

Sixty-second  
Legislative Assembly  
of North Dakota

ENGROSSED HOUSE BILL NO. 1206

Introduced by

Representatives Skarphol, Keiser, Kreun

Senators Fischer, Lyson, O'Connell

1 A BILL for an Act to create and enact chapter 61-40 of the North Dakota Century Code, relating  
2 to a western area water supply authority; to provide grant repayment by the authority; and to  
3 declare an emergency.

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

5 **SECTION 1.** Chapter 61-40 of the North Dakota Century Code is created and enacted as  
6 follows:

7 **61-40-01. Legislative declarations - Authority of western area water supply authority.**

8 The legislative assembly declares that many areas and localities in western North Dakota  
9 do not enjoy adequate quantities of high-quality drinking water; that other areas and localities in  
10 western North Dakota do not have sufficient quantities of water to ensure a dependable,  
11 long-term domestic or industrial water supply; that greater economic security and the protection  
12 of health and property benefits the land, natural resources, and water resources of this state;  
13 and that the promotion of the prosperity and general welfare of all of the people of this state  
14 depend on the effective development and utilization of the land and water resources of this  
15 state and necessitates and requires the exercise of the sovereign powers of this state and  
16 concern a public purpose. To accomplish this public purpose, it is declared necessary that a  
17 water authority to treat, store, and distribute water to western North Dakota be established to  
18 provide for the supply and distribution of water to the people of western North Dakota for  
19 purposes, including domestic, rural water, municipal, livestock, industrial, oil and gas  
20 development, and other uses, and provide for the future economic welfare and prosperity of the  
21 people of this state, and particularly the people of western North Dakota, by the creation and  
22 development of a western area water supply project for beneficial and public uses. The western  
23 area water supply authority may acquire, construct, improve, develop, and own water supply  
24 infrastructure and may enter water supply contracts with member cities, water districts, and

1 private users, such as oil and gas producers, for the sale of water for use within or outside the  
2 authority boundaries or the state.

3 **61-40-02. Western area water supply authority.**

4 The western area water supply authority consists of participating political subdivisions  
5 located within McKenzie, Williams, Burke, Divide, and Mountrail Counties which enter a water  
6 supply contract with the authority. Other cities and water systems, within or outside the authority  
7 counties' boundaries, including cities or water systems in Montana, may contract with the  
8 authority for a bulk water supply. The authority is a political subdivision of the state, a  
9 governmental agency, body politic and corporate, with the authority to exercise the powers  
10 specified in this chapter, or which may be reasonably implied. Participating member entities  
11 may be required to pay dues, water sale income, or bond revenue to the authority, as  
12 determined by the bylaws and future resolutions of the authority. Participating member entities  
13 may not withdraw from the authority or fail or refuse to pay any water sale income or bond  
14 revenue to the authority, if any bonds or refunding bonds issued under this chapter remain  
15 outstanding or a grant of up to thirty million dollars from the state water commission has not  
16 been repaid.

17 **61-40-03. Western area water supply authority - Board of directors.**

- 18 1. The initial board of directors of the western area water supply authority consists of two  
19 representatives from each of the following entities: Williams rural water district,  
20 McKenzie County water resource district, the city of Williston, and R&T water supply  
21 association. Each member entity shall select two representatives to the authority  
22 board. If a vacancy arises for a member entity, that member entity shall select a new  
23 representative to act on its behalf on the authority board.
- 24 2. Additional political subdivisions or water systems may be given membership on the  
25 board upon two-thirds majority vote of the existing board. To be eligible for  
26 membership on the board, the member entity must first contract with the authority for  
27 financial participation in the project.
- 28 3. A member entity may designate an alternate representative to attend meetings and to  
29 act on the member's behalf. The board may designate associate members who are  
30 nonvoting members of the board. Notwithstanding this section, initial board members

1           must be removed if they have not entered a contract with the authority, before  
2           August 1, 2013, for financial participation in the project.

3           **61-40-04. Board of directors - Officers - Meetings.**

4           1. The board of directors shall adopt such rules and bylaws for the conduct of the  
5           business affairs of the authority as it determines necessary, including the time and  
6           place of regular meetings of the board, financial participation structure for membership  
7           in the authority, and membership appointment and changes. Bylaws need to be  
8           approved by member entity boards.

