

Sixty-third
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1440

Introduced by

Representatives Kreun, Haak, Hofstad, D. Johnson, Looysen, Maragos, Streyle

Senators Andrist, Grabinger, Larsen

1 A BILL for an Act to create and enact four new sections to chapter 61-35 of the North Dakota
2 Century Code, relating to exclusion of cities from water districts and state water commission
3 policies on funds for water districts.

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

5 **SECTION 1.** A new section to chapter 61-35 of the North Dakota Century Code is created
6 and enacted as follows:

7 **Annexation of lands located in district - Notice.**

8 At least sixty days before the effective date of any ordinance annexing land that is located
9 in a district into the boundaries of any city, the city shall give written notice to the district of the
10 city's intent to annex the land. The notice must contain the description of the land and the city's
11 plan for the provision of water service to the land.

12 **SECTION 2.** A new section to chapter 61-35 of the North Dakota Century Code is created
13 and enacted as follows:

14 **Contract for city to provide water service - Franchise fee.**

15 Following annexation of district territory by a city, the city and the district may contract for
16 the city to provide water service to any portion of the annexed area.

17 **SECTION 3.** A new section to chapter 61-35 of the North Dakota Century Code is created
18 and enacted as follows:

19 **City designates different supplier - Purchase of district property - Arbitrators -**
20 **Factors - Detachment of territory from district.**

21 1. Following annexation, the district must remain the water service provider to the
22 annexed area unless the city gives written notice designating a different supplier. If the
23 city designates a different supplier, the city shall purchase the property, facilities, and
24 improvements of the district. The city shall fairly compensate the district for the

1 district's asset, plus up to ten years of revenue, as a result of the district being
2 precluded from providing water service to the area being annexed. If a water service
3 agreement between the district and the city is not executed within ninety days after
4 delivery of the notice designating a different supplier, the city and the district in good
5 faith shall engage in mediation. Unless an agreement is executed, a change in the
6 water service provider may not occur and an arbitrator may not be appointed until
7 more than one hundred twenty days after delivery of the notice of intent to change the
8 water supplier and the mediation has been terminated.

9 2. If the district and the city are unable to reach an agreement, then the fair
10 compensation to the district must be determined in the following manner:

11 a. The district and the city each shall select one qualified arbitrator, and the two
12 selected arbitrators shall select a third arbitrator to determine the fair
13 compensation for the district. The arbitration must be conducted in accordance
14 with chapter 32-29.3. Unless the arbitrators agree otherwise, the arbitration
15 proceedings must be conducted in the annexing city. The arbitrators shall
16 consider all elements of value, employing any method of valuation the arbitrators
17 deem appropriate, and shall specifically consider the following factors in
18 determining the fair compensation:

- 19 (1) Whether any property of the district is rendered useless or valueless to the
20 district;
21 (2) The amount of damage to property remaining in the ownership of the district
22 following annexation;
23 (3) Impact on the existing indebtedness of the district and district's ability to
24 repay that debt;
25 (4) The value of the district's service facilities located within the annexed area;
26 (5) The amount of any expenditures for planning, design, or construction of
27 service facilities outside the incorporated or annexed area that are allocable
28 to service the annexed area;
29 (6) The amount of the district's contractual obligations allocable to the annexed
30 area;

- 1 (7) If the annexed area consists of land that does not have water service being
2 provided by the system at the time of the annexation, the value of the land
3 based on the planning, design, and construction of improvements located
4 outside the annexed area reasonably made to provide future water service
5 to the annexed area;
- 6 (8) Any demonstrated impairment of service or increase of cost to the district's
7 remaining customers after the annexation and the impact on future
8 revenues lost from existing and future customers within the annexed area;
- 9 (9) Any necessary and reasonable legal expenses or professional fees;
- 10 (10) Any factors relevant to maintaining the district's current financial integrity;
- 11 (11) The average increase in the number of benefit units in the area annexed for
12 the three years immediately preceding the annexation;
- 13 (12) The reasonable costs of detaching the water system facilities to be sold and
14 all reasonable costs of integrating the remaining water system facilities of
15 the water supplier whose rights are terminated; and
- 16 (13) Any other relevant factors agreed to by the three appointed arbitrators.
- 17 b. At least two of the three arbitrators must agree to written findings and
18 conclusions that must be presented to the city for payment and the district for
19 acceptance.
- 20 3. The compensation required by this section must be paid to the district whether or not
21 the city actually utilizes the facilities of the district for the delivery of water to property
22 within the city. The compensation must be paid within one hundred twenty days
23 following the date upon which the fair market value of the facilities are certified to the
24 city and district, or at a later date as may be mutually agreed upon by the city and
25 district or as determined by the district court.
- 26 4. In any event, the district may elect to retain facilities located within the city and used
27 for transmission of water if the district uses those facilities to continue to supply water
28 service to benefit units outside the city. The district may not receive compensation for
29 facilities it elects to retain.
- 30 5. Except as otherwise provided, this section does not limit the authority of a city to select
31 water service suppliers to areas within the city limits or to adopt and enforce

1 regulations for the operation of a water service supplier, including standards of water
2 quality, classification of water customers, capacity of water system, water system
3 connections to sanitary sewer systems, rates and billing practices, and other
4 regulations for protection of the public health, safety, and welfare.

5 6. If a district will no longer be the water supplier to an area because of annexation and
6 notice under subsection 1, the district shall continue to provide the service until the city
7 gives notice of its assumption of responsibility for service, designating the date that the
8 service must transfer to the city's designated supplier. The district and the city shall
9 cooperate to minimize the inconvenience to water customers because of the transfer.
10 The city shall give written notice to each customer of the district for whom water
11 service is being transferred, specifying the new supplier's name and address, the
12 effective transfer date, the reason for the transfer, and an applicable rate schedule.
13 During the negotiation period, the district may not discontinue or limit service to
14 customers who were supplied water by the district at the time of annexation unless the
15 customer has violated district bylaws, rules, or regulations.

16 7. Following the transfer of water service, the annexed land for which water service has
17 been transferred to the city must be deleted from the district's territory and all benefit
18 units attached to the land must be canceled without compensation. The district shall
19 provide notice of the deletion of territory to the state engineer.

20 **SECTION 4.** A new section to chapter 61-35 of the North Dakota Century Code is created
21 and enacted as follows:

22 **State water commission funding.**

23 The state water commission, before providing grants or loans to a district or city, shall
24 consider whether a district and city within a district have developed a mutually acceptable water
25 service agreement to accommodate anticipated future growth of a city within a district, but the
26 commission may not have these considerations affect the funding of other projects within a
27 district.