

2009 HOUSE POLITICAL SUBDIVISIONS

HB 1266

# 2009 HOUSE STANDING COMMITTEE MINUTES

## Bill No. HB 1266

### House Political Subdivisions Committee

☐ Check here for Conference Committee

Hearing Date: February 6, 2009

Recorder Job Number: 8906

Committee Clerk Signature



Minutes:

**Chairman Wrangham** opened the hearing on HB 1266.

**Rep. Klemin:** Introducing the bill at the request of a lot of ND attorneys. This bill is in connection with Municipal Industrial Development bonds.

**Scott Wegner: Cook Wegner & Wike PLLP in Bismarck:** (see testimony #1). Went over the bill and explained it to the committee. This language in the bill clarifies that any city or county could issue a MIDA bond whether or not they were the ones that originally issued the MIDA bond. The other changes in the bill came from Legislative Counsel to update the language. We ask for your support on 1266.

**Rep. Kretschmar:** When I saw the line on Section 5 where you were crossing out you are not limiting such facilities; you are just taking that out so all other facilities could do so?

**Scott Wegner:** That is correct. This would just allow anyone to participate.

**Rep. Kretschmar:** are you aware that congress is debating **senior centers for the whole country?** Is there anything in there that would loosen this thing up?

**Scott Wegner:** There are a couple of things that we will need to tighten up on that because of the federal stimulus which would make use of MIDA bonds, but there is restrictions on how

small they are based on the taxable expenditures over a period of years and also a dollar amount limit. Congress is going to loosen those up. That should make it more applicable for more manufacturers. There are a few of those kinds of things. They are not going so far as adding retail.

**Rep. Koppelman:** What is the purpose of state laws regarding MIDA bonds since it is a federal tax exempt entity. Do they require enabling state law to make them work or does this just mirror the federal law.

**Scott Wegner:** The main advantage of MIDA bonds is that interest to the purchaser of bond is exempt from Federal Income Tax. The primary exemption is the federal exemption.

Regardless of what ND has enforced; Congress has to approve. You are correct; ND needs some type of enabling or authorizing legislation to take place and every state would have something like this. Whether ND does it at the county level; others might do at the state level.

**Chairman Wrangham:** You say the federal law controls reused and forbids use for retail. Do you know what section that is in? We can look it up.

**Scott Wegner:** I think Title 26 of the US Code and Section 141-150 and also Section 103. Those are the federal law sections that deal with bonds. Specifically Section 141. There is Legislation before congress called private activity. Anything that is non government that is where they put all the restrictions. In those sections they allow for manufacturing and solid waste. For other things like private activity generally not.

**Rep. Jerry Kelsh:** With cities or counties with MIDA Bonds are they any way responsible if these 503.3C for nonprofit used for nonprofit? What are the responsibilities there for counties and cities?

**Scott Wegner:** You are right. They are strictly compactors; they have no liability, so the purchaser of bonds would have to be comfortable with their payment source numbers and their facilities and so if they take a mortgage on the facility. That happens directly between the borrower of borrower and Title I and the purchaser.

**Rep. Klemin:** Maybe you could discuss what roll bonds play as far as local bodies?

**Scott Wegner:** The roll of the bond counsel is really two fold; they want to know whether it is a valid bond. That is whether it is a MIDA Bond or a regular governmental bond. They went to know if there was authority as was mentioned under state law to do this. So the bond counsel gives a legal opinion at the end to the purchaser whether these bonds are validly issued under ND law. That the statutes are authorized and the proper steps are followed. The interest that that purchaser sees it is tax exempt of State and Federal Income Tax. The investors generally require bond counsel if they want some assurance that anyone around the country buys bonds in ND they want some assurance that they have a valid tax exempt bond.

**Rep. Kretschmar:** there was a bill that let a non resident of ND be able to buy bonds in ND?

**Scott Wegner:** You are right there was a Supreme Court case within the last year that addressed whether tax exempt interest from another state could be taxed in their home state.

**Harold Kocher, Examiner for the Securities Department:** (see testimony #2).

No Opposition

No Neutral

Hearing closed.

## 2009 HOUSE STANDING COMMITTEE MINUTES

### Bill No. HB 1266

#### House Political Subdivisions Committee

☐ Check here for Conference Committee

Hearing Date: February 6, 2009

Recorder Job Number: 8913

Committee Clerk Signature

Minutes:

**Chairman Wrangham** reopened the hearing on HB 1266. On page 2, line 14 adding special meeting. Sometimes I think our governing body likes to hold special meetings and I don't think they get the same attention as regular meeting due to public. I had a problem with adding special meetings in there.