9           2. The board shall elect from its members a chairman and a vice chairman. The board  
10          shall elect a secretary and a treasurer, which offices may be held by the same  
11          individual, and either or both offices may be held by an individual who is not a member  
12          of the board. Special meetings of the board may be called by the secretary on order of  
13          the chairman or upon written request of a majority of the qualified members of the  
14          board. Notice of a special meeting must be mailed to each member of the board at  
15          least six days before the meeting, provided that a special meeting may be held at any  
16          time when all members of the board are present or consent in writing.

17          3. Board members are entitled to receive as compensation an amount determined by the  
18          board not to exceed the amount per day provided members of the legislative  
19          management under section 54-35-10 and must be reimbursed for their mileage and  
20          expenses in the amount provided for by sections 44-08-04 and 54-06-09.

21          4. The initial board bylaws must direct board voting protocol. A weighted voting structure  
22          for board members is acceptable if the voting is based upon the volume of water  
23          purchased, the financial contributions of the stakeholder entities, or any other formula  
24          agreed by a majority of the board.

25          5. Before the bylaws become effective, the bylaws must be reviewed and approved by  
26          the attorney general.

27          **61-40-05. Authority of the western area water supply authority.**

28          In addition to authority declared under section 61-40-01, the board of directors of the  
29          western area water supply authority may:

30          1. Sue and be sued in the name of the authority.

- 1       2. Exercise the power of eminent domain in the manner provided by title 32 or as  
2       described in this chapter for the purpose of acquiring and securing any right, title,  
3       interest, estate, or easement necessary or proper to carry out the duties imposed by  
4       this chapter, and particularly to acquire the necessary rights in land for the  
5       construction of an entire part of any pipeline, reservoir, connection, valve, pumping  
6       installation, or other facility for the storage, transportation, or utilization of water and all  
7       other appurtenant facilities used in connection with the authority. However, if the  
8       interest sought to be acquired is a right of way for any project authorized in this  
9       chapter, the authority, after making a written offer to purchase the right of way and  
10      depositing the amount of the offer with the clerk of the district court of the county in  
11      which the right of way is located, may take immediate possession of the right of way,  
12      as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty  
13      days after notice has been given in writing to the landowner by the clerk of the district  
14      court that a deposit has been made for the taking of a right of way as authorized in this  
15      subsection, the owner of the property taken may appeal to the district court by serving  
16      a notice of appeal upon the acquiring agency, and the matter must be tried at the next  
17      regular or special term of court with a jury unless a jury be waived, in the manner  
18      prescribed for trials under chapter 32-15.
- 19      3. Accept funds, property, services, pledges of security, or other assistance, financial or  
20      otherwise, from federal, state, and other public or private sources for the purpose of  
21      aiding and promoting the construction, maintenance, and operation of the authority.  
22      The authority may cooperate and contract with the state or federal government, or any  
23      department or agency of state or federal government, or any city, water district, or  
24      water system within the authority, in furnishing assurances and meeting local  
25      cooperation requirements of any project involving treatment, control, conservation,  
26      distribution, and use of water.
- 27      4. Cooperate and contract with the agencies or political subdivisions of this state or other  
28      states, in research and investigation or other activities promoting the establishment,  
29      construction, development, or operation of the authority.
- 30      5. Appoint and fix the compensation and reimbursement of expenses of employees as  
31      the board determines necessary to conduct the business and affairs of the authority

