

HOUSE BILL NO. 1455

Introduced by

Representatives Severson, Pollert

Senators Heitkamp, Klein

1 A BILL for an Act to create and enact sections 61-02-68.14, 61-02-68.15, 61-02-68.16,
2 61-02-68.17, and 61-02-68.18 of the North Dakota Century Code, relating to state water
3 commission bonding authority; to amend and reenact section 61-02-68.1 of the North Dakota
4 Century Code, relating to guarantees of evidences of indebtedness by the state water
5 commission; and to declare an emergency.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Section 61-02-68.1 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **61-02-68.1. Borrowing on interim notes - Expenses paid and loans made from**
10 **proceeds - Issuance of notes.** The commission, pursuant to appropriate resolution, and in
11 order to carry out the business of developing the water resources of this state as provided in
12 this chapter, may guarantee evidences of indebtedness issued or other obligations undertaken
13 by the owners of water projects, or provide a guarantee to the indebtedness issued or other
14 obligations undertaken by a not-for-profit organization establishing a pool program or other
15 financing program for the owners of the water projects, may borrow money and issue interim
16 financing notes (the terms "interim notes" or "notes" ~~may~~, unless the context ~~demands~~
17 otherwise requires, may be used in sections 61-02-68.1 through ~~61-02-68.13~~ 61-02-68.18 in
18 lieu of the term "interim financing notes") in evidence thereof in order to provide owners with
19 ~~tax-exempt~~ construction period financing. Such construction period financing may include the
20 costs of construction of works or projects, funding of debt service reserves and capitalized
21 interest, and the payment of the costs of issuance.

22 **SECTION 2.** Section 61-02-68.14 of the North Dakota Century Code is created and
23 enacted as follows:

1 **61-02-68.14. Guarantee issued by commission.** A commission guarantee of
2 indebtedness or other obligations of an owner of a water project must be authorized by
3 resolution of the commission and must be evidenced by a written agreement approved by the
4 commission with the terms and conditions the commission determines for the implementation of
5 the policy established by this chapter.

6 **SECTION 3.** Section 61-02-68.15 of the North Dakota Century Code is created and
7 enacted as follows:

8 **61-02-68.15. Pledges.** A pledge of revenue made by the commission as security for a
9 guarantee or notes is valid and binding whenever the pledge is made. The revenues or other
10 moneys pledged and thereafter received by the commission are immediately subject to the lien
11 of the pledge without physical delivery or further act, and the lien of the pledge is valid and
12 binding as against all parties having claims of any kind against the commission, regardless of
13 whether the parties have notice. Neither the resolution nor any other instrument by which a
14 pledge is created need be filed or recorded, except in the records of the commission.

15 **SECTION 4.** Section 61-02-68.16 of the North Dakota Century Code is created and
16 enacted as follows:

17 **61-02-68.16. Reserve fund.**

18 1. The commission shall establish and maintain a reserve fund in which there must be
19 deposited all moneys appropriated by the legislative assembly for the purpose of
20 the fund, all proceeds of notes required to be deposited in the fund by terms of a
21 contract between the commission and its noteholders or a resolution of the
22 commission with respect to the proceeds of notes, any moneys or funds of the
23 commission that it determines to deposit in the fund, any moneys made available
24 to the commission for the purposes of the fund from any other source, and any
25 contractual right to the receipt of moneys by the commission for the purpose of the
26 fund, including a letter of credit or similar instrument. Moneys in the reserve fund
27 must be held and applied solely to the payment of the interest on and the principal
28 of notes and sinking fund payments as they become due and payable and for the
29 retirement of notes, including payment of any redemption premium required to be
30 paid when any notes are redeemed or retired before maturity, and for the payment
31 of principal and interest on municipal securities or obligations guaranteed by the

1 commission. Moneys in the reserve fund may not be withdrawn if the withdrawal
2 would reduce the amount in the reserve fund to an amount less than the required
3 debt service reserve, except for payment of interest due and payable on notes and
4 the principal of notes maturing and payable and sinking fund payments and for the
5 retirement of notes in accordance with the terms of a contract between the
6 commission and its noteholders, for the payment of principal and interest on
7 municipal securities or obligations of an owner of water projects for which a
8 guarantee has been issued by the commission, and for payment of interest or
9 principal or sinking fund payments or retirement of notes or execution of a
10 guarantee, for which other moneys of the commission are not then available in
11 accordance with the terms of the contract. The reserve fund may not be used for
12 the payment of a guarantee by the commission unless the commission has
13 determined that notes of the commission cannot be issued under acceptable terms
14 for the payment of the guarantee or that the payment of the guarantee will not
15 reduce the reserve fund to an amount less than the required debt service reserve.
16 The required debt service reserve must be an aggregate amount equal to at least
17 the largest amount of money required by the terms of all contracts between the
18 commission and its noteholders to be raised in the current or any succeeding
19 calendar year for the payment of interest on and maturing principal of outstanding
20 notes and the payment required by the terms of any contract to a sinking fund
21 established for the payment or redemption of the notes.

