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10/22/03

Date

2003 SENATE POLITICAL SUBDIVISIONS

SB 2388

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2388

Senate Political Subdivisions Committee

Conference Committee

Hearing Date: February 7, 2003

Tape Number	Side A	Side B	Meter #
1	X		0 - 1760
Committee Clerk Signature <i>Sturley Borg</i>			

Minutes:

**CHAIRMAN COOK** called the committee to order. Roll call was taken, Senators Cook, Syverson, Gary Lee, Christenson and Polovitz present. Senator Judy Lee absent.

**CHAIRMAN COOK** opened the hearing on SB 2388, relating to municipal industrial development bonds.

**SENATOR JOHN SYVERSON**, District 45, SB 2388 addresses a simplification of a municipal industrial development acts bond issue. The act has been used successfully over the years for several developments in many communities in ND. It has some clinches which this bill will address. One of those is that under current law issues benefiting nonprofit hospital and nursing homes can be structures with a loan agreement. All other financing must be a lease agreement. Most other states, Minnesota and South Dakota included, permit loan agreements which this bill addresses. Senator Syverson asked that the committee look favorably upon SB 2388.

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Senate Political Subdivisions Committee

Bill/Resolution Number SB 2388

Hearing Date February 7, 2003

Scott Wegner, Attorney with, Cook, Wegner & Wike PLLP, Bismarck, ND. They are a bond counselor law firm and limited their practice to tax exempt bonds by the State of North Dakota and political subdivisions and this includes issuing mida bonds on behalf of cities and counties. He is in support of SB 2388. (See attached testimony written by Jim Stewart)

Jerry Hjeltnstad, ND League of Cities, monitoring the bill. He has one question which came up relating to line 12 on page 2 where it says paid to the municipality or its orders and we are thinking it should read on its order.

Scott Wegner answered , what frequently happens the municipalities issues the mida bonds and what enters the loan agreement. So under the loan agreement the bond payments from say Cloverdale Foods for example, should go back to the City of Mandan, but what happens in these bonds is there is often a trustee so the money never really flows back to the city or county, it is assigned to a trustee. The trustee would take the money and make the principle and interest payments to the bond holders. So to its order means the money is not going to come to the municipality it is going to go to a trustee.

**No Opposed Testimony**

**CHAIRMAN COOK** closed the hearing on SB 2388.

**SENATOR POLIVITZ** moved a **DO PASS** on SB 2388

**SENATOR SYVERSON** seconded the motion

Roll call vote: Yes 6 No 0 Absent 0

Carrier: **SENATOR SYVERSON**

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**REPORT OF STANDING COMMITTEE (410)**  
February 7, 2003 1:06 p.m.

Module No: SR-24-1982  
Carrier: Syverson  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**  
**SB 2388: Political Subdivisions Committee (Sen. Cook, Chairman) recommends DO**  
**PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2388 was placed on the**  
**Eleventh order on the calendar.**

(2) DESK, (3) COMM

Page No. 1

SR-24-1982

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2003 HOUSE POLITICAL SUBDIVISIONS

SB 2388

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10/22/03

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2388

House Political Subdivisions Committee

Conference Committee

Hearing Date: March 7, 2003

Tape Number	Side A	Side B	Meter #
1	X		0.0-9.5
Committee Clerk Signature <i>Mickie Schmidt</i>			3-18-03

Minutes:

**TAPE 1: SIDE 2:**

**(0.0) CHAIRMAN GLEN FROSETH:** I'll have the clerk call the roll; we have a quorum. We will open the hearing on SB 2388.

**(0.8) SEN. JOHN SYVERSON:** (Testimony in support) (See attachment #1) This bill deals with Municipal Industrial Development Bonds. And what this bill would do is simplify the issuance of MIDA bonds as they're called, by permitting loan agreements to be used for all financing and it would eliminate the public hearing requirement for refunding bonds.

**(4.9) SCOTT WEGNER: LAW FIRM OF COOK, WEGNER & WIKE:** We are a Bond Council Law Firm and we limit our practice to the issuance of tax exempt bonds for State agencies and political subdivisions. This includes the issuance of MIDA bonds by cities and counties. We support the amendments offered. The written remarks were prepared by Jim Stewart. Currently there's a distinction made in the MIDA Bond Act between healthier, (hospital

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10/22/03  
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House Political Subdivisions Committee  
Bill/Resolution Number SB 2388  
Hearing Date: March 7, 2003

and nursing home financing) that can be done with a loan agreement. And all other types of MIDA bonds which have to proceed by a lease agreement. The lease agreement requires that property be conveyed to the municipality and then leased back. You have to go through the process then of course of deeding and also having the municipality sign a mortgage. That also means at the end when the bonds are paid off, you need the involvement of a municipality to return title. I don't know why the distinction was made originally in the Act. There's really no reason for it. The surrounding state's do not require the lease mechanism. They would allow a loan agreement to be used. It would also make the financing simpler and more efficient and easier for all parties involved.

**(6.2) REP. WILLIAM KRETSCHMAR:** There would be no problems with the IRS regulations?

**(6.3) SCOTT WEGNER:** There would be no impact. This wouldn't do anything in terms of the Federal Tax Bureau. It would only be a state law mechanism that allows the finance.

**(6.6) REP. ALON WIELAND:** So there's no change in the fact that the municipality or county or whoever will have any obligations to repay these bonds?

**(6.8) SCOTT WEGNER:** That's correct. Nothing changes the fundamental principal of MIDA bonds in that. The MIDA bond will simply pass through, whether it's a lease or loan, the proceeds of the bonds pass through to pay the nursing home hospital. And they alone are responsible to pay the principal and interest back to the bonds. The MIDA bonds specifically allows that the municipality can never be compelled to use it's taxing powers to repay the bonds.

