

**FIRST ENGROSSMENT
with Senate Amendments
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 an appropriation; to provide for loan and
3 grant repayment; and to 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. The western area water supply authority shall consider in the
3 process of locating industrial water depots the location of private water sellers so as to minimize
4 the impact on private water sellers.

5 **61-40-02. Western area water supply authority.**

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

18 **61-40-03. Western area water supply authority - Board of directors.**

19 1. The initial board of directors of the western area water supply authority consists of one
20 representative from each of the following entities: Williams rural water district,
21 McKenzie County water resource district, the city of Williston, BDW water system
22 association, and R&T water supply association, and one county commissioner each
23 from Burke County, Divide County, McKenzie County, Mountrail County, and Williams
24 County. The governing body of each member entity shall select the representative to
25 the authority board. If a vacancy arises for a member entity, the governing body of the
26 member entity shall select a new representative to act on its behalf on the authority
27 board. Directors have a term of one year and may be reappointed. In addition, the
28 governor shall select one member of the state water commission as a voting member
29 on the authority's board of directors. The commission member serves on the board at
30 the pleasure of the governor.

- 1 2. Additional political subdivisions or water systems may be given membership on the
2 board upon two-thirds majority vote of the existing board. To be eligible for
3 membership on the board, the member entity must first contract with the authority for
4 financial participation in the project.
- 5 3. A member entity may designate an alternate representative to attend meetings and to
6 act on the member's behalf. The board may designate associate members who are
7 nonvoting members of the board. Notwithstanding this section, except for the state
8 water commission member and the county commissioners on the board, initial board
9 members must be removed if they have not entered a contract with the authority,
10 before August 1, 2013, for financial participation in the project.

11 **61-40-04. Board of directors - Officers - Meetings.**

- 12 1. The board of directors shall adopt such rules and bylaws for the conduct of the
13 business affairs of the authority as it determines necessary, including the time and
14 place of regular meetings of the board, financial participation structure for membership
15 in the authority, and membership appointment and changes. Bylaws need to be
16 approved by member entity boards.
- 17 2. The board shall elect from its members a chairman and a vice chairman. The board
18 shall elect a secretary and a treasurer, which offices may be held by the same
19 individual, and either or both offices may be held by an individual who is not a member
20 of the board. Special meetings of the board may be called by the secretary on order of
21 the chairman or upon written request of a majority of the qualified members of the
22 board. Notice of a special meeting must be mailed to each member of the board at
23 least six days before the meeting, provided that a special meeting may be held at any
24 time when all members of the board are present or consent in writing.
- 25 3. Board members are entitled to receive as compensation an amount determined by the
26 board not to exceed the amount per day provided members of the legislative
27 management under section 54-35-10 and must be reimbursed for their mileage and
28 expenses in the amount provided for by sections 44-08-04 and 54-06-09.
- 29 4. The initial board bylaws must direct board voting protocol. A weighted voting structure
30 for board members is acceptable if the voting is based upon the volume of water

1 purchased, the financial contributions of the stakeholder entities, or any other formula
2 agreed by a majority of the board.

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

5 **61-40-05. Authority of the western area water supply authority.**

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

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

9 2. Exercise the power of eminent domain in the manner provided by title 32 or as
10 described in this chapter for the purpose of acquiring and securing any right, title,
11 interest, estate, or easement necessary or proper to carry out the duties imposed by
12 this chapter, and particularly to acquire the necessary rights in land for the
13 construction of an entire part of any pipeline, reservoir, connection, valve, pumping
14 installation, or other facility for the storage, transportation, or utilization of water and all
15 other appurtenant facilities used in connection with the authority. However, if the
16 interest sought to be acquired is a right of way for any project authorized in this
17 chapter, the authority, after making a written offer to purchase the right of way and
18 depositing the amount of the offer with the clerk of the district court of the county in
19 which the right of way is located, may take immediate possession of the right of way,
20 as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty
21 days after notice has been given in writing to the landowner by the clerk of the district
22 court that a deposit has been made for the taking of a right of way as authorized in this
23 subsection, the owner of the property taken may appeal to the district court by serving
24 a notice of appeal upon the acquiring agency, and the matter must be tried at the next
25 regular or special term of court with a jury unless a jury be waived, in the manner
26 prescribed for trials under chapter 32-15.

