

February 21, 2013

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1440

Page 1, line 1, replace "three" with "four"

Page 1, remove lines 7 through 24

Page 2, replace lines 1 and 2 with:

"Annexation of lands located in district - Notice.

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

Page 2, replace lines 5 through 20 with:

"Contract for city to provide water service - Franchise fee.

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

Page 2, remove lines 23 through 30

Page 3 replace lines 1 through 10 with:

"City designates different supplier - Purchase of district property - Arbitrators - Factors - Detachment of territory from district.

1. Following annexation, the district must remain the water service provider to the annexed area unless the city gives written notice designating a different supplier. If the city designates a different supplier, the city shall purchase the property, facilities, and improvements of the district. The city shall fairly compensate the district for the district's asset, plus up to ten years of revenue, as a result of the district being precluded from providing water service to the area being annexed. If a water service agreement between the district and the city is not executed within ninety days after delivery of the notice designating a different supplier, the city and the district in good faith shall engage in mediation. Unless an agreement is executed, a change in the water service provider may not occur and an arbitrator may not be appointed until more than one hundred twenty days after delivery of the notice of intent to change the water supplier and the mediation has been terminated.
2. If the district and the city are unable to reach an agreement, then the fair compensation to the district must be determined in the following manner:
 - a. The district and the city each shall select one qualified arbitrator, and the two selected arbitrators shall select a third arbitrator to determine the fair compensation for the district. The arbitration must be conducted in accordance with chapter 32-29.3. Unless the arbitrators agree otherwise, the arbitration proceedings must be conducted in the

annexing city. The arbitrators shall consider all elements of value, employing any method of valuation the arbitrators deem appropriate, and shall specifically consider the following factors in determining the fair compensation:

- (1) Whether any property of the district is rendered useless or valueless to the district;
 - (2) The amount of damage to property remaining in the ownership of the district following annexation;
 - (3) Impact on the existing indebtedness of the district and district's ability to repay that debt;
 - (4) The value of the district's service facilities located within the annexed area;
 - (5) The amount of any expenditures for planning, design, or construction of service facilities outside the incorporated or annexed area that are allocable to service the annexed area;
 - (6) The amount of the district's contractual obligations allocable to the annexed area;
 - (7) If the annexed area consists of land that does not have water service being provided by the system at the time of the annexation, the value of the land based on the planning, design, and construction of improvements located outside the annexed area reasonably made to provide future water service to the annexed area;
 - (8) Any demonstrated impairment of service or increase of cost to the district's remaining customers after the annexation and the impact on future revenues lost from existing and future customers within the annexed area;
 - (9) Any necessary and reasonable legal expenses or professional fees;
 - (10) Any factors relevant to maintaining the district's current financial integrity;
 - (11) The average increase in the number of benefit units in the area annexed for the three years immediately preceding the annexation;
 - (12) The reasonable costs of detaching the water system facilities to be sold and all reasonable costs of integrating the remaining water system facilities of the water supplier whose rights are terminated; and
 - (13) Any other relevant factors agreed to by the three appointed arbitrators.
- b. At least two of the three arbitrators must agree to written findings and conclusions that must be presented to the city for payment and the district for acceptance.

3. The compensation required by this section must be paid to the district whether or not the city actually utilizes the facilities of the district for the delivery of water to property within the city. The compensation must be paid within one hundred twenty days following the date upon which the fair market value of the facilities are certified to the city and district, or at a later date as may be mutually agreed upon by the city and district or as determined by the district court.
4. In any event, the district may elect to retain facilities located within the city and used for transmission of water if the district uses those facilities to continue to supply water service to benefit units outside the city. The district may not receive compensation for facilities it elects to retain.
5. Except as otherwise provided, this section does not limit the authority of a city to select water service suppliers to areas within the city limits or to adopt and enforce regulations for the operation of a water service supplier, including standards of water quality, classification of water customers, capacity of water system, water system connections to sanitary sewer systems, rates and billing practices, and other regulations for protection of the public health, safety, and welfare.
6. If a district will no longer be the water supplier to an area because of annexation and notice under subsection 1, the district shall continue to provide the service until the city gives notice of its assumption of responsibility for service, designating the date that the service must transfer to the city's designated supplier. The district and the city shall cooperate to minimize the inconvenience to water customers because of the transfer. The city shall give written notice to each customer of the district for whom water service is being transferred, specifying the new supplier's name and address, the effective transfer date, the reason for the transfer, and an applicable rate schedule. During the negotiation period, the district may not discontinue or limit service to customers who were supplied water by the district at the time of annexation unless the customer has violated district bylaws, rules, or regulations.
7. Following the transfer of water service, the annexed land for which water service has been transferred to the city must be deleted from the district's territory and all benefit units attached to the land must be canceled without compensation. The district shall provide notice of the deletion of territory to the state engineer.

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

State water commission funding.

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

Renumber accordingly