

HOUSE BILL NO. 1169

Introduced by

Industry, Business and Labor Committee

(At the request of the Industrial Commission)

1 A BILL for an Act to provide for the North Dakota transmission authority, provide for the
2 planning, constructing, owning, financing, maintaining, and operating of electric transmission
3 facilities and related infrastructure, and to authorize issuance of revenue bonds; and to amend
4 and reenact subdivision I of subsection 2 of section 28-32-01 of the North Dakota Century
5 Code, relating to an Administrative Agencies Practice Act exemption for the transmission
6 authority.

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

8 **SECTION 1. Declaration of findings and public purpose.** The legislative assembly
9 finds and declares that:

- 10 1. North Dakota has twenty-five billion tons of abundant, recoverable lignite coal
11 reserves, enough to last eight hundred years at today's thirty million tons of annual
12 production.
- 13 2. The lignite industry presently generates electricity for more than two million people
14 in the northern great plains region and there is increased regional demand for
15 development of North Dakota's lignite resources.
- 16 3. North Dakota has enormous wind resources, providing additional economic
17 opportunity to broaden and diversify the state's economy and diversify the region's
18 energy supply, and that timely development of these resources will stabilize and
19 increase revenues to the state.
- 20 4. Transmission constraints impede the development of the state's lignite and wind
21 resources.
- 22 5. An essential governmental function and public purpose is to assist with the removal
23 of electric transmission export constraints and to assist with upgrading and

1 expansion of the region's electrical transmission grid to facilitate the development
2 of the state's abundant natural resources.

3 6. Developing and exporting our natural resources will promote the public interest by
4 increasing employment, stimulating economic activity, augmenting sources of tax
5 revenue, fostering economic stability, and improving the state's economy.

6 **SECTION 2. North Dakota transmission authority.** There is created the North
7 Dakota transmission authority, which shall be governed by the industrial commission.

8 **SECTION 3. Definitions. As used in this chapter:**

9 1. "Authority" means the industrial commission acting as the North Dakota
10 transmission authority.

11 2. "Commission" means the industrial commission.

12 3. "Facilities" means electric transmission facilities and related supporting
13 infrastructure.

14 4. "Notice of intent" means the notice a person delivers to the authority indicating
15 willingness to construct facilities contemplated by the authority or to provide
16 services fulfilling the need for such facilities.

17 5. "Project area" means the geographic area in which construction of a facility
18 contemplated by the authority is likely to occur.

19 **SECTION 4. Purposes.** The purpose for which the authority is created is to diversify
20 and expand the North Dakota economy through improvements in the state's infrastructure and
21 to facilitate the utilization of North Dakota energy by planning, financing, constructing,
22 developing, acquiring, owning in whole or in part, leasing or renting, maintaining, and operating
23 electric transmission facilities and related supporting infrastructure to facilitate the production,
24 transportation, and utilization of electric energy.

25 **SECTION 5. Powers.** The authority has all powers necessary to carry out the
26 purposes of this chapter, including the power to:

27 1. Make grants or loans and to provide other forms of financial assistance as
28 necessary or appropriate for the purposes of this chapter;

29 2. Make and execute contracts and all other instruments necessary or convenient for
30 the performance of its powers and functions under this chapter;

31 3. Borrow money and issue evidences of indebtedness as provided in this chapter;

- 1 4. Receive and accept aid, grants, or contributions of money or other things of value
2 from any source, including aid, grants, or contributions from any department,
3 agency, or instrumentality of the United States, subject to the conditions upon
4 which the aid, grants, or contributions are made and consistent with the provisions
5 of this chapter;
- 6 5. Issue and sell evidences of indebtedness in an amount or amounts as the authority
7 may determine, but not to exceed eight hundred million dollars, plus costs of
8 issuance, credit enhancement, and any reserve funds required by agreements with
9 or for the benefit of holders of the evidences of indebtedness for the purposes for
10 which the authority is created under this chapter, provided that the amount of any
11 refinancing shall not be counted toward such eight hundred million dollar limitation
12 to the extent it does not exceed the outstanding amount of the obligations being
13 refinanced;
- 14 6. Refund and refinance its evidences of indebtedness;
- 15 7. Make and execute interest rate exchange contracts;
- 16 8. Pledge any and all revenues derived by the authority under this chapter or from a
17 project, service, or activity funded under this chapter to secure payment or
18 redemption of the evidences of indebtedness;
- 19 9. Plan, finance, construct, develop, acquire, own in whole or in part, lease, rent,
20 maintain, and operate within and outside the state of North Dakota property,
21 structures, equipment, facilities and works of public improvement necessary or
22 useful for the accomplishment of the purposes for which the authority was created,
23 including the obtaining of permits and the acquisition of rights of way;
- 24 10. Consult with the public service commission, regional organizations, and any other
25 relevant state or federal authority as necessary and establish reasonable fees,
26 rates, tariffs, or other charges for facilities administrated by the authority and all
27 services rendered by it, consistent with cost-causation principles until such time as
28 the costs of the regional transmission system are shared on a systemwide basis;
- 29 11. Operate, lease, rent, and dispose of facilities constructed pursuant to this chapter,
30 and all incidental and necessary facilities, structures, and properties;
- 31 12. Investigate, plan, prioritize, and propose corridors of the transmission of electricity;

