

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

SENATE BILL NO. 2150
(Industry, Business and Labor Committee)
(At the request of the Industrial Commission)

AN ACT to amend and reenact sections 54-17.2-01, 54-17.2-02.1, and 54-17.2-02.2, subsections 1 and 7 of section 54-17.2-03, and sections 54-17.2-04, 54-17.2-06, 54-17.2-07, 54-17.2-08, 54-17.2-09, 54-17.2-10, 54-17.2-11, 54-17.2-16, and 54-17.2-19 of the North Dakota Century Code, relating to financing by the building authority of projects authorized by the legislative assembly.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-17.2-01 of the North Dakota Century Code is amended and reenacted as follows:

54-17.2-01. Definitions. As used in this chapter, unless the context or subject matter requires otherwise:

1. "Commission" means the industrial commission acting as the North Dakota building authority created under this chapter.
2. "Evidences of indebtedness" means bonds, notes, debentures, and other evidences of indebtedness issued by the commission on behalf of the state of North Dakota to evidence money owed or borrowed.
3. "Financing agreement" means a written agreement between the commission and the state with respect to a project, whereby the state agrees to pay to the commission, when due, the principal of, premium, if any, and interest on bonds issued by the commission with respect to that project. A financing agreement may be in the form of a lease, mortgage, direct or installment sale contract, loan agreement, or take-or-pay or similar agreement, and be secured in a manner the parties agree to or be unsecured.
4. "Project" or "projects" means any:
 - a. Legislatively authorized building or buildings primarily for the use of the state, including related structures, parking facilities, equipment, improvements, real and personal property or any interest therein, including lands under water, space rights and air rights, and other appurtenances and facilities necessary or convenient to the use or operation of the building or buildings, acquired, owned, constructed, reconstructed, extended, rehabilitated, or improved by the commission; or
 - b. Any other undertaking authorized by the legislative assembly.
- ~~4.~~ 5. "Project cost" means the total cost of ~~acquisition and construction~~ of a project or projects and all costs of issuance, financing, and interest during project construction or implementation included in the principal amount of evidences of indebtedness issued.
- ~~5.~~ 6. "State" means any branch of North Dakota government or any office, department, board, commission, bureau, division, public authority or corporation, agency, or instrumentality of the state.

SECTION 2. AMENDMENT. Section 54-17.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

54-17.2-02.1. Evidences of indebtedness conditions - Continued authority. The commission may issue evidences of indebtedness subject to the condition that ~~lease rental payments under financing agreements~~ shall begin no earlier than the first business day of the biennium following the biennium of issuance. Although the authority to issue evidences of indebtedness for specific projects may terminate, the commission may exercise all other powers granted to the commission under this chapter and may comply with any covenants entered into before the applicable termination date.

SECTION 3. AMENDMENT. Section 54-17.2-02.2 of the North Dakota Century Code is amended and reenacted as follows:

54-17.2-02.2. Continuing appropriation. The moneys received by the industrial commission from the sale of evidences of indebtedness ~~and lease rental payments~~, and moneys received by the industrial commission or the state agencies and institutions from revenue generated by projects authorized by the legislative assembly, are hereby appropriated as a continuing appropriation for the ~~acquisition of these authorized projects and the payment of lease rentals for these~~ construction or implementation of the authorized projects and payment of debt service on any evidences of indebtedness issued to finance the projects.

SECTION 4. AMENDMENT. Subsections 1 and 7 of section 54-17.2-03 of the North Dakota Century Code are amended and reenacted as follows:

1. Enter into agreements, including financing agreements, with respect to its projects, operation, properties, and facilities, subject to agreements with holders of evidences of indebtedness.
7. Grant options to purchase any project or to renew any lease financing agreement entered into by it in connection with any of its projects, on terms and conditions it deems advisable.

SECTION 5. AMENDMENT. Section 54-17.2-04 of the North Dakota Century Code is amended and reenacted as follows:

54-17.2-04. Purpose of commission. The public purpose of the commission is to promote the general welfare of the citizens of this state by providing financing for projects for use primarily by the state ~~in providing public services by altering, repairing, maintaining, or constructing buildings primarily for use by the state and making any improvements connected to those buildings or pertaining to those buildings and necessary to the use of those buildings in providing services to the public.~~

SECTION 6. AMENDMENT. Section 54-17.2-06 of the North Dakota Century Code is amended and reenacted as follows:

54-17.2-06. ~~Lease of facilities and sites to~~ Financing agreements with state agencies authorized - Commencement of payments under lease financing agreements. The commission may lease enter into financing agreements for any project to with the state. The ~~leases~~ financing agreements may be entered into contemporaneously with any financing to be done by the commission and payments under the terms of the lease financing agreement shall begin at any time after execution of the lease financing agreement.