- 1           and to procure the services of engineers and other technical experts, and to retain  
2           attorneys to assist, advise, and act for the authority in its proceedings.
- 3        6. Operate and manage the authority to distribute water to authority members and others  
4           within or outside the territorial boundaries of the authority and this state.
- 5        7. Hold, own, sell, or exchange any and all property purchased or acquired by the  
6           authority. All money received from any sale or exchange of property must be deposited  
7           to the credit of the authority and may be used to pay expenses of the authority.
- 8        8. Enter contracts to obtain a supply of bulk water through the purchase of infrastructure,  
9           bulk water sale or lease, which contracts may provide for payments to fund some or all  
10           of the authority's costs of acquiring, constructing, or reconstructing one or more water  
11           supply or infrastructure.
- 12        9. Acquire, construct, improve, and own water supply infrastructure, office and  
13           maintenance space in phases, in any location, and at any time.
- 14        10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial  
15           use to persons within or outside the authority. The contracts may provide for payments  
16           to fund some or all of the authority's costs of acquiring, constructing, or reconstructing  
17           one or more water system projects, as well as the authority's costs of operating and  
18           maintaining one or more projects, whether the acquisition, construction, or  
19           reconstruction of any water supply project actually is completed and whether water  
20           actually is delivered pursuant to the contracts. The contracts the cities, water districts,  
21           and other entities that are members of the western area water supply authority are  
22           authorized to execute are without limitation on the term of years.
- 23        11. Borrow money as provided in this chapter.
- 24        12. Issue and sell revenue bonds, including notes, certificates, leases, or other evidences  
25           of indebtedness, for the authority's benefit in an amount or amounts determined by the  
26           board, including an amount or amounts for costs of issuance and financing, capitalized  
27           interest, and any necessary reserve funds, for the purpose of financing the cost of a  
28           project, purchasing bulk water, or otherwise making capital payments required under a  
29           water purchase contract.
- 30        13. Refund and refinance its bonds from time to time as often as it is advantageous and in  
31           the interest of the authority.

- 1        14. Pledge any and all income, profits, and revenues received by the authority with the  
2            operation, lease, sale, or other disposition of all or any part of a project to secure the  
3            payment of bonds issued and sold to finance the project or otherwise.
- 4        15. Prescribe, revise, and collect rates, fees, tolls, or charges for the services, facilities, or  
5            commodities furnished by the authority, and in anticipation of the collection of the  
6            revenues of the authority, issue revenue bonds to finance all or part of the costs of the  
7            acquisition, construction, reconstruction, improvement, betterment, or extension of a  
8            project.
- 9        16. Pledge revenues of the authority to the punctual payment of principal and interest on  
10           bonds or water purchase contract obligations. A pledge under this subsection applies  
11           to the revenues of improvements, betterments, or extensions of the authority which  
12           may be constructed or acquired after the issuance of bonds, the revenues of existing  
13           systems, plants, works, instrumentalities, and properties of any part of the authority  
14           improved, bettered, or extended, and the revenues received from payments made  
15           under a water sale contract between the authority and persons that contract to  
16           purchase water from the authority.
- 17        17. Make all contracts, execute all instruments, and do all things necessary or convenient  
18           in the exercise of its powers or in the performance of its covenants or duties or in order  
19           to secure the payment of its bonds, but an encumbrance, mortgage, or other pledge of  
20           property of the authority may not be created by any contract or instrument.
- 21        18. Accept from any authorized state or federal agency loans or grants for the planning,  
22           construction, acquisition, lease, or other provision of a project, and enter agreements  
23           with the agency respecting the loans or grants.
- 24        19. Contract debts and borrow money, pledge property of the authority for repayment of  
25           indebtedness other than bonded indebtedness, and provide for payment of debts and  
26           expenses of the authority.
- 27        20. Operate and manage the authority to distribute water to any out-of-state cities or water  
28           systems that contract with the authority.
- 29        21. Property of the authority may not be liable to be forfeited or taken in payment of any  
30           bonds issued under this chapter, and debt on the general credit of the authority may

1 not be incurred in any manner for payment of bonds under this chapter. However, if  
2 bonds issued by the authority utilize section 61-40-17, this subsection does not apply.

3 22. Accept, apply for, and hold water allocation permits.

4 23. Adopt rules concerning the planning, management, operation, maintenance, sale, and  
5 ratesetting regarding water sold by the authority. The authority may adopt a rate  
6 structure with elevated rates set for project industrial water supplies in recognition that  
7 a large component of the project expense is being incurred to meet the demands of  
8 industrial users.

9 24. Develop water supply systems; store and transport water; and provide, contract for,  
10 and furnish water service for domestic, municipal, and rural water purposes; milling,  
11 manufacturing, mining, industrial, metallurgical, and any and all other beneficial uses;  
12 and fix the terms and rates therefore. The authority may acquire, construct, operate,  
13 and maintain dams, reservoirs, ground water storage areas, canals, conduits,  
14 pipelines, tunnels, and any and all treatment plants, works, facilities, improvements,  
15 and property necessary the same without any required public vote before taking  
16 action.