27 3. Accept funds, property, services, pledges of security, or other assistance, financial or
28 otherwise, from federal, state, and other public or private sources for the purpose of
29 aiding and promoting the construction, maintenance, and operation of the authority.
30 The authority may cooperate and contract with the state or federal government, or any
31 department or agency of state or federal government, or any city, water district, or

- 1 water system within the authority, in furnishing assurances and meeting local
2 cooperation requirements of any project involving treatment, control, conservation,
3 distribution, and use of water.
- 4 4. Cooperate and contract with the agencies or political subdivisions of this state or other
5 states, in research and investigation or other activities promoting the establishment,
6 construction, development, or operation of the authority.
- 7 5. Appoint and fix the compensation and reimbursement of expenses of employees as
8 the board determines necessary to conduct the business and affairs of the authority
9 and to procure the services of engineers and other technical experts, and to retain
10 attorneys to assist, advise, and act for the authority in its proceedings.
- 11 6. Operate and manage the authority to distribute water to authority members and others
12 within or outside the territorial boundaries of the authority and this state.
- 13 7. Hold, own, sell, or exchange any and all property purchased or acquired by the
14 authority. All money received from any sale or exchange of property must be deposited
15 to the credit of the authority and may be used to pay expenses of the authority.
- 16 8. Enter contracts to obtain a supply of bulk water through the purchase of infrastructure,
17 bulk water sale or lease, which contracts may provide for payments to fund some or all
18 of the authority's costs of acquiring, constructing, or reconstructing one or more water
19 supply or infrastructure.
- 20 9. Acquire, construct, improve, and own water supply infrastructure, office and
21 maintenance space in phases, in any location, and at any time.
- 22 10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial
23 use to persons within or outside the authority. The contracts may provide for payments
24 to fund some or all of the authority's costs of acquiring, constructing, or reconstructing
25 one or more water system projects, as well as the authority's costs of operating and
26 maintaining one or more projects, whether the acquisition, construction, or
27 reconstruction of any water supply project actually is completed and whether water
28 actually is delivered pursuant to the contracts. The contracts the cities, water districts,
29 and other entities that are members of the western area water supply authority are
30 authorized to execute are without limitation on the term of years.
- 31 11. Borrow money as provided in this chapter.

- 1 12. Make all contracts, execute all instruments, and do all things necessary or convenient
2 in the exercise of its powers or in the performance of its covenants or duties or in order
3 to secure the payment of its bonds, but an encumbrance, mortgage, or other pledge of
4 property of the authority may not be created by any contract or instrument.
- 5 13. Accept from any authorized state or federal agency loans or grants for the planning,
6 construction, acquisition, lease, or other provision of a project, and enter agreements
7 with the agency respecting the loans or grants.
- 8 14. Contract debts and borrow money, pledge property of the authority for repayment of
9 indebtedness other than bonded indebtedness, and provide for payment of debts and
10 expenses of the authority.
- 11 15. Operate and manage the authority to distribute water to any out-of-state cities or water
12 systems that contract with the authority.
- 13 16. Accept, apply for, and hold water allocation permits.
- 14 17. Adopt rules concerning the planning, management, operation, maintenance, sale, and
15 ratesetting regarding water sold by the authority. The authority may adopt a rate
16 structure with elevated rates set for project industrial water supplies in recognition that
17 a large component of the project expense is being incurred to meet the demands of
18 industrial users.
- 19 18. Develop water supply systems; store and transport water; and provide, contract for,
20 and furnish water service for domestic, municipal, and rural water purposes; milling,
21 manufacturing, mining, industrial, metallurgical, and any and all other beneficial uses;
22 and fix the terms and rates therefore. The authority may acquire, construct, operate,
23 and maintain dams, reservoirs, ground water storage areas, canals, conduits,
24 pipelines, tunnels, and any and all treatment plants, works, facilities, improvements,
25 and property necessary the same without any required public vote before taking
26 action.
- 27 19. Contract to purchase or improve water supply infrastructure or to obtain bulk water
28 supplies without requiring any vote of the public on the projects or contracts. In relation
29 to the initial construction of the system and for the purposes of entering a contract with
30 the authority, municipalities are exempt from the public voting requirements or water
31 contract duration limitations otherwise imposed by section 40-33-16.

