bond Resolution include \$105,508,589 of student loans.

How did the Trust accumulate its fund balances?

Bonds sold in the 1970's and 1980's were issued under favorable Federal tax legislation. From those early bond issues the Trust was able to accumulate earnings that were not subject to arbitrage rebate to the federal treasury. One of the provisions of bonds sold prior to October 1, 1993 is that student loans held by the Student Loan Trust will receive a minimum yield of 9.5%. The student loan borrower pays the prevailing rate on a student loan and the federal government will provide a Special Allowance Payment to the Trust that would result in a 9.5% yield on the loan. These loans are very valuable assets of the Trust and this 9.5% yield can only be achieved as long as there are pre-1993 bonds outstanding or proceeds of the pre-1993 bond issues are utilized to recycle student loans.

Another source of earnings for the Trust results from the fact that when bonds are issued, a debt service reserve fund is established. That debt service reserve fund (a source of repayment to the bondholders) is also invested. Some of the investment earnings on the debt service reserve fund are retained within the Trust.

How can the funds within the Trust be utilized?

Under both the First and Second General Bond Resolutions funds derived from the bond issues can be used for the following general purposes:

Student Loan Trust Information

Page 3

December 31, 2002

- 1) Purchase of student loans: Federal Family Education Loan Program Loans (FFELP) and Dakota Education Alternative Loans (DEAL), a supplemental state guaranteed program. The FFELP loans carry federal coinsurance, while the DEAL loans are guaranteed by the North Dakota Guaranteed Student Loan Program (Guarantee Agency) without federal coinsurance;
- 2) Payment of debt service to the bondholders;
- 3) Providing financial assistance to the Guarantee Agency;
- 4) Payment of any rebate liability to the federal government or, when permitted, providing borrower benefits to students; and
- 5) Administration of the Student Loan Trust.

As noted above the Trust funds can be used to provide financial assistance to the Guarantee Agency. Over the past six years the Trust has transferred \$5.8 million to the Guarantee Agency. This has allowed the Guarantee Agency to:

- Provide its guarantee on student loans to our student loan borrowers at a lower cost—the Guarantee Agency has eliminated a 1% guarantee fee previously charged to all borrowers;
- Upgrade its information technology system to streamline its operations, make the system more efficient and thus less costly, and to make the program more user friendly to the university system and other higher education institutions and ultimately to the borrowers;
- Fund six full-time positions for the Higher Education Computer Network (HECN) within the University System. These positions relate to programming system changes and training for HECN schools on system updates;
- Provide operating funds for the Guarantee Agency. Since the mid-90's the federal government has been withdrawing funds from guarantee agencies across the United States;
- Provide the required reserve funds (10%) needed for DEAL loans (those loans without federal coinsurance)

In order for the Guarantee Agency to offer its services at a lower cost to the student loan borrower, the Trust will be asked to transfer additional funding to the Guarantee Agency. Additional funding is also needed to meet the reserve requirements for additional DEAL program loans.

Can funds be withdrawn from the Student Loan Trust?

As noted above the General Bond Resolutions have limitations on how funds can be used. The Industrial Commission has just recently amended the First General Bond Resolution to allow transfer for the \$9 million of earnings that were appropriated by the Legislature during the 2001 Legislative Session for the General Fund. All the outstanding bonds are insured by Ambac and any amendments to the General Bond Resolutions must be agreed to by Ambac. The Trust is currently seeking approval from Ambac of the amendment to the First General Resolution and requesting their approval of the \$9 million transfer. The Trustee for the bonds must also certify that sufficient reserves remain to meet debt service payments, rebate payments and all program costs.

Another option is to defease bonds outstanding under the First General Bond Resolution. Once all the bonds of any General Bond Resolution have matured, been redeemed or all the non-callable bonds defeased and the entire rebate liability due to the federal government paid, the remaining assets held under any General Bond Resolution would be transferred to the Industrial Commission. At that point the status of the student loan program would need to be evaluated and the legal status of any unencumbered assets determined. *(For your information, to defease a bond issue, the Commission deposits sufficient funds in an Escrow Account to fully pay the principal and interest on the outstanding bonds and all other outstanding costs.)* However, it is important to note that at the current time the Trust receives a yield of 9.5% on student loans held within the 1979 Resolution. The earnings from these 9.5% loans are partially used to pay a servicing fee to the Bank of North Dakota. The portion received by the Bank is reflected in the Bank's overall earnings.

What has the Student Loan Trust income been and what is the forecasted fund balance?