**Rep. Conrad:** I think they get more attention on why are they doing it than regular meetings.

**Rep. Klemin:** I think the issue that isn't addressed here is that the timing of the sale of the bonds for the parties involved and they would have to wait a month because a small political subdivision might only meet once a month. That could affect the terms of the sale so that is why they wanted to put special in there. No one is forcing a special meeting in their political subdivision if they don't want to do it. At least they would have the option.

**Rep. Conrad:** Our regular meeting is once a month.

**Rep. Zaiser:** I concur with Rep. Klemin's comments because each entity could vary substantially with business consuming large bonds.

Chairman Wrangham: Are MIDA bonds used to encourage growth or economic development?

We are now opening up to refinancing rather than new construction. I don't know much about MIDA bonds to be clear on that.

**Rep. Klemin:** There are limited types of parties that could use this. This is kind of a tax exempt financing. The party paying the interest may want to take advantage of a reduction in rates and be allowed to refinance those things so they don't have to pay as much in interest. That would be the reason. We are looking at nonprofit organizations and some other limited things here. Some of these bonds go for 20-30 years.

**Rep. Conrad:** One time I think MIDA bonds were part of an economic development, but I don't think they are now. They have been pulled back to nonprofit.

**Do Pass Motion Made by Rep. Kretschmar: Seconded By Rep. Conrad:**

**Vote: 12 Yes 0 No 1 Absent Carrier: Rep. Kretschmar**

**Hearing closed.**

Date: 2/6  
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB1266

House Political Subdivisions Committee

☐ Check here for Conference Committee

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

Action Taken DO PASS DO NOT PASS AS AMENDED

Motion Made By Rep. Kretschmar Seconded By Rep. Rep Conrad

Representatives	Yes	No	Representatives	Yes	No
Rep. Dwight Wrangham, Chairman	✓		Rep. Kari Conrad	✓	
Rep. Craig Headland, Vice Chairman	✓		Rep. Jerry Kelsh	✓	
Rep. Patrick Hatlestad	✓		Rep. Robert Kilichowski	✓	
Rep. Nancy Johnson	✓		Rep. Corey Mock	✓	
Rep. Lawrence Klemin	✓		Rep. Steve Zaiser	✓	
Rep. Kim Koppelman	0				
Rep. William Kretschmar	✓				
Rep. Vonnie Pietsch	✓				

Total (Yes) 12 No 0

Absent 1

Carrier: Rep Kretschmar

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

**REPORT OF STANDING COMMITTEE**

**HB 1266: Political Subdivisions Committee (Rep. Wrangham, Chairman) recommends DO PASS (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1266 was placed on the Eleventh order on the calendar.**



2009 SENATE FINANCE AND TAXATION

HB 1266

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1266

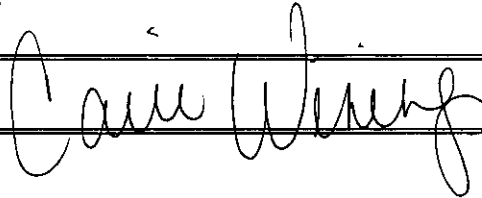
Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 03/23/2009

Recorder Job Number: 11373

Committee Clerk Signature



Minutes:

**Chairman Cook:** Opened the hearing on HB 1266.

**Representative Larry Klemin, District 47:** Testified as sponsor and in support of the bill.

Explained the bill.

**1.35 Scott Wegner, Cook Wegner & Wike Law Firm:** See attachment # 1 for testimony in support of the bill.

**7.49 Senator Hogue:** Can you describe the scenario as to why a borrower would want to switch from a county to a city? Do these counties and cities run up against borrowing limits, and if so, how are those limits defined?

**Scott Wegner:** One example would be just to take here in Bismarck. We have entities that years ago went to the city of Bismarck to issue MIDA bonds. Years later when they had new projects or they wanted to refinance that debt, they went to Burleigh County. The reason was two, one cities and counties, and this deals with the limit question, there is a limit of a special category of bonds called bank qualified status. It just means they are more attractive investments for banks. If they stay with this bank qualified status it generally brings a little better interest rate. There is a limit of 10 million dollars per calendar year of these bank qualified status bonds. Now what happens with a more regular issue like the city of Bismarck,

they would frequently run up or surpass that 10 million dollar limit? Whereas like Burleigh County would not have the same needs as the city (the infrastructure) and so they would not use that 10 million. Therefore a 51C3 could come into Burleigh County and issue their bonds and still have that special bank qualified status that they would not receive through the city of Bismarck. I should mention to that the federal stimulus act does extend that to 30 million for the next couple of years.

**Senator Anderson:** I think that the question might have had to do with the limit of a subdivision. What percentage of its assessed value can be outstanding at any one time for these types of bonds, general obligation bonds as a whole where they are not special assessed?

