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**ND Rural Water Systems Association**

**In Support of Engrossed House Bill 1537**

**Senate Industry, Business & Labor Committee**

**March 31, 2025**

Chairman Barta and members of the Senate Industry, Business & Labor Committee, my name is Eric Volk. I am the executive director of the North Dakota Rural Water Systems Association (NDRWSA). Our vision is to ensure all of North Dakota has access to affordable, ample, and quality water. NDRWSA is committed to completing and maintaining North Dakota's water infrastructure for economic growth and quality of life. We collaborate with the state's small and rural water and wastewater systems to enhance their technical, managerial, and financial capabilities. Today, I am submitting testimony in support of Engrossed House Bill 1537, which seeks to make changes to N.D.C.C. § 6-09.4-22.

#### **Background of State and Federal Laws**

North Dakota statute N.D.C.C. § 6-09.4-22 (SB 2086) was overwhelmingly approved by the Legislature in 1997 to protect state government lenders who have loaned money to a North Dakota rural water district and to protect rural communities. The statute prevents neighboring municipalities from taking the collateral pledged to secure the loan (such as taking or encroaching into the territory where the water district provides water service or has made water service available). Loss of territory results in a loss of customers and a loss of the source of revenue to repay loans. Loss of customers and territory also deprives rural residents of the "economy of scale" the statute was intended to create. The intent of SB 2086 was also *"to encourage rural development by providing a safeguard for the viability and financial security of the rural water system being financed"* (Tom Tudor, Municipal Bond Bank, who was the lead Sponsor of SB 2086).

The North Dakota statute is remarkably similar to a federal statute (Title 7, United States Code, § 1926(b) adopted in 1961). The federal statute was designed to protect the interests of the United States

Department of Agriculture (USDA), which loans money to water districts nationwide. The purpose of 1926(b) is to:

1. Encourage Rural Development
2. Spread fixed costs over a large group of users (create an economy of scale)
3. Prevent rural water costs from becoming prohibitively expensive to any particular user
4. Provide fresh and clean water to rural households
5. Protect the federal government as the insurer of the loan

It was evident that the North Dakota Legislature intended to accomplish the same purpose and protection in the state statute that 1926(b) accomplished. SB 2086 testimony also stated, *“This same protection is currently provided under federal law with respect to loans made by USDA Rural Development (formerly FmHA).”*

#### **State Lender Participation in Agreements**

It was also very clear through the testimony of the sponsor of SB 2086 that the lending agency must be a party to any agreements between the two political subdivisions, *“SB 2086 expressly prohibits any curtailment or limitation of any Bond Bank-financed services as a result of annexation of all or part of the service area as long as the Bond Bank debt is outstanding unless the two political subdivisions, together with the Bond Bank, negotiate an agreement with respect to payment to the Bond Bank.”* The current law is designed to preclude/prevent a water district and a municipality from entering into agreements that might impair repayment of the loan, such as the water district selling its territory (which is the bank’s collateral) and leaving the lender uncollateralized or inadequately collateralized. The agreement would be invalid and unenforceable if the public finance authority did not sign off on (approve) the agreement. There is a similar provision under USDA (Federal) regulations. The public finance authority or state agency must fully participate in the agreement to ensure the loan is protected and repaid properly.

### **Subsection 3**

In July 2024, the North Dakota Supreme Court issued an opinion on N.D.C.C. § 6-09.4-22(2).

*“We conclude the language “invalid and unenforceable” in N.D.C.C. § 6-09.4-22(2) means an agreement made without the public lending authority as a party is void ab initio. Our answer to the first certified question is “yes,” the language “invalid and unenforceable” means void ab initio, and our answer to the second question is “no,” it does not mean voidable and capable of ratification.”*

Void ab initio means the agreement was void from the beginning if the Public Finance Authority (PFA) did not sign it. Subsection 3 of Engrossed HB 1537 will help ensure that any agreements not signed by the PFA remain valid and enforceable unless the PFA determines that the agreement lacks adequate safeguards to ensure the security and timely payment of any outstanding bonds issued to fund the loan.

This section of the law impacts cities, rural water systems, and state lending agencies in North Dakota. The North Dakota League of Cities, the North Dakota Rural Water Systems Association, and the Public Finance Authority have agreed on the current version of HB 1537. This legislation aims to address future issues with unsigned agreements without affecting ongoing litigation. The passage of HB 1537 will allow any unsigned agreements to remain in effect as is. If not, the unsigned agreements will also be considered void from the beginning.

Thank you for allowing me to provide supporting testimony on behalf of the NDRWSA. If you have any questions, please contact me at [ericvolk@ndrw.org](mailto:ericvolk@ndrw.org).



# Incorporated Cities on a Rural or Regional System