1 13. Participate in and join regional transmission organizations; and

2 14. Do any and all things necessary or expedient for the purposes of the authority
3 provided in this chapter.

4 **SECTION 6. Authority may act.**

5 1. The authority shall coordinate its plans for constructing facilities with regional
6 organizations having transmission planning responsibilities for the project area.

7 2. Prior to exercising its powers to construct facilities granted to it in this chapter, the
8 authority shall publish in a newspaper of general circulation in North Dakota and in
9 a newspaper in the project area, a notice describing the need for facilities
10 contemplated by the authority. Persons willing to construct the facilities or furnish
11 services to satisfy the needs described in the notice shall have a period of one
12 hundred eighty days from the date of last publication of the notice within which to
13 deliver to the authority a notice of intent. After receipt of a notice of intent, the
14 authority shall not exercise its powers to construct facilities unless the authority
15 finds that exercising its authority would be in the public interest. In making such a
16 finding the authority shall consider factors including economic feasibility, technical
17 performance, reliability, and the likelihood of successful completion and ongoing
18 operation.

19 3. The authority may require a person giving a notice of intent to provide a bond and
20 to submit a plan for completion of the facilities or commencement of services within
21 a period of time acceptable to the authority. If no person submits an adequate plan
22 or bond as required by the authority, the authority may proceed with constructing
23 the facility described in the authority's published notice.

24 **SECTION 7. Authority may participate upon request.** The authority may participate
25 in a project, through financing, planning, joint ownership, or other arrangements at the request
26 of a person giving a notice of intent.

27 **SECTION 8. Evidences of indebtedness.**

28 1. Evidences of indebtedness of the authority must be authorized by resolution of the
29 industrial commission and may be issued in one or more series and must bear
30 such date or dates, mature at such time or times, bear interest at such rate or rates
31 of interest per year, be in such denomination or denominations, be in such form,

- 1 either coupon or registered, carry such conversion or registration privileges, have
2 such rank or priority, be executed in such manner, be payable from such sources
3 in such medium of payment at such place or places within or without the state, and
4 be subject to such terms of redemption, with or without premium, as such
5 resolution or resolutions may provide. Evidences of indebtedness of the authority
6 are to mature not more than forty years from the date of issue. Evidences of
7 indebtedness of the authority may be sold at such time or times and at such price
8 or prices as the authority determines.
- 9 2. Evidences of indebtedness issued by the authority are payable solely from:
- 10 a. Revenues that may be received by the authority from projects, facilities,
11 services, or activities funded under this chapter with the proceeds of the
12 authority's evidences of indebtedness, subject only to prior payment of the
13 reasonable and necessary expenses of operating and maintaining such
14 projects or facilities except depreciation.
- 15 b. Amounts received by the authority under loans authorized under this chapter.
- 16 c. Revenues received by the authority under this chapter from any source other
17 than general tax revenues.
- 18 3. The evidences of indebtedness are not subject to taxation by the state or any of its
19 political subdivisions and do not constitute a debt of the state of North Dakota
20 within the meaning of any statutory or constitutional provision and must contain a
21 statement to that effect on their face.
- 22 4. The authority may establish and maintain a reserve fund for evidences of
23 indebtedness issued under this chapter. There must be deposited in the reserve
24 fund:
- 25 a. All moneys appropriated by the legislative assembly to the authority for the
26 purpose of the reserve fund.
- 27 b. All proceeds of evidences of indebtedness issued under this chapter required
28 to be deposited in the reserve fund by the terms of any contract between the
29 authority and the holders of its evidences of indebtedness or any resolution of
30 the authority.

