

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

SENATE BILL NO. 2376
(Senators Wardner, Freborg, Triplett)
(Representatives S. Kelsh, Klein, Porter)

AN ACT to amend and reenact section 17-05-08 of the North Dakota Century Code, relating to replenishing a reserve fund for a portion of bonds issued by the transmission authority.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 17-05-08 of the North Dakota Century Code is amended and reenacted as follows:

17-05-08. Evidences of indebtedness.

1. Evidences of indebtedness of the authority must be authorized by resolution of the industrial commission and may be issued in one or more series and must bear such date or dates, mature at such time or times, bear interest at such rate or rates of interest per year, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable from such sources in such medium of payment at such place or places within or without the state, and be subject to such terms of redemption, with or without premium, as such resolution or resolutions may provide. Evidences of indebtedness of the authority are to mature not more than forty years from the date of issue. Evidences of indebtedness of the authority may be sold at such time or times and at such price or prices as the authority determines.
2. Evidences of indebtedness and grants, loans, or other forms of financial assistance issued by the authority are payable solely from:
 - a. Revenues that may be received by the authority from transmission facilities, services, or activities funded under this chapter with the proceeds of the authority's evidences of indebtedness, subject only to prior payment of the reasonable and necessary expenses of operating and maintaining such transmission facilities except depreciation.
 - b. Amounts received by the authority under loans authorized under this chapter.
 - c. Revenues received by the authority under this chapter from any source other than general tax revenues.
3. The evidences of indebtedness are not subject to taxation by the state or any of its political subdivisions and do not constitute a debt of the state of North Dakota within the meaning of any statutory or constitutional provision and must contain a statement to that effect on their face.
4. The authority may establish and maintain a reserve fund for evidences of indebtedness issued under this chapter. There must be deposited in the reserve fund:
 - a. All moneys appropriated by the legislative assembly to the authority for the purpose of the reserve fund.

- b. All proceeds of evidences of indebtedness issued under this chapter required to be deposited in the reserve fund by the terms of any contract between the authority and the holders of its evidences of indebtedness or any resolution of the authority.
 - c. Any lawfully available moneys of the authority which it may determine to deposit in the reserve fund.
 - d. Any moneys from any other source made available to the authority for deposit in the reserve fund or any contractual right to the receipt of moneys by the authority for the purpose of the fund, including a letter of credit, surety bond, or similar instrument.
5. The authority must include in its biennial request to the office of the budget the amount, if any, necessary to restore any reserve fund established under this section to an amount equal to the amount required to be deposited in the fund by the terms of any contract or resolution approved by the commission.
6. The commission may approve a resolution for the issuance of bonds as provided in this section which states in substance that this subsection is applicable to any required debt service reserve for bonds issued under that resolution in an aggregate amount not to exceed two hundred forty million dollars plus costs of issuance, credit enhancement, and any reserve funds required by agreements with or for the benefit of holders of the evidences of indebtedness for the purposes for which the authority is created under this chapter. The amount of any refinancing, however, may not be counted toward the two hundred forty million dollar limitation to the extent the amount does not exceed the outstanding amount of the obligations being refinanced. No more than thirty percent of the total project costs for any single transmission facility project may be financed by bonds issued under this section which are supported by the debt service reserve fund approved by the commission under this subsection. To ensure the maintenance of the required debt service reserve fund approved by the commission under this subsection, the legislative assembly shall appropriate and pay to the authority for deposit in the reserve fund any sum, certified by the commission as necessary to restore the reserve fund to an amount equal to the required debt service reserve fund approved by the commission.
7. Any pledge of revenue made by the industrial commission as security for the authority's evidences of indebtedness is valid and binding from time to time when the pledge is made. The revenues or other moneys so pledged and thereafter received by the authority are immediately subject to the lien of any such pledge without any physical delivery thereof or further act, and the lien of any such pledge is valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, regardless of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be filed or recorded, except in the records of the authority.
- ~~7.~~ 8. The authority is authorized and empowered to obtain from any entity of the state, any department or agency of the United States of America, or any nongovernmental insurer any insurance, guaranty, or liquidity facility, or from a financial institution a letter of credit to the extent such insurance, guaranty, liquidity facility, or letter of credit now or hereafter available, as to, or for, the payment or repayment of, interest or principal, or both, or any part thereof, on any evidences of indebtedness issued by the authority pursuant to this chapter, and to enter into any agreement or contract with respect to any such insurance, guaranty, letter of credit, or liquidity facility, and pay any required fee, unless the same would impair or interfere with the ability of the authority to fulfill the terms of any agreement made with the holders of its evidences of indebtedness.
- ~~8.~~ 9. After issuance, all evidences of indebtedness of the authority are conclusively presumed to be fully authorized and issued under the laws of the state, and any person or governmental

unit is estopped from questioning their authorization, sale, issuance, execution, or delivery by the authority.

- ~~9.~~ 10. When the authority has issued evidences of indebtedness and pledged the revenues of the transmission facilities for the payment thereof as herein provided, the authority shall operate and maintain the transmission facilities and shall impose and collect fees and charges for the services furnished by the transmission facilities, including those furnished to the authority itself, in the amounts and at the rates as are fully sufficient at all times to:
- a. Pay the expenses of operating and maintaining the transmission facilities;
 - b. Provide a debt service fund sufficient to assure the prompt payment of principal and interest on the evidences of indebtedness at maturity; and
 - c. Provide a reasonable fund for contingencies as may be required by the resolution authorizing the evidences of indebtedness.

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 Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2376.

Senate Vote: Yeas 46 Nays 0 Absent 1

House Vote: Yeas 93 Nays 0 Absent 1

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

Governor

Filed in this office this _____ day of _____, 2009,
at _____ o'clock _____ M.

Secretary of State