

HOUSE BILL NO. 1426

Introduced by

Representatives Skarphol, Belter, Glassheim

Senators Andrist, Nelson, Wardner

1 A BILL for an Act to provide for the creation of commerce authorities; and to create and enact a
2 new subsection to section 57-15-06.7, a new subsection to section 57-15-10, a new subsection
3 to section 57-15-20.2, and two new sections the chapter 57-15 of the North Dakota Century
4 Code, relating to tax levies for commerce authorities; and to provide an effective date.

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

6 **SECTION 1. Definitions.** As used in sections 1 through 17 of this Act, unless the
7 context requires otherwise:

- 8 1. "Bonds" means any bonds, notes, interim certificates, debentures, or similar
9 obligations issued by a commerce authority.
- 10 2. "Commerce authority" means an authority created under section 3 of this Act.
- 11 3. "Political subdivision" means any county, city, or other unit of local government.
12 The term includes a job development authority created under chapter 11-11.1 and
13 an industrial development organization created under chapter 40-57, 40-57.1, or
14 40-57.2.
- 15 4. "Project" means facilities including all real and personal property, structures,
16 equipment, and appurtenances owned or operated by a commerce authority.

17 **SECTION 2. Purposes of commerce authority.** A commerce authority may be
18 created to:

- 19 1. Promote, stimulate, develop, and advance commerce, economic development, and
20 general prosperity within its jurisdiction and this state;
- 21 2. Endeavor to increase the volume of commerce within its jurisdiction and this state
22 through planning, advertising, acquisition, development, construction,
23 improvement, maintenance, operation, and regulation, of transportation, storage, or

other facilities that promote the safe, efficient, and economical handling of commerce;

3. Cooperate and act in conjunction with other organizations in the development and promotion of commerce, industry, manufacturing, services, natural resources, agriculture, livestock, recreation, tourism, health care, and other economic activity; and
4. Support the creation, expansion, modernization, retention, and relocation of new and existing businesses and industries and otherwise stimulate, assist in, and support growth of all kinds of economic activity that promote commerce and business development, maintain economic stability and prosperity of its jurisdiction and this state, and thus provide maximum opportunities for employment and improvement in the standard of living of citizens of its jurisdiction and this state.

SECTION 3. Creation of commerce authority. One or more political subdivisions may form a commerce authority as follows:

1. Any political subdivision may create, by resolution of its governing body, a public body corporate and politic to be known as a commerce authority that may exercise its functions upon the appointment and qualification of the first commissioners of the commerce authority. The governing body by resolution may determine to exercise any powers granted to a commerce authority until the powers have been conferred upon a commerce authority. Upon the adoption of a resolution creating a commerce authority, the governing body of the political subdivision shall appoint, pursuant to the resolution, no fewer than five individuals as commissioners of the commerce authority.
2. Two or more political subdivisions, whether in this state or in an adjoining state provided that at least one political subdivision is in this state, may create by execution of a joint agreement authorized by resolution of the governing body of each participating subdivision, a commerce authority that may exercise its functions upon the issuance by the secretary of state of a certificate of incorporation. The governing bodies of the participating political subdivisions shall appoint, pursuant to the joint agreement, no fewer than five persons as commissioners of the commerce authority.

1 3. A commerce authority may be increased to serve one or more additional political
2 subdivisions if each additional political subdivision and each of the political
3 subdivisions then participating in the authority, adopt a resolution consenting to the
4 addition.

5 4. A commerce authority may be decreased if each of the political subdivisions in the
6 commerce authority consent to the decrease and make provisions for the retention
7 or disposition of its assets and liabilities. If the commerce authority has any bonds
8 outstanding, no decrease may be effected unless all of the holders of the bonds
9 consent to the decrease.

10 **SECTION 4. Filing of agreement and resolutions - Certificate of incorporation -**

11 **Beginning of corporate existence.** The joint agreement, if applicable, and a certified copy of
12 the resolution of each political subdivision creating or agreeing to participate in a commerce
13 authority must, be filed with the secretary of state. If the agreement and resolutions conform to
14 the requirements of section 3 of this Act, the secretary of state shall issue a certificate of
15 incorporation that states the name of the commerce authority and the date of incorporation.
16 The existence of the commerce authority as a political subdivision of this state begins upon the
17 issuance of the certificate of incorporation. The certificate of incorporation is conclusive
18 evidence of the existence of the commerce authority.

