

SENATE BILL NO. 2261

Introduced by

Senators Nething, Heitkamp, Wardner

Representatives Delmore, Devlin, Keiser

1 A BILL for an Act to create and enact a new subsection to section 6-09.4-07, a new subsection
2 to section 40-05-01, a new section to chapter 40-34, a new section to chapter 54-01, a new
3 section to chapter 54-17, three new subsections to section 57-02-08, a new subsection to
4 section 61-24.5-09, and a new subsection to section 61-35-12 of the North Dakota Century
5 Code, relating to long-term leases and leaseback transactions; to amend and reenact sections
6 40-11-04, 40-33-01, 40-33-02, 40-33-03, 40-33-04, and 40-34-02 of the North Dakota Century
7 Code, relating to long-term leases and leaseback transactions; and to declare an emergency.

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

9 **SECTION 1.** A new subsection to section 6-09.4-07 of the North Dakota Century Code
10 is created and enacted as follows:

11 To do and perform any act and thing authorized by section 54-01-05.6 or 54-17-35
12 under, through, or by means of its officers, agents, or employees or by contracts
13 with any person to assist the state, or any agency or institution of the state, in
14 making, entering, and enforcing all contracts or agreements necessary,
15 convenient, or desirable for the purposes of leasing all or part of, or an undivided or
16 other interest in, property.

17 **SECTION 2.** A new subsection to section 40-05-01 of the North Dakota Century Code
18 is created and enacted as follows:

19 Lease of waterworks or sewage systems. To lease, for a term not to exceed
20 ninety-nine years, the plant or equipment of any waterworks, mains, or water
21 distribution system and any property related thereto pursuant to section 40-33-01
22 or to lease, for a term not to exceed ninety-nine years, any sewage system and all
23 related property for the collection, treatment, purification, and disposal in a sanitary
24 manner of sewage pursuant to section 40-34-01.2.

1 **SECTION 3. AMENDMENT.** Section 40-11-04 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **40-11-04. Ordinance required for the transfer of property.** Every municipality shall
4 enact an ordinance providing for the conveyance, sale, lease, or disposal of personal and real
5 property of the municipality. When the property to be disposed of is estimated by the governing
6 body of the municipality to be of a value of less than two thousand five hundred dollars, the
7 property may be sold at private sale upon the proper resolution of the governing body. In all
8 other cases, the property may be sold only at public sale or as provided under section
9 40-11-04.2. This section and sections 40-11-04.1 and 40-11-04.2 do not apply to a lease by a
10 municipality to the state, or any agency or institution of the state, of any waterworks, mains, and
11 water distribution system and any equipment or appliances connected therewith and any real
12 property related thereto pursuant to section 40-33-01 or of any sewage system and all related
13 property for the collection, treatment, purification, and disposal in a sanitary manner of sewage
14 pursuant to section 40-34-01.2.

15 **SECTION 4. AMENDMENT.** Section 40-33-01 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **40-33-01. Electric light, telephone, natural and artificial gas plants, pipelines and**
18 **distribution systems and power plants - Municipalities may purchase, erect, construct,**
19 **maintain, sell, or lease.** Any municipality may purchase, erect, construct, operate, maintain,
20 enlarge, improve and extend, or lease from any person, ~~firm, corporation, or limited liability~~
21 ~~company,~~ or sell or lease to any person, ~~firm, corporation, or limited liability company:~~

- 22 1. Any electric light and power plant, site, buildings, and equipment thereof.
- 23 2. Any electric distribution system and equipment thereof.
- 24 3. Any electric transmission line and equipment thereof.
- 25 4. Any telephone plant, equipment, and distribution system thereof.
- 26 5. Any waterworks, mains, and water distribution system and any equipment or
27 appliances connected therewith and any property related thereto, notwithstanding
28 any other provision of law.
- 29 6. Any heating system, gas or otherwise, and the buildings and equipment necessary
30 to furnish heat to the public buildings of the municipality and to the inhabitants of
31 the municipality.