SECTION 7. AMENDMENT. Section 54-17.2-07 of the North Dakota Century Code is amended and reenacted as follows:

54-17.2-07. Terms, conditions, and ~~rental~~ payment under leases financing agreements - Automatic biennial extension provisions. Leases Financing agreements may be entered into by the commission:

1. Upon terms, conditions, and ~~lease rentals~~ payment provisions, subject to available appropriations, as in the judgment of the commission are in the public interest; and

2. For an original term of not to exceed two years, with an automatic extension of the term of the lease financing agreement, unless specifically rejected by the legislative assembly, for a term of two years from the expiration of the original term of the lease financing agreement and for two years from the expiration of each extended term of the lease financing agreement, until the original term of the lease financing agreement has been extended for a total number of years to be agreed upon by the parties at a lease rental payment which, if paid for the original term and for each of the full number of years for which the term of the lease financing agreement may be extended, will amortize the total project cost of the project.

The lease rental payment must be paid at the times agreed upon by the parties to the lease financing agreement.

SECTION 8. AMENDMENT. Section 54-17.2-08 of the North Dakota Century Code is amended and reenacted as follows:

54-17.2-08. State's option to purchase - Conveyance on exercise of option. ~~The lease A~~ financing agreement must provide that the state may, at the expiration of the original or any extended term, purchase the project at a stated price, which must be the balance of the total project cost not amortized by the ~~payment of rents payments~~ payments previously made by the state. The lease financing agreement must provide that if the option to purchase the project has been exercised or if the lease financing agreement has been extended for the full number of years which it may be extended, and all ~~rents and~~ payments provided for in the lease financing agreement have been made and all project costs have been paid, the commission shall convey its interest in the project to the lessee.

SECTION 9. AMENDMENT. Section 54-17.2-09 of the North Dakota Century Code is amended and reenacted as follows:

54-17.2-09. Insurance and credit enhancements added to ~~rental~~ payments. ~~The lease A~~ financing agreement may provide that the state shall provide insurance or, as additional ~~rent for the leased project~~ payment under a financing agreement, pay the cost of insuring the project against loss or damage in such sum agreed to by the parties. The lease financing agreement may also provide for payment of the cost of such credit enhancements as in the judgment of the commission may be required for sale of the evidences of indebtedness, including bond insurance or letters of credit.

SECTION 10. AMENDMENT. Section 54-17.2-10 of the North Dakota Century Code is amended and reenacted as follows:

54-17.2-10. Appropriations and funds from which ~~rent payments are payable and right to project upon nonpayment~~ - Commission's power to use or sell facilities for other purposes on nonpayment of rent. ~~The lease A~~ financing agreement must provide that ~~rents payments due under the financing agreement~~ are payable solely from appropriations to be made by the legislative assembly for the such payment of the lease rent or, money available to the lessee state not requiring appropriation, money generated from charges made for use of the project, any revenues derived by the commission from the operation of the project, or any combination of such moneys. The financing agreement may provide that the commission upon nonpayment ~~of lease rents~~ is immediately entitled to the peaceable possession, access, and occupancy of the project and all appurtenances and easements appertaining thereto, and may maintain and operate the project or execute leases for the project or sell the project to political subdivisions of the state or private persons or entities for any purpose.

SECTION 11. AMENDMENT. Section 54-17.2-11 of the North Dakota Century Code is amended and reenacted as follows:

54-17.2-11. Costs and reserves to be covered by rent and charges or other payments. ~~Lease rentals~~ Payments under a financing agreement for a project must be sufficient at all times to pay ~~the~~ any maintenance and operation costs for the project, unless the maintenance and operation costs are otherwise provided for under ~~a lease the financing agreement~~, the principal of and interest on any evidence of indebtedness, and a proportion of the administrative expenses of the commission as

provided for by each ~~lease financing agreement~~, and the reserves as may be provided in the resolutions authorizing the issuance of evidences of indebtedness.

SECTION 12. AMENDMENT. Section 54-17.2-16 of the North Dakota Century Code is amended and reenacted as follows:

54-17.2-16. Revenues, appropriations, funds, and income from which evidences of indebtedness payable. Evidences of indebtedness are payable solely from:

1. Revenues to be derived by the commission from the operation of a project or projects;
2. ~~Income to be derived~~ Payments from ~~rentals paid the state pursuant to leases to the state financing agreements~~, or from leases to others as provided by this chapter;
3. Funds appropriated by the legislative assembly; and
4. Any other legally available revenue, income, or funds available to the commission.

SECTION 13. AMENDMENT. Section 54-17.2-19 of the North Dakota Century Code is amended and reenacted as follows:

54-17.2-19. Restrictions on obligation stated on face of evidences of indebtedness. Evidences of indebtedness must state upon their face that they are payable solely from ~~revenues moneys~~ derived by the commission as provided in this chapter, ~~including revenues from the operation of projects acquired, constructed, completed, remodeled, or equipped in whole or in part with the proceeds of the sale of such evidences of indebtedness, including income to be derived from rental leases as provided by this chapter.~~ Evidences of indebtedness must state upon their face that they do not constitute an obligation of the state within the meaning of any statutory or constitutional provision.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2150.

Senate Vote: Yeas 26 Nays 20 Absent 1

House Vote: Yeas 84 Nays 4 Absent 6

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,

at _____ o'clock _____ M.

Secretary of State