

Sixty-third
Legislative Assembly
of North Dakota

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 ~~three~~four new sections to chapter 61-35 of the North
2 Dakota Century Code, relating to exclusion of cities from water districts and state water
3 commission 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 ~~**Compensation for the exclusion of a city from a water district.**~~

8 ~~1. To be excluded from a water district, the governing body of a city may petition the~~
9 ~~public service commission requesting that all or part of the city be excluded from the~~
10 ~~district.~~

11 ~~2. In determining whether the water district will be compensated for the exclusion, the~~
12 ~~following must be considered in an eminent domain proceeding:~~

13 ~~a. The value of the district's water system outstanding debt as calculated on a per-~~
14 ~~user basis for all users in the transferred area at the time of transfer.~~

15 ~~b. The reasonable costs of detaching the district's water system facilities in the area~~
16 ~~to be transferred and reasonable costs of integrating the remaining facilities of~~
17 ~~the district's water system.~~

18 ~~c. Fixed operation and maintenance costs as calculated on a per user basis for all~~
19 ~~the district's water system users in the transferred area at the time of transfer for~~
20 ~~a compensatory time period of ten years.~~

21 ~~d. The remaining debt of dedicated service facilities that are specific to the~~
22 ~~transferred area which cannot be recouped in the remaining service area of the~~
23 ~~district's water system, whether water service is currently provided in the~~
24 ~~transferred area or is planned for in the future.~~

~~3. The court shall determine the amount of compensation in the eminent domain proceeding.~~

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.

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

~~**Factors for the transfer of service territory between a water district and city.**~~

~~1. The following factors must be considered as part of a determination of reasonable compensation on the transfer of water service territory from a water district to a city.~~

~~2. The factors are:~~

~~a. The value of the water system's outstanding debt as calculated on a per user basis for all users in the transferred area at the time of transfer.~~

~~b. The reasonable costs of detaching the water system facilities in the area to be transferred and reasonable costs of integrating the remaining facilities of the water system.~~

~~c. Fixed operation and maintenance costs as calculated on a per user basis for all the water system's users in the transferred area at the time of transfer for a compensatory time period of ten years.~~

~~d. The remaining debt of dedicated service facilities that are specific to the transferred area and cannot be recouped in the remaining service area of the water system, whether water service is currently provided in the transferred area or is planned for in the future.~~

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.

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

~~**Policies for water districts receiving state funds.**~~

- ~~1. The state water commission shall develop policies for determining whether and to what amount a water district receives state funds, including funds from the resources trust fund.~~
- ~~2. These policies must address:~~
 - ~~a. Whether a water district will be given powers to establish a monopoly.~~
 - ~~b. Whether the funding of the water district's water project harms another public entity's ability to operate.~~
 - ~~c. Whether the water district is having any disputes with other public entities that are within or bordering the designated territory, whether state funding will give the water district an advantage over the other entity, whether the water district attempted to resolve the issue in good faith, and whether the dispute affects the best interest of a public entity which has been neglected as a result of the dispute.~~
 - ~~d. The appropriate level of funding. If any of the policies are determined to be violated by the water district, the water district may not receive state funding unless the public entity negatively affected and the water district agree to mediate the issue, then funding may be restored by the commission.~~

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;

1 (8) Any demonstrated impairment of service or increase of cost to the district's
2 remaining customers after the annexation and the impact on future
3 revenues lost from existing and future customers within the annexed area;

4 (9) Any necessary and reasonable legal expenses or professional fees;

5 (10) Any factors relevant to maintaining the district's current financial integrity;

6 (11) The average increase in the number of benefit units in the area annexed for
7 the three years immediately preceding the annexation;

8 (12) The reasonable costs of detaching the water system facilities to be sold and
9 all reasonable costs of integrating the remaining water system facilities of
10 the water supplier whose rights are terminated; and

11 (13) Any other relevant factors agreed to by the three appointed arbitrators.

12 b. At least two of the three arbitrators must agree to written findings and
13 conclusions that must be presented to the city for payment and the district for
14 acceptance.

15 3. The compensation required by this section must be paid to the district whether or not
16 the city actually utilizes the facilities of the district for the delivery of water to property
17 within the city. The compensation must be paid within one hundred twenty days
18 following the date upon which the fair market value of the facilities are certified to the
19 city and district, or at a later date as may be mutually agreed upon by the city and
20 district or as determined by the district court.

21 4. In any event, the district may elect to retain facilities located within the city and used
22 for transmission of water if the district uses those facilities to continue to supply water
23 service to benefit units outside the city. The district may not receive compensation for
24 facilities it elects to retain.

25 5. Except as otherwise provided, this section does not limit the authority of a city to select
26 water service suppliers to areas within the city limits or to adopt and enforce
27 regulations for the operation of a water service supplier, including standards of water
28 quality, classification of water customers, capacity of water system, water system
29 connections to sanitary sewer systems, rates and billing practices, and other
30 regulations for protection of the public health, safety, and welfare.

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

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

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

18 **State water commission funding.**

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