**Scott Wegner:** There is a constitutional debt limit that applies to all political subdivisions and that is generally for cities, it is generally 5% of that communities assessed valuation which can be raised to 80% if the community wants. That only applies to general obligation debt. As you know most types of debt are not subject to that debt. Theoretically there is no limit on the dollar amount a MIDA bonds that a city could issue.

**Senator Anderson:** Comment.

**Scott Wegner:** That question has come up time to time. A MIDA bond is truly a pass through and they have no responsibility.

**Senator Triplett:** Comment. My question has to do with a proposed amendment. Page 1, Line 18, it is proposed to include child care facilities, what is your feeling on that?

**Scott Wegner:** I think that would be indifferent. If you look on page 1, line 23, everything is really included.

**Senator Triplett:** By that same argument we could delete all of A through E and just say any industry or business not prohibited by the constitutional law?

**Scott Wegner:** That would probably be a good idea. It would clean up the act a bit.

**Senator Hogue:** Is there any customary fee that political subs charge to be the pass through?

**Scott Wegner:** I know there is an Attorney General's opinion from years ago that said cities could have some type of administrative fee or counties for that matter. \Some do and some don't. I think that it is more typical that they do not.

14.10 **Senator Dotzenrod:** On line 10 you introduced the term working capital, is that defined anywhere?

**Scott Wegner:** It is not defined in the act. Our view is that we would look at federal regulations as to what constitutes working capital. Federal law would limit this to 5%.

15.45 **Harold Kocher, Chief Examiner, Securities Commissioner:** See attachment #2 for testimony in support of the bill.

16.30 **Chairman Cook:** What is it going to do if we eliminate this?

**Harold Kocher:** I cannot answer that.

**Connie Sprynczynatyk, North Dakota League of Cities:** Testified in support of the bill.

**Chairman Cook:** Closed the hearing.

17.14 **Senator Triplett:** Passed out attachment #3 for proposed amendment.

**Chairman Cook:** Do you think that they are needed?

**Senator Triplett:** It sounds like they are not, but it may not hurt to add these.

**Chairman Cook:** Are they allowed by the federal government?

**Senator Triplett:** Moved amendment .0101.

**Senator Anderson:** Seconded.

**Senator Hogue:** I don't have a problem with it.

**Senator Anderson:** Comment.

**Chairman Cook:** Any further discussion? (no)

**A Voice Vote was taken: Yea 7, Nay 0, Absent 0.**

**Motion passed.**

**Senator Anderson: Moved a Do Pass As Amended.**

**Senator Triplett: Seconded.**

**Chairman Cook: Discussion? (no)**

**A Roll Call vote was taken: Yea 7, Nay 0, Absent 0.**

**Senator Anderson will carry the bill.**

#3  
90419.0101  
Title.

Prepared by the Legislative Council staff for  
Senator Horne  
February 11, 2009

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1266

Page 1, line 18, after "providing" insert "child care facilities or"

Renumber accordingly

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. : 12/06

**Senate Finance and Taxation**

Committee

☐ Check here for Conference Committee

## Amendment

Legislative Council Amendment Number

. 0101

### Action Taken

☐ Do Pass

☐ Do Not Pass

☐ Amended

**Motion Made By**

**Seconded By**

[illegible]

**Total: Yes**

No

**Absent**

### Floor Assignment

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

Date: 3/23/09  
Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.: 1266

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

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

Action Taken Do Pass As Amended

Motion Made By Senator Anderson Seconded By Senator Triplett

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman	✓		Sen. Arden Anderson	✓	
Sen. Joe Miller - Vice Chairman	✓		Sen. Jim Dotzenrod	✓	
Sen. David Hogue	✓		Sen. Constance Triplett	✓	
Sen. Dave Oehlke	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Anderson

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



**REPORT OF STANDING COMMITTEE**

**HB 1266: Finance and Taxation Committee (Sen. Cook, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1266 was placed on the Sixth order on the calendar.

Page 1, line 18, after "Providing" insert "child care facilities or"

Renumber accordingly

2009 TESTIMONY

HB 1266

#1

**HB 1266**  
**House Political Subdivisions Committee**  
**February 6, 2009**

Mr. Chairman and members of the Committee:

My name is Scott Wegner. I am a member of the law firm of Cook Wegner & Wike PLLP in Bismarck. We are a bond counsel law firm. I am appearing this morning in favor of House Bill 1266.