The Student Loan Trust has averaged net income over the past six years of \$3,983,940 before transfers to the Guarantee Agency or the General Fund. Governor Hoeven's 2003-2005 Executive Budget utilizes \$26,258,969 from the Student Loan Trust--\$9,000,000 of the Student Loan Trust's projected income during the 2003-2005 biennium and \$17,258,969 from funds held in the Student Loan Trust. This transfer from the funds held in the Student Loan Trust 1979 General Bond Resolution (which may require the sale of 9.5% loans) and a proposed transfer to the Guarantee Agency to support its operations and continue the DEAL loan program will reduce the First General Bond Resolution fund balance to \$25,960,013 on July 1, 2005. The Trust is currently considering options, including the drafting of legislation, which will enable the Trust to provide the funding proposed in the Executive Budget without the sale of the 9.5% loans and to maximize the Trust's future earnings.

Will students be able to obtain a student loan from the Bank of North Dakota if funds are transferred from the Student Loan Trust?

Yes, the Bank of North Dakota will continue to offer FFELP student loans. Currently the Student Loan Trust is a liquidity provider for the Bank and provides an alternative for the Bank should the Bank determine a need to reduce its student loan portfolio.

Dated December 31, 2002

If there are additional questions regarding the Student Loan Trust, please contact Karlene Fine, Executive Director and Secretary for the Industrial Commission (328-3722), or Ed Sather, Senior Vice President of the Bank of North Dakota (328-3722).

SB# 2335

**MATCH PROGRAM
BANK OF NORTH DAKOTA**

MATCH PROJECTS - FUNDED

As Of December 31, 2002

BORROWER	DATE FUNDED	TOTAL BND LOAN AMOUNT
1 American Crystal	2/23/1994	\$12,000,000
2 US Bancorporation	12/27/1996	\$6,600,000
3 Community First	1/29/1998	\$3,200,000
4 Dakota Growers	7/29/1998	\$12,000,000
5 Ingersoll-Rand	6/28/1999	\$18,000,000
6 Integrity Windows	5/16/2001	\$4,000,000
7 Steffes Corporation	12/13/2001	\$406,000
8 Arthur Co & F. Burgum	1/17/2002	\$4,600,000
9 Grand Forks EDC (LM Glassfiber)	5/13/2002	\$3,300,000
10 Wahpeton CDC (Imation)	12/3/2002	\$5,310,000
Total		\$64,106,000

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10/22/03
Date

For SB 2335 to allow investment of public pension funds into seed capital through a Fund of Funds and create a 5-member seed capital investment board to invest 1% of 1% (0.25% - or 5% of 5%) of the \$3 billion in pension funds into a portfolio of seed capital funds (not direct investments).

By: Bruce Gjovig, Center for Innovation, Rural Technology Incubator
Box 8372, Grand Forks ND 58202, 701-777-3134, Bruce@Innovators.net

facts: 3 Goals: Excellent ROI, seed capital for entre, seed/vc infrastructure

- 5% of 5% of \$3 billion would make available up to \$7.5 million for seed and early stage capital investments. Current law allows the pension funds to invest up to 5% in alternative and venture capital investments, which under this bill seed capital will be included within than 5%.
- Several states have established a 'fund of fund' portfolio approach to invest seed and venture capital from state pension funds - Iowa, Oklahoma, Michigan, Maryland, New Mexico and Oregon. Similar proposals are pending in Arizona, Tennessee, Ohio and California. The seed capital portfolio approach with pension funds has been tested and helped launch a private venture industry in the host states.
- More than 95% of the taxpayer financed pension funds (teachers & public employees) are invested out-of-state stimulating other state's economies. This bill requires that the pension investment board report to the Governor and Legislature the total number and amount of pension funds invested in North Dakota companies, with explanations on what investments could be secured, why more could not be secured that met investment standards, and what can be done to increase the number of eligible investments. Goal is a modest 5% of the public pension funds invested in the state or justify why, leaving 95% invested worldwide.
- Establish a 5-member seed capital investment board: President of the Bank of ND, Director of the Dept of Commerce, and 3 members appointed by the Governor with experience in seed and venture capital but who are not interested in being a fund manager themselves. This board would invest in state, regional and national seed and venture funds willing to invest in ND seed and venture opportunities. Will give preference to ND funds and funds willing to invest in ND. The funds may also help facilitate a SBIC and will coordinate with other publicly created seed funds to gain the highest leverage with lowest costs.
- Seed capital has consistently outperformed other equity investments over the last 20 years. This is not a risky scheme. Artemis Ventures study, Dec. 2001: "Seed capital consistently performed every asset class, including a balanced portfolio, later stage venture, buyout, mezzanine, and all private equity. Figure 2 shows venture capital returns have averaged approximately 25% for the past 20 years, while Figure 3 shows seed stage capital investing has averaged 33%. Although seed stage investing has consistently outperformed other private equity asset classes, it also

