

Fifty-ninth
Legislative Assembly
of North Dakota

ENGROSSED 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, operating, and disposing of electric
3 transmission facilities and related infrastructure, and to authorize issuance of revenue bonds; to
4 amend and reenact subdivision I of subsection 2 of section 28-32-01 of the North Dakota
5 Century Code, relating to an Administrative Agencies Practice Act exemption for the
6 transmission authority; and to provide for reports to the legislative council.

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
23 removal of electric transmission export constraints and to assist with upgrading

1 and expansion of the region's electrical transmission grid to facilitate the
2 development 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 7. State ownership of electrical transmission facilities may not exceed the extent and
7 duration necessary or useful to promote the public interest.

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

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

11 1. "Authority" means the industrial commission acting as the North Dakota
12 transmission authority.

13 2. "Commission" means the industrial commission.

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

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

19 5. "Transmission facilities" means electric transmission lines and substations, and
20 related structures, equipment, rights of way, and works of public improvement,
21 located within and outside this state, excluding electric generating facilities.

22 **SECTION 4. Purposes.** The purpose for which the authority is created is to diversify
23 and expand the North Dakota economy by facilitating development of transmission facilities to
24 support the production, transportation, and utilization of North Dakota 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. Enter lease-sale contracts;
- 17 9. Pledge any and all revenues derived by the authority under this chapter or from a
- 18 transmission facility, service, or activity funded under this chapter to secure
- 19 payment or redemption of the evidences of indebtedness;
- 20 10. To the extent and for the period of time necessary for the accomplishment of the
- 21 purposes for which the authority was created, plan, finance, develop, acquire, own
- 22 in whole or in part, lease, rent, and dispose of transmission facilities;
- 23 11. Enter contracts to construct, maintain, and operate transmission facilities;
- 24 12. 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 transmission facilities and all services rendered
- 27 by the authority;
- 28 13. Lease, rent, and dispose of transmission facilities owned pursuant to this chapter;
- 29 14. Investigate, plan, prioritize, and propose corridors of the transmission of electricity;
- 30 15. Participate in and join regional transmission organizations; and

1 of interest per year, be in such denomination or denominations, be in such form,
2 either coupon or registered, carry such conversion or registration privileges, have
3 such rank or priority, be executed in such manner, be payable from such sources
4 in such medium of payment at such place or places within or without the state, and
5 be subject to such terms of redemption, with or without premium, as such
6 resolution or resolutions may provide. Evidences of indebtedness of the authority
7 are to mature not more than forty years from the date of issue. Evidences of
8 indebtedness of the authority may be sold at such time or times and at such price
9 or prices as the authority determines.

10 2. Evidences of indebtedness and grants, loans, or other forms of financial
11 assistance issued by the authority are payable solely from:

12 a. Revenues that may be received by the authority from transmission facilities,
13 services, or activities funded under this chapter with the proceeds of the
14 authority's evidences of indebtedness, subject only to prior payment of the
15 reasonable and necessary expenses of operating and maintaining such
16 transmission facilities except depreciation.

17 b. Amounts received by the authority under loans authorized under this chapter.

18 c. Revenues received by the authority under this chapter from any source other
19 than general tax revenues.

20 3. The evidences of indebtedness are not subject to taxation by the state or any of its
21 political subdivisions and do not constitute a debt of the state of North Dakota
22 within the meaning of any statutory or constitutional provision and must contain a
23 statement to that effect on their face.

24 4. The authority may establish and maintain a reserve fund for evidences of
25 indebtedness issued under this chapter. There must be deposited in the reserve
26 fund:

27 a. All moneys appropriated by the legislative assembly to the authority for the
28 purpose of the reserve fund.

29 b. All proceeds of evidences of indebtedness issued under this chapter required
30 to be deposited in the reserve fund by the terms of any contract between the

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

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

18 **SECTION 9. Public service commission jurisdiction and consultation.**

- 19 1. The authority and the transmission facilities built under this chapter, until sold or
20 disposed of by the authority, are exempt from the provisions of title 49 except for
21 chapter 49-22. Upon sale or disposal by the authority, transmission facilities built
22 under this chapter are subject to the provisions of title 49.
- 23 2. The authority shall consult with the public service commission with respect to the
24 rates charged by the authority for use of its transmission facilities and such rates
25 must thereafter be considered just and reasonable in proceedings before the
26 public service commission pursuant to section 49-05-06.
- 27 3. The authority shall conduct its activities in consultation with transmission providers,
28 wind interests, the lignite research council, and other persons having relevant
29 expertise.

30 **SECTION 10. Bonds as legal investments.** The bonds of the authority are legal
31 investments which may be used as collateral for public funds of the state, insurance

1 companies, banks, savings and loan associations, investment companies, trustees, and other
2 fiduciaries which may properly and legally invest funds in their control or belonging to them in
3 bonds of the authority. The state investment board may invest in bonds of the authority in an
4 amount specified by the state investment board.

5 **SECTION 11. Disposal of transmission facilities.**

- 6 1. Before becoming an owner or partial owner of a transmission facility, the authority
7 shall develop a plan identifying:
8 a. The public purposes of the authority's ownership;
9 b. Conditions that would make the authority's ownership no longer necessary for
10 accomplishing those public purposes; and
11 c. A plan to divest the authority's ownership interest as soon as economically
12 prudent once those conditions occur.
- 13 2. For transmission facilities that are leased to another entity by the authority, at the
14 end of the lease, absent default by the lessee, the authority shall convey its
15 interest in the transmission facilities to the lessee.
- 16 3. For transmission facilities that are owned by the authority without a lessee, the
17 authority shall divest itself of ownership as soon as economically prudent in
18 accordance with the divestiture plan developed pursuant to subsection 1.

19 **SECTION 12. Exemption from property taxes.** Transmission facilities built under
20 sections 1 through 11 of this Act are exempt from property taxes for a period determined by the
21 authority not to exceed the first five taxable years of operation; after this initial period,
22 transmission lines of two hundred thirty kilovolts or larger and the transmission lines' associated
23 transmission substations remain exempt from property taxes but are subject to a per mile tax at
24 the full per mile rate and subject to the same manner of imposition and allocation as the per
25 mile tax imposed by subsection 2 of section 57-33.1-02 without application of the discounts
26 provided in that subsection.

27 **SECTION 13. Biennial report to legislative council.** The authority shall deliver a
28 written report on its activities to the legislative council each biennium.

29 **SECTION 14. AMENDMENT.** Subdivision l of subsection 2 of section 28-32-01 of the
30 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.