19 **SECTION 5. Commissioners - Compensation - Officers.**

20 1. The power of each commerce authority is vested in its commissioners. A
21 commerce authority may adopt and amend rules for its own operation subject to
22 the agreement of the participating political subdivisions and sections 1 through 17
23 of this Act.

24 2. A commissioner of a commerce authority may not receive compensation for
25 services but is entitled to reimbursement of necessary expenses incurred in the
26 discharge of duties at the rates provided in sections 44-08-04 and 54-06-09.

27 3. The commissioners of a commerce authority shall elect a chairman, a vice
28 chairman, and a secretary-treasurer from among the commissioners.

29 4. The commissioners of a commerce authority may appoint or elect an executive
30 director, and any other officers, agents, and employees determined to be
31 necessary and shall determine their qualifications, duties, and compensation. The

commissioners of a commerce authority may delegate powers and duties of the commerce authority to one or more of its officers, agents, or employees.

SECTION 6. Powers of political subdivisions in aid of a commerce authority. A

political subdivision creating or participating in a commerce authority may:

1. Lend or donate money to the commerce authority.
2. Provide that all or a portion of the taxes or funds available to the political subdivision for economic development purposes be transferred or paid directly to the commerce authority.
3. Cause water, sewer, drainage, or any other facilities that the political subdivision is authorized to provide to be furnished adjacent to or in connection with a project.
4. Dedicate, sell, convey, or lease any of the political subdivision's interest in any property or grant easements, licenses, or any other rights or privileges therein to the commerce authority.
5. Plan, dedicate, close, pave, install, grade, or regrade, to the extent allowed by title 24, streets, roadways, and walks from established streets or roads to a project.
6. Aid and cooperate with the commerce authority in the planning, construction, or operation of a project.
7. Enter agreements with the commerce authority regarding action to be taken by the political subdivision under this section.

SECTION 7. Powers of commerce authority. A commerce authority has all the powers necessary or convenient to carry out the purposes of sections 1 through 17 of this Act, including the power to:

1. Execute contracts and other instruments.
2. Sue and be sued.
3. Plan, acquire, develop, construct, improve, maintain, equip, operate, and regulate transportation, storage, or other facilities.
4. Acquire by lease, purchase, gift, or other lawful means and to hold in its name for its use and control both real and personal property and easements and rights of way within or without the limits of the commerce authority.
5. Convey, sell, dispose of, or lease personal and real property.

6. Employ or procure services of engineers, attorneys, technical experts, and other persons to assist, advise, and act for the commerce authority.
7. Accept, receive, disburse, and expend federal, state, local, and other moneys, public or private, made available by grant or loan.
8. Cooperate and contract with this state or any other governmental entity to obtain infrastructure and services.
9. Develop, obtain, and furnish water supply, treatment, storage, and transportation facilities and electric, natural gas, and telecommunications facilities and services.
10. Obtain local, state, and federal permits necessary to develop resources and infrastructure authorized by sections 1 through 17 of this Act.
11. Issue warrants in anticipation of taxes levied to pay current and anticipated expenses relative to the development and operation of its assets.
12. Establish the geographical boundary of the commerce authority and the extent to which financial incentives provided in sections 1 through 17 of this Act will apply to the commerce authority.
13. Levy and collect real estate taxes within the boundary of the commerce authority as authorized in its charter.
14. Create a debt service fund and accumulate in the fund a sum determined by the commerce authority, together with interest on that sum, for the use, repair, maintenance, and capital outlays of the commerce authority.
15. Adopt, amend, and repeal such reasonable resolutions, regulations, and orders as necessary for the management and use of a project owned or operated by the commerce authority.

SECTION 8. Power of eminent domain - Restrictions on acquisition of public property. A commerce authority may acquire real or personal property necessary to carry out the purposes of sections 1 through 17 of this Act by condemnation and the exercise of the power of eminent domain in the manner provided by chapter 32-15 and other laws applicable to political subdivisions in exercising the right of eminent domain.