important to note its superior performance over other asset classes, including the public markets, hedge funds, and buyout funds. Figure 6 shows: **"seed stage capital returns have beaten all other alternative asset and public market investment vehicles for the past 20 years as well."**

- Even with the historical high performance of seed stage capital, it is also important to consider the performance of seed stage capital during recessionary periods...returns have declined less than the public markets. Thus investing in seed stage companies during an economic recession or down markets increase your overall return on investment, while at the same time decrease your portfolio risk. The data further supports that many investors abandoned seed stage investing and focused on investing in later stage rounds in recent years. Ultimately, the lack of players in this space has created a financial opportunity for investors wise enough to recognize these trends. Venture Economics
- Seed stage investing is the highest performing asset class and can provide a 'shelter' during volatile market conditions. For the alternative asset managers and other related institutions, investing in a successful seed stage venture fund is also an effective way to diversify risk and fill a 'void' in its existing portfolio.
- 1987 when I helped legislation to allow pension funds to invest in venture capital funds, there was strong opposition as there was fear it was a risky scheme. Venture capital has ended up being a high performer in their pension portfolio. Seed capital will do likewise. 5% of 5% will prove its worth, and I predict the board will soon support more seed capital.
- Problems with current bill: written to exempt the 1/4 of 1% to the same compliances and investment standards. There are some reasons to do this such as investing in some ND funds. This language is not likely necessary, but ensures that the seed capital investment board does not have unworkable standards upfront to invest the funds. Opponents may claim this allows risky investments. No reasonable and prudent investment board would do that. But this opens the door to those outrageous claims.
- Amendment suggested that utilizes the Pension fund investment in the Bank of ND in CD rate for seed investment thus **guaranteeing the principle of the Funds of Funds with assets of the Bank of North Dakota.** This would take away all risk from the fund of funds is unlikely even remotely necessary, but makes the bill more saleable.
- Page 3, Line 6-9 will need to be clarified. Now it reads "The board shall allocate 1/4 of 1% of the 5% allocated to North Dakota alternative and venture capital investments for the fund of funds." The goal was 1/4 of 1% of the total pension fund (not of the 5%), and that be included in the 5% allocation for alternative and venture capital investments. It should read 5% of 5%.

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10/22/03

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FUNDING PROGRAMS AVAILABLE TO BUSINESSES BY DEVELOPMENT STAGE (AS IDENTIFIED BY THE DEPARTMENT OF ECONOMIC DEVELOPMENT AND FINANCE)

The schedule below presents information provided by representatives of the Department of Economic Development and Finance on the various development stages of businesses, funding programs available to businesses in each development stage, and the categorization of bills under consideration by the 2001 Legislative Assembly in the various business stages. Appendix A provides definitions for the business development stage. Appendix B lists bills being considered by the 2001 Legislative Assembly relating to economic development. Appendix C provides information on North Dakota Development Fund projects approved during the 1999-2001 biennium to date.