1 7. Any natural or artificial gas pipeline transmission or distribution system or plants.
2 For purposes of subsection 5, the term "lease" includes any lease, sublease, purchase
3 agreement, lease-purchase agreement, installment purchase agreement, leaseback
4 agreement, or other contract, agreement, instrument, or arrangement pursuant to which any
5 rights, interests, or other property are transferred to, by, or from any party to, by, or from one or
6 more parties, and any related documents entered or to be entered, including any operating
7 agreement, service agreement, indemnity agreement, participation agreement, loan agreement,
8 or payment undertaking agreement. A lease obligation of a municipality under subsection 5
9 may not exceed a term of ninety-nine years. A lease obligation of a municipality under
10 subsection 5 does not constitute an indebtedness of the municipality, or a pledge of the full faith
11 and credit or unlimited taxing resources of the municipality. Notwithstanding any other
12 provision of law, a municipality may solicit and accept one or more proposals for a lease
13 transaction, including the arrangement thereof, under subsection 5. The municipality, by
14 resolution of its governing body upon a majority vote of the members of the governing body,
15 may accept a proposal that it determines to be in the public interest. A lease under
16 subsection 5, and any related documents entered or to be entered, may be authorized by
17 resolution of the governing body of the municipality.

18 **SECTION 5. AMENDMENT.** Section 40-33-02 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **40-33-02. Acquiring, erecting, or improving plant, system, or line without election**
21 **prohibited - ~~Exception~~ Exceptions.** No municipal officers may purchase, erect, substantially
22 enlarge, improve, or extend an existing plant, or lease from others any plant, system, or line
23 provided for in section 40-33-01, unless the proposition has been submitted by a resolution of
24 the governing body to the qualified electors of the city at a biennial or special election called,
25 held, and conducted upon the notice and in the manner specified by this title for the election of
26 the governing body of the city, and has been approved by a majority of the electors voting
27 thereon. If the cost of any enlargement, improvement, or extension will be paid out of the
28 earnings of the plant and the cost does not exceed the sum of five thousand dollars, or if eighty
29 per centum or more of the cost of any waterworks, mains, water system and equipment or
30 appliances therefor is to be paid by special assessments or by the earnings of the plant or by
31 both, the governing body is not required to submit the proposition to the electors of the city. If

1 the improvement and facilities are to provide for a greater and more adequate water supply to
2 meet the needs of the city for domestic use, fire protection, or for sanitation and sewage
3 disposal, regardless of cost the governing body thereof may by resolution provide for the
4 needed improvement and facilities in cooperation with the state or federal government, or any
5 agency thereof, without an election if funds for such cooperation or for defraying the entire cost
6 thereof are available in the municipal utilities fund as defined by section 40-33-10. If the lease
7 by the city of any plant, system, or line provided for in section 40-33-01 is from the state, or any
8 agency or institution of the state, the governing body is not required to submit the proposition to
9 the electors of the city.

10 **SECTION 6. AMENDMENT.** Section 40-33-03 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **40-33-03. Sale or lease of plant, system, or line - Offer or written proposition -**
13 **Election - Proceeds.** No municipality shall sell any municipal plant, system, or line, nor lease
14 the same, or any substantial part thereof, or interest therein, to any person, firm, corporation, or
15 limited liability company unless the person, firm, corporation, or limited liability company shall
16 have filed in the office of the auditor of the municipality a complete written offer or proposition,
17 nor unless a majority of the qualified electors of the municipality shall have voted in favor of
18 accepting the offer or proposition at an election called, held, and conducted as specified in
19 section 40-33-02. A copy of the offer or proposition shall be published with the notice of the
20 election. The proceeds of any sale or lease made according to this section shall be applied
21 toward the payment of the existing indebtedness of the municipality incurred for the purpose of
22 purchasing, erecting, operating, or enlarging, improving, or extending such plant, system, or
23 line. The purchaser or lessee, however, shall not be required to see that the consideration of
24 the purchase or lease is applied correctly as provided in this section, but he shall be protected
25 fully in making the payment or payments by the receipt of the city auditor. Nothing contained in
26 this section shall prevent the governing body from selling or disposing of any machinery,
27 material, or other property belonging to any such utility which may have been inadequate or
28 insufficient for the purposes for which it was intended to be used. This section does not apply
29 to a lease by a municipality of any plant, system, or line to the state, or any agency or institution
30 of the state pursuant to section 40-33-01.

1 **SECTION 7. AMENDMENT.** Section 40-33-04 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **40-33-04. Manner of payment of purchase, erection, improvement, or leasing of**
4 **plant, system, or line.** Any municipality may pay the cost of purchasing, erecting, enlarging,
5 improving, extending, or leasing any municipal plant, system, line, or any part thereof:

- 6 1. Out of the earnings of the plant, system, or line;
- 7 2. By issuing special assessment warrants as provided in section 40-33-05;
- 8 3. By issuing bonds of the municipality as provided in section 40-33-07;
- 9 4. Partly by such special assessment warrants and partly by such bonds; or
- 10 5. Partly out of the earnings of the plant, system, or line, and partly by such special
11 assessments or bonds or special assessments and bonds.

