

Fifty-ninth  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1169

Introduced by

Industry, Business and Labor Committee

(At the request of the Industrial Commission)

1 A BILL for an Act to provide for the North Dakota transmission authority, provide for the  
2 planning, constructing, owning, financing, maintaining, operating, and disposing of electric  
3 transmission facilities and related infrastructure, and to authorize issuance of revenue bonds; to  
4 amend and reenact subdivision I of subsection 2 of section 28-32-01 of the North Dakota  
5 Century Code, relating to an Administrative Agencies Practice Act exemption for the  
6 transmission authority; and to provide for reports to the legislative council.

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

8 **SECTION 1. Declaration of findings and public purpose.** The legislative assembly  
9 finds and declares that:

- 10 1. North Dakota has twenty-five billion tons of abundant, recoverable lignite coal  
11 reserves, enough to last eight hundred years at today's thirty million tons of annual  
12 production.
- 13 2. The lignite industry presently generates electricity for more than two million people  
14 in the northern great plains region and there is increased regional demand for  
15 development of North Dakota's lignite resources.
- 16 3. North Dakota has enormous wind resources, providing additional economic  
17 opportunity to broaden and diversify the state's economy and diversify the region's  
18 energy supply, and that timely development of these resources will stabilize and  
19 increase revenues to the state.
- 20 4. Transmission constraints impede the development of the state's lignite and wind  
21 resources.
- 22 5. An essential governmental function and public purpose is to assist with the  
23 removal of electric transmission export constraints and to assist with upgrading

1           and expansion of the region's electrical transmission grid to facilitate the  
2           development of the state's abundant natural resources.

3           6.   Developing and exporting our natural resources will promote the public interest by  
4           increasing employment, stimulating economic activity, augmenting sources of tax  
5           revenue, fostering economic stability, and improving the state's economy.

6           7.   State ownership of electrical transmission facilities may not exceed the extent and  
7           duration necessary or useful to promote the public interest.

8           **SECTION 2. North Dakota transmission authority.** There is created the North  
9           Dakota transmission authority, which shall be governed by the industrial commission.

10          **SECTION 3. Definitions.** As used in this chapter:

11          1.   "Authority" means the industrial commission acting as the North Dakota  
12          transmission authority.

13          2.   "Commission" means the industrial commission.

14          3.   "Notice of intent" means the notice a person delivers to the authority indicating  
15          willingness to construct transmission facilities contemplated by the authority or to  
16          provide services fulfilling the need for such transmission facilities.

17          4.   "Project area" means the geographic area in which construction of a transmission  
18          facility contemplated by the authority is likely to occur.

19          5.   "Transmission facilities" means electric transmission lines and substations, and  
20          related structures, equipment, rights of way, and works of public improvement,  
21          located within and outside this state, excluding electric generating facilities.

22          **SECTION 4. Purposes.** The purpose for which the authority is created is to diversify  
23          and expand the North Dakota economy by facilitating development of transmission facilities to  
24          support the production, transportation, and utilization of North Dakota electric energy.

25          **SECTION 5. Powers.** The authority has all powers necessary to carry out the  
26          purposes of this chapter, including the power to:

27          1.   Make grants or loans and to provide other forms of financial assistance as  
28          necessary or appropriate for the purposes of this chapter;

29          2.   Make and execute contracts and all other instruments necessary or convenient for  
30          the performance of its powers and functions under this chapter;

31          3.   Borrow money and issue evidences of indebtedness as provided in this chapter;

- 1           4.   Receive and accept aid, grants, or contributions of money or other things of value  
2                   from any source, including aid, grants, or contributions from any department,  
3                   agency, or instrumentality of the United States, subject to the conditions upon  
4                   which the aid, grants, or contributions are made and consistent with the provisions  
5                   of this chapter;
- 6           5.   Issue and sell evidences of indebtedness in an amount or amounts as the authority  
7                   may determine, but not to exceed eight hundred million dollars, plus costs of  
8                   issuance, credit enhancement, and any reserve funds required by agreements with  
9                   or for the benefit of holders of the evidences of indebtedness for the purposes for  
10                  which the authority is created under this chapter, provided that the amount of any  
11                  refinancing shall not be counted toward such eight hundred million dollar limitation  
12                  to the extent it does not exceed the outstanding amount of the obligations being  
13                  refinanced;
- 14          6.   Refund and refinance its evidences of indebtedness;
- 15          7.   Make and execute interest rate exchange contracts;
- 16          8.   Enter lease-sale contracts;
- 17          9.   Pledge any and all revenues derived by the authority under this chapter or from a  
18                  transmission facility, service, or activity funded under this chapter to secure  
19                  payment or redemption of the evidences of indebtedness;
- 20          10.   To the extent and for the period of time necessary for the accomplishment of the  
21                  purposes for which the authority was created, plan, finance, develop, acquire, own  
22                  in whole or in part, lease, rent, and dispose of transmission facilities;
- 23          11.   Enter contracts to construct, maintain, and operate transmission facilities;
- 24          12.   Consult with the public service commission, regional organizations, and any other  
25                  relevant state or federal authority as necessary and establish reasonable fees,  
26                  rates, tariffs, or other charges for transmission facilities and all services rendered  
27                  by the authority;
- 28          13.   Lease, rent, and dispose of transmission facilities owned pursuant to this chapter;
- 29          14.   Investigate, plan, prioritize, and propose corridors of the transmission of electricity;
- 30          15.   Participate in and join regional transmission organizations; and

1        16. Do any and all things necessary or expedient for the purposes of the authority  
2        provided in this chapter.