1 20. Accept assignment by member entities of contracts that obligate member entities to
2 provide a water supply, contracts that relate to construction of water system
3 infrastructure, or other member entity contracts that relate to authorities transferred to
4 the authority under this chapter.

5 **61-40-06. Oversight of authority projects.**

6 The authority shall comply with the policy on cost-sharing of the state water commission as
7 the policy relates to bidding, planning, and construction of the project. The authority shall report
8 to and consult with the state water commission regarding the operation and financial status of
9 the project, as requested by the state water commission. In relation to debt repayment, the
10 authority shall present the overall plan for the project to the state water commission for
11 concurrence. The attorney general shall assist the authority at the request of the state water
12 commission. If a grant of up to thirty million dollars from the state water commission has not
13 been repaid, without the written consent of the state water commission the authority may not
14 sell, lease, abandon, encumber, or otherwise dispose of any part of property used in a water
15 system of the authority if the property is used to provide revenue.

16 **61-40-07. Easement granted for ditches, canals, tramways, and transmission lines on**
17 **any public lands.**

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

24 **61-40-08. Proceedings to confirm judicially contracts and other acts.**

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

1 **61-40-09. Default.**

2 If the authority is in default in the payment of the principal of or interest on any of the
3 obligations of the authority under this chapter and if the budget section determines that the
4 authority is unable to reimburse the state in the time period required by the budget section, the
5 budget section may give written notice to the governing board of the authority that the state has
6 taken possession and ownership of the water system of the authority. Upon written notice, the
7 members of the governing board of the authority are immediately removed, and the state water
8 commission is the governing board from the date of notice. If the state water commission
9 determines that governance, possession, and ownership of the water system is not necessary
10 for the authority to be able to reimburse the state in the necessary time period, the state water
11 commission may develop a plan to return governance, possession, and ownership to the
12 authority, subject to approval of the plan by the budget section.

13 **61-40-10. Taxing authority.**

14 If projected or actual revenues are insufficient to prevent default, each board of county
15 commissioners of Burke County, Divide County, McKenzie County, Mountrail County, and
16 Williams County shall levy property tax in equal mills as is necessary to prevent default within a
17 maximum of five mills for each county.

18 **SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the permanent
19 oil tax trust fund in the state treasury, not otherwise appropriated, the sum of \$75,000,000, or so
20 much of the sum as may be necessary, to the state water commission for the purpose of
21 providing a loan to the western area water authority for a maximum term of twenty years at five
22 percent interest per year, for the biennium beginning July 1, 2011, and ending June 30, 2013.

23 **SECTION 3. LOAN AND GRANT REPAYMENT OBLIGATION.** The western area water
24 authority shall make payments on the loan provided in section 2 of this Act to the state water
25 commission. The state water commission shall transfer the funds to the state treasurer for
26 deposit of the principal in the permanent oil tax trust fund and deposit of the interest in the
27 resources trust fund. Upon the repayment of the principal, the authority shall make payments in
28 at least the amount of the principal payments to repay any state water commission grant made
29 to the authority in an amount not to exceed thirty million dollars. In addition, upon repayment of
30 the state water commission grant, the authority shall provide five percent of the net profits to the

1 state water commission for deposit by the state treasurer in the resources trust fund until
2 June 30, 2040.

3 **SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.