17 25. Contract to purchase or improve water supply infrastructure or to obtain bulk water  
18 supplies without requiring any vote of the public on the projects or contracts. In relation  
19 to the initial construction of the system and for the purposes of entering a contract with  
20 the authority, municipalities are exempt from the public voting requirements or water  
21 contract duration limitations otherwise imposed by section 40-33-16.

22 26. Accept assignment by member entities of contracts that obligate member entities to  
23 provide a water supply, contracts that relate to construction of water system  
24 infrastructure, or other member entity contracts that relate to authorities transferred to  
25 the authority under this chapter.

26 **61-40-06. Oversight of authority projects.**

27 The authority shall report to the state water commission on the bidding, planning,  
28 construction, operation, and financial status of the project, as requested by the state water  
29 commission. In relation to initial construction of the system and debt repayment, the authority  
30 shall present the overall plan and contract plans and specifications for the project to the state  
31 water commission for concurrence. The attorney general shall assist the authority at the request

1 of the state water commission. If bonds issued by the authority utilize section 61-40-17 or a  
2 grant of up to thirty million dollars from the state water commission has not been repaid, without  
3 the written consent of the state water commission the authority may not sell, lease, abandon,  
4 encumber, or otherwise dispose of any part of property used in a water system of the authority if  
5 the property is used to provide revenue.

6 **61-40-07. Resolution authorizing the issuance of revenue bonds.**

7 The issuance of revenue bonds or refunding bonds must be authorized by a resolution of  
8 the board adopted by the affirmative vote of a majority of the board. Unless otherwise provided  
9 in the resolution, the resolution under this section takes effect immediately and need not be laid  
10 over, published, or posted. Each resolution providing for the issuance of bonds provided for in  
11 this chapter must set forth the purpose or purposes for which the bonds are to be issued, the  
12 provisions for payment of the bonds, and the revenues or other funds pledged to secure the  
13 payment of the bonds.

14 **61-40-08. Sale of bonds.**

15 Revenue bonds or refunding bonds may be sold at public or private sale on the terms,  
16 conditions, and payment provisions as the board deems appropriate.

17 **61-40-09. Bonds or certificates issued pending preparation of bonds.**

18 Pending the issuance of bonds, bond anticipation notes may be issued and sold in the form  
19 and with the provisions determined by the board.

20 **61-40-10. Validity of bonds.**

21 Revenue bonds or refunding bonds bearing the manual or facsimile signatures of the  
22 appropriate officers who are in office on the date of signing are valid and binding obligations  
23 notwithstanding that before the delivery and payment any or all of the persons whose  
24 signatures appear on the bonds have ceased to be officers of the issuing authority. The  
25 resolution authorizing the bonds may provide that the bonds must contain a recital that they are  
26 issued under this chapter and the recital is conclusive evidence of their validity and of the  
27 regularity of their issuance.

28 **61-40-11. Bonds exempt from taxation.**

29 Notwithstanding any restriction contained in any other law, the state and all public officers,  
30 boards, and agencies, and political subdivisions and agencies of the state, all national banking  
31 associations, state banks, trust companies, savings banks and institutions, credit unions,



1 savings and loan associations, investment companies, and other persons carrying on a banking  
2 business, and executors, administrators, guardians, trustees, and other fiduciaries, may legally  
3 invest any sinking funds, moneys, or other funds belonging to them or within their control in any  
4 bonds issued by the authority under this chapter, and the bonds are authorized security for  
5 public deposits. Bonds, including refunding bonds, issued under this chapter and their income  
6 are exempt from all taxation by the state or by any political subdivision except inheritance,  
7 estate, and transfer taxes.