Seed Funding Programs	Startup Funding Programs	First Stage Funding Programs	Second Stage Funding Programs	Third Stage Funding Programs	Bridge Funding Programs	Open Market Funding Programs	Acquisition Funding Programs	REDAF Funding Programs
Angel Investors	Certified Development Corporation (CDC) 804 program Micro loan program	ND Development Fund (debt and equity) Regional awards	ND Development Fund (debt and equity) Regional awards	Small Business Investment Center (SBIC) Regional institutions (Bank of North Dakota) ND Development Fund (debt and equity) Regional awards	Small Business Investment Center (SBIC) Reinsurance fund ND Development Fund (debt and equity) Regional awards	Public lending	Venture capital fund Regional fund	Venture capital fund Regional fund
Agricultural Products Utilization Commission (APUC)	USDA Intermediary lending program (IFP) Local development corporation entrepreneurship (Star Fund, Magic Fund, Growth Fund) Bank of North Dakota startup and long-term entrepreneur programs ND Development Fund (debt and equity) Regional awards	Regional awards Reinsurance fund Bank of North Dakota small business loan program USDA Intermediary lending program (IFP) Micro loan program Local development corporation USDA Intermediary lending program (IFP) Farmers equity fund (IFB 1051) Reinsurance zone (SB 2272) Venture capital fund (IFB 1038) Venture Capital Corporation, Inc. (IFB 1042) Rural growth incentive program (IFB 1407) Seed capital investment tax credit changes (IFB 1413)	Regional awards Reinsurance fund Certified Development Corporation (CDC) 804 program USDA Intermediary lending program (IFP) Micro loan program Local development corporation Farmers equity fund (IFB 1051) Reinsurance zone (SB 2272) Venture capital fund (IFB 1038) Venture Capital Corporation, Inc. (IFB 1042) Rural growth incentive program (IFB 1407) Seed capital investment tax credit changes (IFB 1413)	Small Business Investment Center (SBIC) Regional institutions (Bank of North Dakota) ND Development Fund (debt and equity) Regional awards Investment bankers Local development corporation Certified Development Corporation (CDC) 804 program USDA Intermediary lending program (IFP) Reinsurance fund Micro loan program Reinsurance zone (SB 2272) Rural growth incentive program (IFB 1407) Market fund for state business investments (IFB 1454)	Small Business Investment Center (SBIC) Reinsurance fund ND Development Fund (debt and equity) Regional awards	Public lending	Venture capital fund Regional fund ND Development Fund (debt and equity) Small Business Investment Center (SBIC) Regional awards Reinsurance fund Regional institutions	Venture capital fund Regional fund Small Business Investment Center (SBIC)
Corporate tax deduction for research and development (SB 2306)								
Value-added agriculture entrepreneur program (SB 2379)	Angel investors Farmers equity fund (IFB 1051) Rural growth incentive program (IFB 1407) Beginning farmers loan program (SB 2104) Seed capital investment tax credit (IFB 1041)							

ATTACH3

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Deanna Waller
Operator's signature

10/22/03

Date



Att # 2

PO Box 2599 • Bismarck, ND 58502
U.S. Toll Free 1-877-311-1648 • (701) 355-4458 • (701) 223-4645 (Fax)
office@itcnd.org • www.itcnd.org

Testimony of Dana Bohn

Information Technology Council of North Dakota Executive Director

On Engrossed SB 2335

March 17, 2003

Mr. Chairman and members of the House Industry, Business, and Labor Committee:

My name is Dana Bohn and I am the Executive Director of the Information Technology Council of North Dakota (ITCND). I am here to testify in support of engrossed SB 2335.

ITCND was formed in 2000 by North Dakota business, government and university leaders who recognized the need to strengthen the state's information technology infrastructure and reposition the state as a national leader in IT. The membership of ITCND has 100-plus members and we are a growing organization, which reflects the growth of IT businesses throughout North Dakota.

One of the key planks in the ITCND Legislative Agenda is to support entrepreneurs, seed, and venture capital programs, and that is why I am before you today speaking in favor of engrossed SB 2335.

North Dakota's information technology industry is projected to outpace the national average in employment over the next five years. With this promise of growth, having seed capital funds available to state IT entrepreneurs to start new businesses or grow existing ones could move this industry forward in North Dakota at an even greater pace.

This Fund of Funds that SB 2335 would create has been successfully established in other states. The funding it would generate for seed and early stage capital investments would

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Dana Bohn
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10/22/03
Date

be a significant advantage to not only North Dakota's IT industry, but other industries that are investing in the state.

North Dakota has made a significant investment in establishing the infrastructure necessary for the creation of tech-based businesses throughout the state. On behalf of ITCND and myself personally, I want to thank you for all you have done to help move this industry forward in the state. Your support of engrossed SB 2335 will demonstrate your support of this industry through seed capital funding that is so crucial to attracting new businesses to the state.

We thank you for your support of business development in the past, and we encourage you to give engrossed SB 2335 a DO PASS recommendation.

Bohn testimony in support of engrossed SB 2335.

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Date

#3

Information on The North Dakota Student Loan Trust

Background

In 1971 the Legislature authorized the Industrial Commission to "acquire and hold in one or more trusts [1] all unpaid United States government guaranteed or reinsured student loans and [2] North Dakota guaranteed student loans, belonging to the state of North Dakota or to any of its agencies . . ." (NDCC 54-17-24. See also NDCC 54-17-25). The creation of the North Dakota Student Loan Trust enabled the State of North Dakota to obtain low cost funds (through the sale of tax-exempt bonds) and use those funds for purchasing student loans originated or acquired by the Bank of North Dakota. Since 1971 the Industrial Commission has issued over \$900,000,000 in student loan bonds. The Student Loan Trust had just over \$125,852,000 in bonds outstanding as of December 31, 2002.