**(7.2) REP. NANCY JOHNSON:** At this public hearing for the refund of bonds, what action would you take?

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Date

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House Political Subdivisions Committee

Bill/Resolution Number SB 2388

Hearing Date: March 7, 2003

**(7.4) SCOTT WEGNER:** Right now there's a new project that is being built, a nursing home's expanding and they need more money to add on to that facility. A public hearing is required.

State law requires it. There's a requirement that the competitors be notified if they want to object to a project and issuance of a bond. Federal law also requires that a public hearing be held. The amendments to SB 2388 eliminate the requirement of a public hearing only when that bond issue be refinanced to take advantage of lower interest rates. But it remains the requirement of a public hearing anytime there's anything being done. The project itself has already been approved.

**(8.3) CHAIRMAN GLEN FROSETH:** Questions? Further support? Opposition? Seeing none, I will close the hearing on SB 2388. Committee's wishes?

**(8.7) REP. ANDREW MARAGOS:** I WOULD MOVE A DO PASS.

**(8.8) REP. ALON WIELAND:** I SECOND IT.

**(8.9) CHAIRMAN GLEN FROSETH:** Any committee discussion? Hearing none, I will have the clerk take the Roll Call Vote: 11-y; 0-n; 3-absent; Carrier: Rep. Kretschmar. (9.5)

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Date: 3-7-06  
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2388

House POLITICAL SUBDIVISION Committee

Check here for Conference Committee

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

Action Taken Do Pass

Motion Made By Rep. Maragos Seconded By Rep. Wieland

Representatives	Yes	No	Representatives	Yes	No
Chairman Glen Froeth	✓				
Vice-Chairman Nancy Johnson	✓				
Rep. Mike Groez	✓				
Rep. Gil Herbel	✓				
Rep. Ron Iverson	0				
Rep. William Kretschmar	✓				
Rep. Andrew Maragos	✓				
Rep. Dale Severson	✓				
Rep. Alon Wieland	✓				
Rep. Bruce Eckre	0				
Rep. Mary Ekstrom	0				
Rep. Carol Niemeier	✓				
Rep. Sally Sandvig	✓				
Rep. Vonnie Pitsch	✓				

Total (Yes) 11 No 0

Absent 3

Floor Assignment Rep. Kretschmar

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

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**REPORT OF STANDING COMMITTEE (410)**  
March 7, 2003 12:11 p.m.

Module No: HR-41-4218  
Carrier: Kretschmar  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**  
**SB 2388: Political Subdivisions Committee (Rep. Froese, Chairman) recommends DO**  
**PASS (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). SB 2388 was placed on**  
**the Fourteenth order on the calendar.**

(2) DESK, (3) COMM

Page No. 1

HR-41-4218

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2003 TESTIMONY

SB 2388

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TESTIMONY IN SUPPORT OF S.B. 2388

TO: Senator John Syverson

FROM: Jim Stewart

- Scott Wegner - Testimony

RE: Senate Bill No. 2388

DATE: February 7, 2003

Senate Bill 2388 will simplify the issuance of Municipal Industrial Development Act Bonds by:

1. Permitting loan agreements to be used for all financings; and
2. Eliminating the public hearing requirement for refunding bonds.

**BACKGROUND INFORMATION**

The Municipal Industrial Development Act (the "Act") has been successfully used as an economic development tool in North Dakota since 1955. Under the Act, municipalities are authorized to issue tax-exempt bonds to finance certain types of projects which are used by private businesses. The private business entity is responsible for paying the principal of and interest on bonds and the issuing municipality has no liability for any bond payments.

**LOAN AGREEMENTS VS. LEASE AGREEMENTS**

For a project involving a nonprofit hospital or nursing home, the Act permits a municipality to enter into a *loan agreement* with the nonprofit entity. However, in all other cases, the Act requires the municipality to acquire the project and enter into a *lease agreement* with the private business. This arrangement requires the company to deed or ground lease its property to the municipality and lease it back. The municipality, as fee title holder, must be a party to any mortgage given to secure the bonds. The procedure is unnecessarily cumbersome, confusing and expensive. The municipalities do not want to hold fee title to the property or sign the mortgage, the private businesses do not want to transfer title to their facilities and the bond purchasers find this financing structure to be confusing.

With a loan agreement, the title to the property would remain with the private business entity. It could grant a mortgage and security interest to secure the bonds without including the issuing municipality as a party. Payments made by the business entity under the loan agreement are used to pay principal and interest on the bonds in the same manner that the "rent" payments under lease agreements are applied.

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### PUBLIC HEARINGS

Under the Act, the municipality is required to conduct a public hearing before it issues new money bonds or refunding bonds. Such bonds may not be issued unless, after the public hearing, it finds such approval is in the public interest and the impact and effect of the issue upon existing industry and business will not result in an unfair advantage for the proposed project to the substantial detriment of existing enterprises.

Federal tax law and statutes in other states that are similar to the Act, require public hearings for new money issues but not for refunding bonds. Refunding bonds are generally issued to reduce the interest payable by the company or to restructure its debt. The hearing process focuses on the nature of the project and its impact on competing businesses, not the debt service requirements. Once a project has been approved following a public hearing and bonds have been issued, it should not be necessary to conduct a second public hearing to refund those bonds. The public hearing requirement often results in a delay of refinancing by a month or more, adds additional expense to the transaction and wastes the municipality's time in conducting the hearing.

### CONCLUSION

Senate Bill No. 2388 would solve these problems by permitting loan agreements to be used in all financings under the Act and eliminating the public hearing requirement for refunding bonds. The amendments would bring the Act in line with similar statutes in most other states, including Minnesota and South Dakota.

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