The purpose of HB 1266 is to update the Municipal Industrial Development Act, North Dakota Century Code Chapter 40-57, and provide consistency with federal law. The Act has been successfully used as an economic development tool in North Dakota since 1955. Under the Act, cities and counties are authorized to issue tax-exempt bonds to finance certain types of projects which are used by private businesses. Tax-exempt interest rates are normally about 2% to 3% below conventional interest rates. The lower interest cost is the primary benefit of going through the MIDA Bond process.

The city or county acts as a conduit or sponsor, in that the proceeds of the bonds flow directly to the business. The private business entity is responsible for paying principal and interest on the bonds. The issuing city or county has no liability on the bonds. Today, due to federal tax law restrictions, the only businesses that qualify are non-profit 501(c)(3) organizations, small manufacturers and certain exempt facilities, such as solid waste disposal.

Section 1 of HB 1266 clarifies that a project can include working capital. Working capital is specifically permitted under federal law. Generally, no more than 5% of an issue can consist of working capital. Accordingly, working capital bonding will primarily be used in connection with a building or equipment project.

Section 3 of HB 1266 amends the Act to permit approval of the bond issue at a special meeting rather than just at a regular meeting. A public hearing is still required, and notice of the hearing must be published twice in the official newspaper prior to the meeting. Since many cities and counties meet only once a month, timing sale of the bonds is sometimes a problem. This amendment also aligns the Act with federal law.

Section 4 of HB 1266 repeals the notice to the ND Securities Commissioner. Currently, at the conclusion of each MIDA Bond, the parties are required to provide certain information to the Securities Commissioner. The notice requirement was added in 1979 following an interim legislative study on MIDA Bonds. At that time, MIDA Bonds could be issued on a tax-exempt basis for virtually any type of business. The committee was concerned about the use and misuse of MIDA bonds for retail business and the competitive impact on existing business. The purpose of the notice requirement was to provide a means of gathering information about use of MIDA Bonds. In 1986, federal tax law dramatically changed eligibility for MIDA Bonds. As a result, concerns as to over-use or misuse of MIDA Bonds are no longer relevant. To our knowledge, only one study has been done using the information filed with the Securities

Commissioner. In 1981, the state Tax Commissioner prepared a survey of MIDA Bond use in North Dakota. The Securities Commissioner takes no position on the repeal.

Section 5 of HB 1266 clarifies that any eligible borrower may use MIDA Bonds to refinance existing debt. The current language with regard to refinancing conventional loans refers only to healthcare. Federal law generally permits any eligible borrower to refinance existing debt.

Section 7 of HB 1266 clarifies that any city or county may issue MIDA Bonds to refinance MIDA Bonds issued by any other city or county. For example, MIDA Bonds issued ten years ago by the City of Bismarck could be refinanced with MIDA Bonds issued today by Burleigh County.

Finally, the HB 1266 amendments other than those discussed above are suggested by Legislative Council.

We ask you to give House Bill 1266 a Do Pass recommendation.

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**Testimony of Harold Kocher, Examiner for the Securities Department**

**Before the House Political Subdivisions Committee**

**February 5, 2009**

*Same given  
to Senate.*

Mr. Chairman and members of the Committee. I am Harold Kocher, Chief Examiner for the Securities Department.

Section 40-57-05 was added to Chapter 40-57 in 1979. It was decided certain information pertaining to North Dakota municipal bond offerings be filed and retained by the Securities Commissioner. The information to be filed concerning a project was:

1. The name of the contracting party;
2. The location and nature of the project;
3. The amount and nature of the bonds being issued; and
4. The general terms and nature of the financing arrangement.

The Securities Department was to be depository of the information pending a study of the issuance of municipal bonds and for the first five or six years only one individual reviewed the information once every six months on behalf of the Commerce Department and the study did not take place. It is understood the information is filed with and is available from other sources. The Securities Department has not received a request to provide the information relating to all issues or a single issue for over 20 years. The Securities Department has no objection to the amendment relating to the elimination of the filing requirement of the information.

**HB 1266**  
**Senate Finance and Taxation Committee**  
**March 23, 2009**

Mr. Chairman and members of the Committee:

My name is Scott Wegner. I am a member of the law firm of Cook Wegner & Wike PLLP in Bismarck. We are a bond counsel law firm. I am appearing this morning in favor of House Bill 1266.

The purpose of HB 1266 is to update the Municipal Industrial Development Act, North Dakota Century Code Chapter 40-57, and provide consistency with federal law. The Act has been successfully used as an economic development tool in North Dakota since 1955. Under the Act, cities and counties are authorized to issue tax-exempt bonds to finance certain types of projects which are used by private businesses. Tax-exempt interest rates are approximately 2% below conventional interest rates. The lower interest cost and the ability to lock-in long term fixed rates are the primary benefits of going through the MIDA Bond process.

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