22 2. If the establishment of the reserve fund for an issue or the maintenance of an
23 existing reserve fund at a required level under this section would necessitate the
24 investment of all or any portion of a new reserve fund or all or any portion of an
25 existing reserve fund at a restricted yield, because to not restrict the yield may
26 cause the notes to be taxable under the Internal Revenue Code, then at the
27 discretion of the commission a reserve fund does not need to be established
28 before the issuance of notes or the reserve fund need not be funded to the levels
29 required by other subsections of this section or an existing reserve fund may be
30 reduced.

- 1 3. Notes may not be issued by the commission unless there is in the reserve fund the
2 required debt service reserve for all notes then issued and outstanding and the
3 notes to be issued. This chapter does not prevent or preclude the commission
4 from satisfying this requirement by depositing so much of the proceeds of the notes
5 to be issued, upon their issuance, as is needed to achieve the required debt
6 service reserve. The commission may issue its notes for the purpose of providing
7 an amount necessary to increase the amount in the reserve fund to the required
8 debt service reserve, or to meet any higher or additional reserve as may be fixed
9 by the commission with respect to the fund.
- 10 4. In order to assure the maintenance of the required debt service reserve, there must
11 be appropriated by the legislative assembly and paid to the commission for deposit
12 in the reserve fund any sum certified by the commission as necessary to restore
13 the reserve fund to an amount equal to the required debt service reserve or to
14 maintain a reserve fund established by the commission under this chapter and
15 required according to the terms of a guarantee issued by the commission. The
16 commission may approve a resolution for the issuance of notes, as provided by
17 this chapter, which states in substance that this subsection is not applicable to the
18 required debt service reserve for notes issued under that resolution.
- 19 5. If the maturity of a series of notes of the commission is not more than three years
20 from the date of issuance of the notes, the commission may determine that no
21 reserve fund need be established for that respective series of notes or that the
22 reserve fund may be in an amount less than the required debt service reserve. If
23 the determination is made, holders of that respective series of notes do not have
24 an interest in or claim on existing reserve funds established for the security of the
25 holders of previously issued commission notes, and do not have an interest in or
26 claim on reserve funds established for the holders of subsequent issues of notes of
27 the commission.

28 **SECTION 5.** Section 61-02-68.17 of the North Dakota Century Code is created and
29 enacted as follows:

30 **61-02-68.17. Additional reserves and funds.** The commission may establish
31 additional and further reserves or other funds or accounts as may be necessary, desirable, or

1 convenient to further the accomplishment of the purposes of the commission to comply with the
2 provisions of an agreement made by or a resolution of the commission.

3 **SECTION 6.** Section 61-02-68.18 of the North Dakota Century Code is created and
4 enacted as follows:

5 **61-02-68.18. Protection of service during term of guarantee or loan.**

- 6 1. The service provided or made available by owners of water projects through the
7 construction or acquisition of an improvement, or the improvement revenues,
8 financed in whole or in part with a guarantee or loan to the owners of water
9 projects from the commission or any other state entity, may not be curtailed or
10 limited by inclusion of all or any part of the area served by the owners of water
11 projects within the boundaries of any other owners of water projects, or by the
12 granting of any private franchise for similar service within the area served by the
13 owners of water projects, during the term of the guarantee or loan. The owners of
14 water projects providing the service may not be required to obtain or secure a
15 franchise, license, or permit as a condition of continuing to serve the area if it is
16 included within the boundaries of another owner of a water project during the term
17 of the guarantee or loan.
- 18 2. Under the circumstances described in subsection 1, nothing prevents the two
19 owners of water projects and the commission or other state entity from negotiating
20 an agreement for the right or obligation to provide the service in question, provided
21 that an agreement is invalid unless the commission or other state agency or
22 enterprise is a party to the agreement and unless the agreement contains
23 adequate safeguards to ensure the security and timely payment of any outstanding
24 notes of the commission issued to fund the loan.

25 **SECTION 7. EMERGENCY.** This Act is declared to be an emergency measure.