Structure of the Trust

The Student Loan Trust is composed of funds held under two General Bond Resolutions. These General Bond Resolutions determine the use and flow of funds within the Student Loan Trust.

The following chart shows the consolidated assets and liabilities held under the Student Loan Trust as of December 31, 2002 (unaudited):

	<u>Total</u>
Assets	209,731,820
Bonds Outstanding	125,852,166
Other Liabilities	13,017,862
Fund Balance	70,861,792

As noted above the Trust is composed of two General Bond Resolutions. The First General Bond Resolution (1979) includes funds from the 1979, 1988, 1989 and 1992 student loan bond issues. The following is a chart showing the assets and liabilities held under the First General Bond Resolution as of December 31, 2002 (unaudited):

	<u>1979</u>	<u>1988</u>	<u>1989</u>	<u>1992</u>	<u>Total</u>
Assets	3,625,152	27,734,270	24,200,991	10,518,269	66,078,682
Bonds Outstanding	0	0	3,956,205 ²	0	3,956,205
Other Liabilities	33,369	9,227,639 ¹	26,306	90,154	9,377,468
Fund Balance	3,591,783	18,506,631	20,218,480	10,428,115	52,745,009

¹ The 57th Legislative Assembly directed the Student Loan Trust to make a transfer of \$9,000,000 to the North Dakota General Fund during the 2001-2003 biennium with certain conditions. This transfer was made in January, 2003.

² Non-callable; final maturity in 2005.

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The non-callable 1989 bond issue is insured by Ambac Assurance Corporation (Ambac). The assets of the First General Bond Resolution include \$38,232,829 of student loans.

The Second General Bond Resolution (1996) includes funds from the 1996, 1997, 1998 and 2000 Student Loan Bond Issues. The following chart shows the assets and liabilities held under the Second General Bond Resolution as of December 31, 2002 (unaudited):

	1996	1997	1998	2000	Total
Assets	21,094,550	21,897,737	35,009,839	65,651,012	143,653,138
Bonds Outstanding	13,550,000 ¹	15,400,000 ²	29,945,961 ³	63,000,000 ⁴	121,895,961
Other Liabilities	272,973	273,002	1,095,598	1,998,821	3,640,394
Fund Balance	7,271,577	6,224,735	3,968,280	652,191	18,116,783

¹ Bond maturities extend to 2006, 2014
² Bond maturities extend to 2027
³ Bond maturities extend to 2006
⁴ Bond maturities extend to 2025, 2035

All bond issues under the Second General Bond Resolution are insured by Ambac. The assets of the Second General Bond Resolution include \$98,701,456 of student loans.

How did the Trust accumulate its fund balances?

Bonds sold in the 1970's and 1980's were issued under favorable Federal tax legislation. From those early bond issues the Trust was able to accumulate earnings that were not subject to arbitrage rebate to the federal treasury. One of the provisions of tax-exempt bonds sold prior to October 1, 1993 is that student loans held by the Student Loan Trust will receive a minimum yield of 9.5%. The student loan borrower pays the prevailing rate on a student loan and the federal government will provide a Special Allowance Payment to the Trust that would result in a 9.5% yield on the loan. These loans are very valuable assets of the Trust and this 9.5% yield can only be achieved as long as there are pre-1993 bonds outstanding or proceeds of the pre-1993 bond issues are utilized to recycle student loans.

Another source of earnings for the Trust results from the fact that when bonds are issued, a debt service reserve fund is established. That debt service reserve fund (a source of repayment to the bondholders) is also invested. Some of the investment earnings on the debt service reserve fund are retained within the Trust.

How can the funds within the Trust be utilized?

Under both the First and Second General Bond Resolutions funds derived from the bond issues can be used for the following general purposes:

- 1) Purchase of student loans: Federal Family Education Loan Program Loans (FFELP) and Dakota Education Alternative Loans (DEAL), a supplemental state guaranteed program. The FFELP loans carry federal coinsurance, while the DEAL loans are guaranteed by the North Dakota Guaranteed Student Loan Program (Guarantee Agency) without federal coinsurance;
- 2) Payment of debt service to the bondholders;
- 3) Providing financial assistance to the Guarantee Agency;
- 4) Payment of any rebate liability to the federal government or, when permitted, providing borrower benefits to students; and
- 5) Administration of the Student Loan Trust.