8 **61-40-12. Liability of authority for bonds.**

9 Revenue bonds and refunding bonds issued under this chapter may not be payable from or  
10 charged upon any funds other than the revenue pledged to payment of the bonds and the  
11 authority issuing the bonds may not be subject to any pecuniary liability. The holder of these  
12 bonds may not enforce payment of the bonds against any property of the authority. Bonds  
13 issued under this chapter do not constitute a charge, lien, or encumbrance upon any property of  
14 the authority, other than the revenues pledged to their payments. Each bond issued under this  
15 chapter must recite in substance that the bond and interest on the bond is payable solely from  
16 the revenue pledged to the payment and that the bond does not constitute a debt of the  
17 authority within the meaning of any constitutional or statutory limitation. However, this section  
18 does not apply to any bonds issued which utilize section 61-40-17.

19 **61-40-13. Duties of authority and officers relative to the issuance of bonds.**

20 To adequately secure the payment of bonds and interest on the bonds, the authority and its  
21 officers, agents, and employees shall:

- 22 1. Pay or cause to be paid, punctually, the principal and interest of every bond on the  
23 dates, at the places, in the manner, and out of the funds provided in the resolution  
24 authorizing its issuance.
- 25 2. Make certain any project financed by the authority is operated in an efficient and  
26 economical manner, enforce all water purchase and water sales contracts, and  
27 establish, levy, maintain, and collect related necessary or proper fees, tolls, rentals,  
28 rates, and other charges. The fees, tolls, rentals, rates, and other charges must be  
29 sufficient, after making due and reasonable allowances for contingencies and for a  
30 margin of error in the estimates, at least:
  - 31 a. To pay all current expenses of operation and maintenance of any project;

- 1           b. To make all payments required under any water purchase contract the authority  
2           may execute;
- 3           c. To pay the interest and principal on the authority's bonds as they become due;
- 4           d. To comply with the terms of the resolution authorizing the issuance of the bonds  
5           or any other contract or agreement with the holders of the bonds; and
- 6           e. To meet any other obligations of the authority that are charges, liens, or  
7           encumbrances upon the revenues of the authority.
- 8           3. Operate, maintain, preserve, and keep every part of any tangible project financed and  
9           owned or operated by the authority in good repair, working order, and condition.
- 10          4. Enforce the provisions of all water purchase and sale contracts that produce revenues  
11          pledged to payment of bonds.
- 12          5. Preserve and protect the security of the bonds and the rights of the bondholders and  
13          warrant and defend such rights against all claims and demands.
- 14          6. Pay and discharge all lawful claims for labor, materials, and supplies which, if unpaid,  
15          might become by law a lien or charge on all or part of the revenues superior to the lien  
16          of the bonds or which might impair the security of the bonds.
- 17          7. Hold in trust the revenues pledged to the payment of the bonds for the benefit of the  
18          holders of the bonds and apply the revenues only as provided by the resolution  
19          authorizing the issuance of the bonds or, if the resolution is modified, as provided in  
20          the modified resolution.
- 21          8. Keep proper separate books of record and accounts of the project in which complete  
22          and correct entries must be made of all transactions relating to any part of the project.  
23          All books and papers of the authority are subject to inspection by the holders of ten  
24          percent or more of the outstanding bonds or by representatives authorized in writing.  
25          The duties contained in this section may not require any expenditure by the authority  
26          of any funds other than revenue received from a project or water sale contract. The  
27          performance of the duties enumerated in this section is of the essence of the contract  
28          of the authority with the bondholders.

29          **61-40-14. Remedies of bondholders in general.**

- 30          1. Subject to any contractual limitations binding upon the holders of any issue of bonds,  
31          or a trustee for the holders, including the restriction of the exercise of any remedy to a

1 specified proportion or percentage of the holders, any holder of bonds or trustee, for  
2 the equal benefit and protection of all bondholders similarly situated, may:

3 a. By mandamus or other civil action, enforce the holder's rights against the  
4 authority and its board and any of its officers, agents, or employees and may  
5 require the authority or the board or any officers, agents, or employees of the  
6 authority or board to perform their duties and obligations under this chapter and  
7 their covenants and agreements with bondholders.

8 b. By civil action, require the authority and the board to account as if they were the  
9 trustees of an express trust.

10 c. By civil action, enjoin any acts or things that may be unlawful or in violation of the  
11 rights of the bondholders.

12 d. Bring suit upon the bond.