SECTION 9. Bonds and other obligations.

- 1 1. A commerce authority may borrow money and issue bonds, including refunding
2 bonds, in the form and upon the terms as it may determine, payable out of any
3 revenues of the commerce authority.
- 4 2. Any bonds issued under this section are payable, as to principal and interest,
5 solely from revenues of the commerce authority, and must so state on the face of
6 the bond. If any issue of bonds constitutes an indebtedness within the meaning of
7 any constitutional or statutory debt limitation or restriction, each bond of the issue
8 is, subject to the requirements of subsection 8, an equally valid and binding special
9 obligation of the commerce authority or participating political subdivision, as the
10 case may be, in accordance with its terms, in an amount proportionate to the total
11 amount of the issue which is within the limitation or restriction. A commissioner of
12 a commerce authority or an individual executing the bonds is not liable personally
13 on the bonds by reason of the issuance of the bonds, except to the extent that the
14 bonds, if constituting an indebtedness, exceed any applicable limitation or
15 restriction.
- 16 3. If any commissioner or officer of a commerce authority whose signature appears
17 on any bonds or coupons ceases to be a commissioner or officer after
18 authorization but before the delivery of the bonds, the signature, is valid and
19 sufficient for all purposes, the same as if the commissioner or officer had remained
20 in office until delivery.
- 21 4. Any bond reciting in substance that the bond has been issued by the commerce
22 authority under this section and for a purpose authorized by sections 1 through 17
23 of this Act is conclusively deemed, in any proceeding involving the validity or
24 enforceability of the bond or the security of the bond to have been issued under
25 this section and for that purpose.
- 26 5. Bonds issued by a commerce authority under this section are declared to be
27 issued for an essential public government purpose, and together with interest and
28 income on the bonds, are exempt from all taxes.
- 29 6. For the security of the bonds, the commerce authority by resolution may make any
30 covenant, agreement, or indenture authorized to be made as security for revenue
31 bonds issued under chapter 40-35. The sums required to pay principal and

1 interest and to create and maintain a reserve for the bonds may be payable from
2 any revenues referred to in sections 1 through 17 of this Act, before the payment of
3 current costs of operation and maintenance of the facilities.

4 7. When bonds are issued under this section and made payable from revenues of a
5 commerce authority involving political subdivisions with a population over ten
6 thousand, subject to the requirements of subsection 8, the governing bodies of the
7 political subdivisions, if at any time all revenues, including taxes, appropriated and
8 to that time collected for the bonds are insufficient to pay the principal or interest
9 then due, shall levy a general tax upon all of the taxable property in the political
10 subdivisions for the payment of the deficiency. If a deficiency is likely to occur
11 within one year for the payment of principal and interest due on the bonds, the
12 governing bodies, in their declaration, may levy a general tax upon all the taxable
13 property in the political subdivisions for the payment of the deficiency. The taxes
14 are not subject to any limitation of rate or amount applicable to other political
15 subdivisions taxes.

16 8. For bonds issued under this section to be an obligation of a political subdivision or
17 commerce authority, the issuance of the bonds must be approved by a majority
18 vote of the governing body of each political subdivision involved or, within thirty
19 days after the commerce authority decides to issue the bonds, the political
20 subdivision or commerce authority must put the question, specifying the amount of
21 the bond at issue, to the electors at any primary, general, or special election. If a
22 majority of the qualified electors voting on the issue vote in favor of issuing the
23 bonds, the commerce authority or political subdivision, to the amount authorized in
24 the election, may pledge the general obligation of the commerce authority or
25 political subdivision to guarantee the repayment of the principal and interest on the
26 bonds.

27 **SECTION 10. Operation and use privileges.**

28 1. In connection with the operation of a project owned or controlled by a commerce
29 authority, the commerce authority may enter a contract, lease, and other
30 arrangement with any person:

- a. Granting the privilege of using or improving the project or any portion or space in the project for commercial purposes.
 - b. Conferring the privilege of supplying goods or services at the project.
 - c. Making available services to be furnished by the commerce authority or its agents at the project.
2. The commerce authority may establish the terms and conditions and fix the charges, rentals, or fees for the privileges or services, which must be reasonable and uniform for the same class or privilege or service.