3        **SECTION 6. Authority may act.**

4        1. The authority shall coordinate its plans for transmission facilities with regional  
5        organizations having transmission planning responsibilities for the project area.

6        2. Before exercising its powers to construct transmission facilities granted to it in this  
7        chapter, the authority shall publish in a newspaper of general circulation in North  
8        Dakota and in a newspaper in the project area, a notice describing the need for  
9        transmission facilities contemplated by the authority. Persons willing to construct  
10       the transmission facilities or furnish services to satisfy the needs described in the  
11       notice have a period of one hundred eighty days from the date of last publication of  
12       the notice within which to deliver to the authority a notice of intent. After receipt of  
13       a notice of intent, the authority may not exercise its powers to construct  
14       transmission facilities unless the authority finds that exercising its authority would  
15       be in the public interest. In making such a finding the authority shall consider  
16       factors including economic impact to the state, economic feasibility, technical  
17       performance, reliability, past performance and the likelihood of successful  
18       completion and ongoing operation.

19       3. The authority may require a person giving a notice of intent to provide a bond and  
20       to submit a plan for completion of the transmission facilities or commencement of  
21       services within a period of time acceptable to the authority. If no person submits  
22       an adequate plan or bond as required by the authority, the authority may proceed  
23       with contracting for construction of the facility described in the authority's published  
24       notice.

25       **SECTION 7. Authority may participate upon request.** The authority may participate  
26       in a transmission facility through financing, planning, joint ownership, or other arrangements at  
27       the request of a person giving a notice of intent.

28       **SECTION 8. Evidences of indebtedness.**

29       1. Evidences of indebtedness of the authority must be authorized by resolution of the  
30       industrial commission and may be issued in one or more series and must bear  
31       such date or dates, mature at such time or times, bear interest at such rate or rates

1           of interest per year, be in such denomination or denominations, be in such form,  
2           either coupon or registered, carry such conversion or registration privileges, have  
3           such rank or priority, be executed in such manner, be payable from such sources  
4           in such medium of payment at such place or places within or without the state, and  
5           be subject to such terms of redemption, with or without premium, as such  
6           resolution or resolutions may provide. Evidences of indebtedness of the authority  
7           are to mature not more than forty years from the date of issue. Evidences of  
8           indebtedness of the authority may be sold at such time or times and at such price  
9           or prices as the authority determines.

10          2. Evidences of indebtedness and grants, loans, or other forms of financial  
11          assistance issued by the authority are payable solely from:

12           a. Revenues that may be received by the authority from transmission facilities,  
13           services, or activities funded under this chapter with the proceeds of the  
14           authority's evidences of indebtedness, subject only to prior payment of the  
15           reasonable and necessary expenses of operating and maintaining such  
16           transmission facilities except depreciation.

17           b. Amounts received by the authority under loans authorized under this chapter.

18           c. Revenues received by the authority under this chapter from any source other  
19           than general tax revenues.

20          3. The evidences of indebtedness are not subject to taxation by the state or any of its  
21          political subdivisions and do not constitute a debt of the state of North Dakota  
22          within the meaning of any statutory or constitutional provision and must contain a  
23          statement to that effect on their face.

24          4. The authority may establish and maintain a reserve fund for evidences of  
25          indebtedness issued under this chapter. There must be deposited in the reserve  
26          fund:

27           a. All moneys appropriated by the legislative assembly to the authority for the  
28           purpose of the reserve fund.

29           b. All proceeds of evidences of indebtedness issued under this chapter required  
30           to be deposited in the reserve fund by the terms of any contract between the

1                   authority and the holders of its evidences of indebtedness or any resolution of  
2                   the authority.

3                   c.   Any lawfully available moneys of the authority which it may determine to  
4                   deposit in the reserve fund.

5                   d.   Any moneys from any other source made available to the authority for deposit  
6                   in the reserve fund or any contractual right to the receipt of moneys by the  
7                   authority for the purpose of the fund, including a letter of credit, surety bond,  
8                   or similar instrument.

9                   5.   The authority must include in its biennial request to the office of the budget the  
10                  amount, if any, necessary to restore any reserve fund established under this  
11                  section to an amount equal to the amount required to be deposited in the fund by  
12                  the terms of any contract or resolution approved by the commission.

