

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.