SECTION 11. Sales and use tax incentives. A commerce authority may offer sales and use tax exemptions for personal property purchased and made a part of the commerce authority's infrastructure if the personal property is placed within the geographic boundaries of the political subdivisions and is necessary and directly services infrastructure needs of the commerce authority.

SECTION 12. Commerce authority property and income exempt from taxation. Any property in this state acquired by a commerce authority for the purposes of the commerce authority, and any income derived by the commerce authority from the ownership, operation, or control of the property, is exempt from taxation to the same extent as other property used for public purposes.

SECTION 13. Out-of-state jurisdiction authorized - Reciprocity with adjoining governmental agencies. A political subdivision creating a commerce authority may exercise those powers within any political subdivision or jurisdiction adjoining this state, subject to the laws of that political subdivision.

SECTION 14. Tax levy may be certified by commerce authority or political subdivision. The commerce authority may certify annually to the governing bodies the amount of tax to be levied by each political subdivision participating in the commerce authority. Each political subdivision shall levy the amount certified. The levy may not exceed the maximum levy permitted for commerce authority purposes. Each political subdivision shall collect the taxes certified by a commerce authority in the same manner as other taxes are levied and collected. The proceeds of the taxes must be deposited in a special account or accounts in which other revenues of the commerce authority are deposited and may be expended by the commerce authority as provided in sections 1 through 17 of this Act. Before issuance of bonds under

1 section 9 of this Act, the commerce authority by resolution may covenant and agree that the
2 total amount of the taxes authorized by law, or the portion of the taxes specified by the
3 resolution, will be certified, levied, and deposited annually until the bonds and interest are fully
4 paid.

5 **SECTION 15. Zones of benefit - Tax levy applied.** A commerce authority may, in
6 connection with the certification of an annual tax levy for the commerce authority, designate
7 various zones of benefit or geographical portions of the participating political subdivisions
8 which, in the judgment of the commissioners of the commerce authority, will be or have been
9 benefited by a project. The commerce authority may then certify that the annual levy be applied
10 only to the benefited area.

11 **SECTION 16. Maximum tax levy - county levy not applied in political subdivision**
12 **making levy.** In a political subdivision that is a party to an agreement creating a commerce
13 authority, a levy, not exceeding the limitation in section 18 of this Act may be made for the
14 purposes of the commerce authority. A county levy under section 57-15-06.7 does not apply to
15 any other political subdivision within that county making a levy for the purposes of the
16 commerce authority.

17 **SECTION 17. Favorable rates.** A commerce authority may charge favorable rates for
18 services provided by the commerce authority to persons taxed for the commerce authority.

19 **SECTION 18.** A new subsection to section 57-15-06.7 of the North Dakota Century
20 Code is created and enacted as follows:

21 Counties supporting commerce authorities may levy a tax not exceeding four mills
22 in accordance with section 16 of this Act.

23 **SECTION 19.** A new subsection to section 57-15-10 of the North Dakota Century Code
24 is created and enacted as follows:

25 Taxes levied for commerce authority purposes may be levied in an amount not
26 exceeding four mills.

27 **SECTION 20.** A new subsection to section 57-15-20.2 of the North Dakota Century
28 Code is created and enacted as follows:

29 A township levying a tax for commerce authority purposes may levy a tax not
30 exceeding four mills.

1 **SECTION 21.** Two new sections to chapter 57-15 of the North Dakota Century Code
2 are created and enacted as follows:

3 **Tax levy for commerce authority purposes.** In cities supporting commerce
4 authorities for which no levy has been made by a taxing district within the corporate limits of
5 that city, a levy not exceeding the limitation in section 19 of this Act may be made for those
6 purposes.

7 **Township levy for commerce authority purposes.** The electors of each township
8 may vote at the annual meeting to levy a tax for the purpose of supporting a commerce
9 authority in an amount not exceeding the limitation in section 20 of this Act. The tax levy
10 provided in this section does not apply to any city, park district, or other taxing district that
11 already has a commerce authority levy.

12 **SECTION 22. EFFECTIVE DATE.** This Act is effective for taxable years beginning
13 after December 31, 2002.