13                  6.   Any pledge of revenue made by the industrial commission as security for the  
14                  authority's evidences of indebtedness is valid and binding from time to time when  
15                  the pledge is made. The revenues or other moneys so pledged and thereafter  
16                  received by the authority are immediately subject to the lien of any such pledge  
17                  without any physical delivery thereof or further act, and the lien of any such pledge  
18                  is valid and binding as against all parties having claims of any kind in tort, contract  
19                  or otherwise against the authority, regardless of whether such parties have notice  
20                  thereof. Neither the resolution nor any other instrument by which a pledge is  
21                  created need be filed or recorded, except in the records of the authority.

22                  7.   The authority is authorized and empowered to obtain from any entity of the state,  
23                  any department or agency of the United States of America, or any  
24                  nongovernmental insurer any insurance, guaranty, or liquidity facility, or from a  
25                  financial institution a letter of credit to the extent such insurance, guaranty, liquidity  
26                  facility, or letter of credit now or hereafter available, as to, or for, the payment or  
27                  repayment of, interest or principal, or both, or any part thereof, on any evidences of  
28                  indebtedness issued by the authority pursuant to this chapter, and to enter into any  
29                  agreement or contract with respect to any such insurance, guaranty, letter of  
30                  credit, or liquidity facility, and pay any required fee, unless the same would impair

or interfere with the ability of the authority to fulfill the terms of any agreement made with the holders of its evidences of indebtedness.

8. After issuance, all evidences of indebtedness of the authority are conclusively presumed to be fully authorized and issued under the laws of the state, and any person or governmental unit is estopped from questioning their authorization, sale, issuance, execution, or delivery by the authority.
9. When the authority has issued evidences of indebtedness and pledged the revenues of the transmission facilities for the payment thereof as herein provided, the authority shall operate and maintain the transmission facilities and shall impose and collect fees and charges for the services furnished by the transmission facilities, including those furnished to the authority itself, in the amounts and at the rates as are fully sufficient at all times to:
- a. Pay the expenses of operating and maintaining the transmission facilities;
  - b. Provide a debt service fund sufficient to assure the prompt payment of principal and interest on the evidences of indebtedness at maturity; and
  - c. Provide a reasonable fund for contingencies as may be required by the resolution authorizing the evidences of indebtedness.

**SECTION 9. Public service commission jurisdiction and consultation.**

1. The authority and the transmission facilities built under this chapter, until sold or disposed of by the authority, are exempt from the provisions of title 49 except for chapter 49-22. Upon sale or disposal by the authority, transmission facilities built under this chapter are subject to the provisions of title 49.
2. The authority shall consult with the public service commission with respect to the rates charged by the authority for use of its transmission facilities and such rates must thereafter be considered just and reasonable in proceedings before the public service commission pursuant to section 49-05-06.
3. The authority shall conduct its activities in consultation with transmission providers, wind interests, the lignite research council, and other persons having relevant expertise.

**SECTION 10. Bonds as legal investments.** The bonds of the authority are legal investments which may be used as collateral for public funds of the state, insurance

1 companies, banks, savings and loan associations, investment companies, trustees, and other  
2 fiduciaries which may properly and legally invest funds in their control or belonging to them in  
3 bonds of the authority. The state investment board may invest in bonds of the authority in an  
4 amount specified by the state investment board.

5 **SECTION 11. Disposal of transmission facilities.**

- 6 1. Before becoming an owner or partial owner of a transmission facility, the authority  
7 shall develop a plan identifying:  
8 a. The public purposes of the authority's ownership;  
9 b. Conditions that would make the authority's ownership no longer necessary for  
10 accomplishing those public purposes; and  
11 c. A plan to divest the authority's ownership interest as soon as economically  
12 prudent once those conditions occur.
- 13 2. For transmission facilities that are leased to another entity by the authority, at the  
14 end of the lease, absent default by the lessee, the authority shall convey its  
15 interest in the transmission facilities to the lessee.
- 16 3. For transmission facilities that are owned by the authority without a lessee, the  
17 authority shall divest itself of ownership as soon as economically prudent in  
18 accordance with the divestiture plan developed pursuant to subsection 1.

19 **SECTION 12. Exemption from property taxes.** Transmission facilities built under  
20 sections 1 through 11 of this Act are exempt from property taxes for a period determined by the  
21 authority not to exceed the first five taxable years of operation; after this initial period,  
22 transmission lines of two hundred thirty kilovolts or larger and the transmission lines' associated  
23 transmission substations remain exempt from property taxes but are subject to a per mile tax at  
24 the full per mile rate and subject to the same manner of imposition and allocation as the per  
25 mile tax imposed by subsection 2 of section 57-33.1-02 without application of the discounts  
26 provided in that subsection.

27 **SECTION 13. Biennial report to legislative council.** The authority shall deliver a  
28 written report on its activities to the legislative council each biennium.

29 **SECTION 14. AMENDMENT.** Subdivision I of subsection 2 of section 28-32-01 of the  
30 North Dakota Century Code is amended and reenacted as follows:



- 1                   I.    The industrial commission with respect to the activities of the Bank of North
- 2                           Dakota, North Dakota housing finance agency, North Dakota municipal bond
- 3                           bank, North Dakota mill and elevator association, ~~and~~ North Dakota farm
- 4                           finance agency, and the North Dakota transmission authority.