12 A municipality may pay the cost of leasing any municipal plant, system, line, or any part
13 thereof from the state, or any agency or institution of the state under section 40-33-01 solely
14 from revenues to be derived by the municipality from the ownership, sale, lease, disposition,
15 and operation of the waterworks, mains, and water distribution system; the funds or any other
16 amounts invested by the municipality pursuant to section 21-06-07, or invested on the
17 municipality's behalf by the state, or any agency or institution of the state, in conformity with
18 policies of the industrial commission, including investment in a guaranteed investment contract
19 and any earnings thereon, to the extent pledged therefor; and funds, if any, appropriated
20 annually by the governing body of the municipality or received from federal or state sources.

21 When such cost, or any part thereof, is to be paid out of the earnings, the cost or the
22 part thereof payable out of the earnings shall not become a general obligation of the
23 municipality payable out of the money raised through taxation but shall be a special obligation
24 payable solely and exclusively out of the earnings derived from the operation of the plant,
25 system, or line.

26 **SECTION 8.** A new section to chapter 40-34 of the North Dakota Century Code is
27 created and enacted as follows:

28 **Agreements between municipalities and with the state or private parties - Leasing**
29 **property.** Notwithstanding any other law, any municipality of the state, either individually or
30 jointly by agreement, may enter agreements to lease to the state, or any agency or institution of
31 the state, or to any person for such compensation and upon such terms and conditions as the

1 parties under such agreement may stipulate, all or part of, or an undivided or other interest in,
2 its sewage system and all related real and personal property for the collection, treatment,
3 purification, and disposal in a sanitary manner of sewage. In addition, any municipality of the
4 state, either individually or jointly by agreement, may enter agreements to lease from the state,
5 or any agency or institution of the state, or from any person all or part of, or an undivided or
6 other interest in, its sewage system and all related real and personal property for the collection,
7 treatment, purification, and disposal in a sanitary manner of sewage for such compensation and
8 upon such terms and conditions as the parties under such agreement may stipulate. Such
9 agreements must be authorized by resolution of the governing body of a municipality upon a
10 majority vote of the members of the governing body. For the purposes of this section, such
11 agreements include any lease, sublease, purchase agreement, lease-purchase agreement,
12 installment purchase agreement, leaseback agreement, or other contract, agreement,
13 instrument, or arrangement pursuant to which any rights, interests, or other property are
14 transferred to, by, or from any party to, by, or from one or more parties, and any related
15 documents entered or to be entered, including any operating agreement, service agreement,
16 indemnity agreement, participation agreement, loan agreement, or payment undertaking
17 agreement. A lease obligation under this section may not exceed a term of ninety-nine years.
18 A lease obligation under this section does not constitute an indebtedness of the municipality or
19 a pledge of the full faith and credit or unlimited taxing resources of the municipality.
20 Notwithstanding any other law, a municipality may solicit and accept one or more proposals for
21 a lease transaction, including the arrangement thereof, under this section. The municipality
22 may, by resolution of the governing body upon a majority vote of the members of the governing
23 body, accept a proposal that it determines to be in the public interest.

24 **SECTION 9. AMENDMENT.** Section 40-34-02 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **40-34-02. Methods of defraying cost of sewage or garbage disposal**
27 **improvements or lease.** The total cost of a sewage or garbage disposal system, or any
28 portion thereof, may be defrayed by the following alternative methods:

29 1. Out of the general current tax revenues on hand and appropriated for that purpose.