As noted above the Trust funds can be used to provide financial assistance to the Guarantee Agency. Over the past six years the Trust has transferred \$5.8 million to the Guarantee Agency. This has allowed the Guarantee Agency to:

- Provide its guarantee on student loans to our student loan borrowers at a lower cost—the Guarantee Agency has eliminated a 1% guarantee fee previously charged to all borrowers;
- Upgrade its information technology system to streamline its operations, make the system more efficient and thus less costly, and to make the program more user friendly to the university system and other higher education institutions and ultimately to the borrowers;
- Fund six full-time positions for the Higher Education Computer Network (HECN) within the University System. These positions relate to programming system changes and training for HECN schools on system updates;
- Provide operating funds for the Guarantee Agency. Since the mid-90's the federal government has been withdrawing funds from guarantee agencies across the United States;
- Provide the required reserve funds (10%) needed for DEAL loans (those loans without federal coinsurance)

In order for the Guarantee Agency to offer its services at a lower cost to the student loan borrower, the Trust will be asked to transfer additional funding to the Guarantee Agency. Additional funding is also needed to meet the reserve requirements for additional DEAL program loans.

Can funds be withdrawn from the Student Loan Trust?

As noted above the General Bond Resolutions have limitations on how funds can be used. The Industrial Commission has just recently amended the First General Bond Resolution to allow transfer for the \$9 million of earnings that were appropriated by the Legislature during the 2001 Legislative Session for the General Fund. All the outstanding bonds are insured by Ambac and any amendments to the General Bond Resolutions must be agreed to by Ambac. The Trust has received approval from Ambac of an amendment to the First General Resolution and Ambac has approved the \$9 million transfer. The Trustee for the bonds must also certify that sufficient reserves remain to meet debt service payments, rebate payments and all program costs.

Another option is to defease bonds outstanding under the First General Bond Resolution. Once all the bonds of any General Bond Resolution have matured, been redeemed or all the non-callable bonds defeased and the entire rebate liability due to the federal government paid, the remaining assets held under any General Bond Resolution would be transferred to the Industrial Commission. At that point the status of the student loan program would need to be evaluated and the legal status of any unencumbered assets determined. (For your information, to defease a bond issue, the Commission deposits sufficient funds in an Escrow Account to fully pay the principal and interest on the outstanding bonds and all other outstanding costs.) However, it is important to note that at the current time the Trust receives a yield of 9.5% on student loans held within the 1979 Resolution. If the 1979 Resolution is defeased, the Trust would no longer be able to receive the 9.5% yield on loans held in the 1979 Resolution. The earnings from these 9.5% loans are partially used to pay a servicing fee to the Bank of North Dakota. The portion received by the Bank is reflected in the Bank's overall earnings.

What has the Student Loan Trust Income been and what is the forecasted fund balance?

The Student Loan Trust has averaged net income over the past six years of \$3,983,940 before transfers to the Guarantee Agency or the General Fund. Governor Hoeven's 2003-2005 Executive Budget utilizes \$26,258,969 from the Student Loan Trust--\$9,000,000 of the Student Loan Trust's current and prior income during the 2003-2005 biennium and \$17,258,969 from funds held in the Student Loan Trust. This transfer from the funds held in the Student Loan Trust 1979 General Bond Resolution (which may require the sale of 9.5% loans) and a proposed transfer to the Guarantee Agency to support its operations and continue the DEAL loan program will reduce the First General Bond Resolution fund balance to \$26,690,000 on June 30, 2005. The Trust is currently considering options, including the passage of legislation (SB 2232), which will enable the Trust to provide the funding proposed in the Executive Budget without the sale of the 9.5% loans and to maximize the Trust's future earnings.

Will students be able to obtain a student loan from the Bank of North Dakota if funds are transferred from the Student Loan Trust?

Yes, the Bank of North Dakota will continue to offer FFELP student loans. Currently the Student Loan Trust is a liquidity provider for the Bank and provides an alternative for the Bank should the Bank determine a need to reduce its student loan portfolio.

Dated February 24, 2003.

If there are additional questions regarding the Student Loan Trust, please contact Karlene Fine, Executive Director and Secretary for the Industrial Commission (328-3722), or Ed Sather, Senior Vice President of the Bank of North Dakota (328-5604).

Deanna Hall
Operator's Signature

10/22/03

Date