13 2. A right or remedy conferred by this chapter upon any bondholder, or upon any trustee  
14 for a bondholder, is not intended to be exclusive of any other right or remedy, but each  
15 right or remedy is cumulative and in addition to every other right or remedy and may  
16 be exercised without exhausting and without regard to any other remedy conferred by  
17 this chapter or by any other law of this state.

18 **61-40-15. Easement granted for ditches, canals, tramways, and transmission lines on**  
19 **any public lands.**

20 In connection with the construction and development of the project, there is granted over all  
21 the lands belonging to the state, including lands owned or acquired for highway right-of-way  
22 purposes, a right of way for pipelines, connections, valves, and all other appurtenant facilities  
23 constructed as part of the project. However, the director of the department of transportation and  
24 the state engineer must approve the plans of the authority with respect to the use of right of way  
25 of roads before the grant becomes effective.

26 **61-40-16. Proceedings to confirm judicially contracts and other acts.**

27 The authority, before making any contract, issuing bonds, or taking any special action, may  
28 commence a special proceeding in district court by which the proceeding leading up to the  
29 making of such contract or leading up to any other special action must be examined, approved,  
30 and confirmed. The judicial proceedings must comply substantially with the procedure required  
31 in the case of judicial confirmation of proceedings, acts, and contracts of an irrigation district.

1       **61-40-17. Debt service reserve - Legislative appropriation requirement.**

2       1. In order to assure the maintenance of any required debt service reserve, including a  
3       letter of credit or similar instrument, for bonds issued under this chapter, the legislative  
4       assembly shall appropriate to the state water commission for deposit in the reserve  
5       fund or funds for the bonds, such sums if any, as are certified by the authority to the  
6       state water commission as necessary to restore the reserve fund or funds to an  
7       amount equal to the required debt service reserve. The state water commission shall  
8       include in its submission to the governor for inclusion by the governor in the biennial  
9       executive budget of the state any amount as is certified to the commission by the  
10      authority. If the governor does not include in the executive budget the amount certified,  
11      the state water commission shall request independently an appropriation from the  
12      legislative assembly for the certified amount. This section is applicable to any required  
13      debt service reserve for bonds issued under this chapter in an aggregate amount not  
14      to exceed one hundred fifty million dollars plus costs of issuance, capitalized interest,  
15      credit enhancement, and any reserve funds required by agreements with or for the  
16      benefit of holders of the bonds for the purposes for which the authority is created  
17      under this chapter. However, the amount of any refinancing may not be counted  
18      toward the one hundred fifty million dollar limitation to the extent the amount does not  
19      exceed the outstanding amount of the obligations being refinanced plus costs of  
20      issuance.

21      2. To the extent any reserve fund is replenished under this section, the authority shall  
22      reimburse the state from any revenues, funds, or any other property of the authority as  
23      dictated by the budget section.

24      3. Any bond financing planned by the authority utilizing this section must undergo due  
25      diligence examination by the public finance authority and the Bank of North Dakota,  
26      and must receive approval of the budget section.

27      **60-40-18. Default.**

28      If the authority is in default in the payment of the principal of or interest on any of the  
29      obligations of the authority under this chapter, if the legislative assembly has appropriated  
30      moneys to restore the reserve fund for the obligation in default under this chapter, and if the  
31      budget section determines that the authority is unable to reimburse the state in the time period

1 required by the budget section, the budget section may give written notice to the governing  
2 board of the authority that the state has taken possession and ownership of the water system of  
3 the authority. Upon written notice, the members of the governing board of the authority are  
4 immediately removed, and the state water commission is the governing board from the date of  
5 notice. If the state water commission determines that governance, possession, and ownership  
6 of the water system is not necessary for the authority to be able to reimburse the state in the  
7 necessary time period, the state water commission may develop a plan to return governance,  
8 possession, and ownership to the authority, subject to approval of the plan by the budget  
9 section.

10       **SECTION 2. STATE WATER COMMISSION GRANT REPAYMENT OBLIGATION.** After  
11 any bonds or refunding bonds have been paid in full by the authority and after the provision of  
12 adequate funds for capital reserves and operation and maintenance reserves, the authority  
13 shall repay any state water commission grant made to the authority in an amount not to exceed  
14 thirty million dollars.

15       **SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.