- 1 c. Any lawfully available moneys of the authority which it may determine to
2 deposit in the reserve fund.
- 3 d. Any moneys from any other source made available to the authority for deposit
4 in the reserve fund or any contractual right to the receipt of moneys by the
5 authority for the purpose of the fund, including a letter of credit, surety bond,
6 or similar instrument.
- 7 5. The authority must include in its biennial request to the office of the budget the
8 amount, if any, necessary to restore any reserve fund established under this
9 section to an amount equal to the amount required to be deposited in the fund by
10 the terms of any contract or resolution approved by the commission.
- 11 6. Any pledge of revenue made by the industrial commission as security for the
12 authority's evidences of indebtedness is valid and binding from time to time when
13 the pledge is made. The revenues or other moneys so pledged and thereafter
14 received by the authority are immediately subject to the lien of any such pledge
15 without any physical delivery thereof or further act, and the lien of any such pledge
16 is valid and binding as against all parties having claims of any kind in tort, contract
17 or otherwise against the authority, regardless of whether such parties have notice
18 thereof. Neither the resolution nor any other instrument by which a pledge is
19 created need be filed or recorded, except in the records of the authority.
- 20 7. The authority is authorized and empowered to obtain from any entity of the state,
21 any department or agency of the United States of America, or any
22 nongovernmental insurer any insurance, guaranty, or liquidity facility, or from a
23 financial institution a letter of credit to the extent such insurance, guaranty, liquidity
24 facility, or letter of credit now or hereafter available, as to, or for, the payment or
25 repayment of, interest or principal, or both, or any part thereof, on any evidences of
26 indebtedness issued by the authority pursuant to this chapter, and to enter into any
27 agreement or contract with respect to any such insurance, guaranty, letter of credit,
28 or liquidity facility, and pay any required fee, unless the same would impair or
29 interfere with the ability of the authority to fulfill the terms of any agreement made
30 with the holders of its evidences of indebtedness.

- 1 8. After issuance, all evidences of indebtedness of the authority are conclusively
2 presumed to be fully authorized and issued under the laws of the state, and any
3 person or governmental unit is estopped from questioning their authorization, sale,
4 issuance, execution, or delivery by the authority.
- 5 9. When the authority has issued evidences of indebtedness and pledged the
6 revenues of the project or facilities for the payment thereof as herein provided, the
7 authority shall operate and maintain the project or facilities and shall impose and
8 collect fees and charges for the services furnished by the project or facilities,
9 including those furnished to the authority itself, in the amounts and at the rates as
10 shall be fully sufficient at all times to:
- 11 a. Pay the expenses of operating and maintaining the project or facilities;
12 b. Provide a debt service fund sufficient to assure the prompt payment of
13 principal and interest on the evidences of indebtedness at maturity; and
14 c. Provide a reasonable fund for contingencies as may be required by the
15 resolution authorizing the evidences of indebtedness.

16 **SECTION 9. Public service commission jurisdiction.**

- 17 1. The authority and the facilities constructed or operated by the authority are exempt
18 from the provisions of title 49 except for chapter 49-22, the North Dakota Energy
19 Conversion and Transmission Facility Siting Act.
- 20 2. The authority shall consult with the public service commission with respect to the
21 rates charged by the authority for use of its facilities and such rates shall thereafter
22 be considered just and reasonable in proceedings before the public service
23 commission pursuant to section 49-05-06.

24 **SECTION 10. Bonds as legal investments.** The bonds of the authority are legal
25 investments which may be used as collateral for public funds of the state, insurance companies,
26 banks, savings and loan associations, investment companies, trustees, and other fiduciaries
27 which may properly and legally invest funds in their control or belonging to them in bonds of the
28 authority. The state investment board may invest in bonds of the authority in an amount
29 specified by the state investment board.

30 **SECTION 11. AMENDMENT.** Subdivision l of subsection 2 of section 28-32-01 of the
31 North Dakota Century Code is amended and reenacted as follows:

Fifty-ninth
Legislative Assembly

- 1 I. The industrial commission with respect to the activities of the Bank of North
- 2 Dakota, North Dakota housing finance agency, North Dakota municipal bond
- 3 bank, North Dakota mill and elevator association, ~~and~~ North Dakota farm
- 4 finance agency, and the North Dakota transmission authority.