- 1 2. Out of the proceeds of the sale of general liability bonds issued in accordance with
2 the procedure and subject to the conditions and limitations prescribed by chapter
3 21-03, as far as the same are applicable.
- 4 3. Partly out of general current tax revenues on hand and appropriated for that
5 purpose and the residue out of the proceeds of the sale of general liability bonds
6 as provided in subsection 2, as the governing body of the municipality shall
7 determine by a majority vote.
- 8 4. Partly from moneys secured by the issuance of mortgage bonds secured by the net
9 revenues of the improvement or system and by a mortgage or deed of trust upon
10 the improvement or system issued by the municipality. Bonds issued under this
11 subsection shall not exceed sixty percent of the cost of the improvement, and the
12 remaining forty percent of such cost shall be defrayed as provided in subsection 1,
13 2, or 3.
- 14 5. From moneys secured by the issuance and sale of first mortgage bonds secured
15 by the assets and property of the improvement or system in like manner as
16 provided in subsection 4, except that such bonds may be issued for the total cost
17 of the improvement upon compliance with this subsection. Bonds issued under
18 this subsection shall be secured by a pledge of the net revenues of the
19 improvement or system to be set apart as an interest and sinking fund to pay the
20 principal and interest of such first mortgage bonds as they mature. If the method
21 provided in this subsection is utilized by any municipality to defray the cost of a
22 sewage disposal system, it, by a resolution of its governing body, shall create the
23 district, provide for and approve the plans and specifications and estimates of the
24 cost, and adopt and publish the resolution declaring the work necessary to be done
25 in accordance with the requirements of chapter 40-22 as far as the same may be
26 applicable. If the owners of property liable to be imposed with the sewage disposal
27 service charges as provided in this subsection shall file with the city auditor, within
28 thirty days after the first publication of the resolution, a written protest against the
29 improvement, the governing body at its next meeting after the expiration of the time
30 for filing protests against the improvement, shall hear and determine the sufficiency
31 of the protests. After the hearing has been had, the governing body, if it finds the

1 protests to contain the signatures of the owners of a majority of the property liable
2 to be charged, shall not proceed further with the improvement. If the protests are
3 found insufficient or invalid, the governing body of the municipality may cause the
4 improvement to be made, contract therefor, and defray the cost thereof in the
5 manner provided in this subsection.

6 A municipality may pay the cost of leasing any sewage systems and all related real and
7 personal property for the collection, treatment, purification, and disposal in a sanitary manner of
8 sewage from the state, or any agency or institution of the state under section 40-34-01.2, solely
9 from revenues to be derived by the municipality from the ownership, sale, lease, disposition,
10 and operation of the sewage systems; the funds or any other amounts invested by the
11 municipality pursuant to section 21-06-07, or invested on the municipality's behalf by the state,
12 or any agency of the state, in conformity with policies of the industrial commission, including
13 investment in a guaranteed investment contract and any earnings thereon, to the extent
14 pledged therefor; and funds, if any, appropriated annually by the governing body of the
15 municipality or received from federal or state sources.

16 **SECTION 10.** A new section to chapter 54-01 of the North Dakota Century Code is
17 created and enacted as follows:

18 **Lease of state-owned property.** Notwithstanding any other provision of law, the state,
19 or any agency or institution of the state, may enter agreements to lease all or part of, or an
20 undivided or other interest in, any real or personal property belonging to the state, or any
21 agency or institution of the state, to and, or, from any agency or institution of the state or any
22 person for such compensation and upon such terms and conditions as the parties under such
23 agreement may stipulate. Such agreements must be authorized by the board, if any, or
24 commissioner or other executive officer of the commission, agency, or institution holding,
25 controlling, possessing, or owning the property or on whose behalf the property is held, and
26 must be approved by the industrial commission. For purposes of this section, the agreements
27 include any lease, sublease, purchase agreement, lease-purchase agreement, installment
28 purchase agreement, leaseback agreement, or other contract, agreement, instrument, or
29 arrangement pursuant to which any rights, interests, or other property are transferred to, by, or
30 from any party to, by, or from one or more parties, and any related documents entered or to be
31 entered, including any operating agreement, service agreement, indemnity agreement,

1 participation agreement, loan agreement, or payment undertaking agreement. A lease
2 obligation under this section may not exceed a term of ninety-nine years. A lease obligation
3 entered into under this section is payable solely from revenues to be derived by the state, or
4 any agency or institution of the state, from the ownership, sale, lease, disposition, and operation
5 of the property; any funds or investments permitted under state law, and any earnings thereon,
6 to the extent pledged therefor; revenues to be derived by the state, or any agency or institution
7 of the state, from any support and operating agreement, service agreement, or any other
8 agreement relating to the property; funds, if any, appropriated annually by the legislative
9 assembly or received from federal sources; and income or proceeds from any collateral
10 pledged or provided therefor. A lease obligation under this section does not constitute an
11 indebtedness of the state, or any agency or institution of the state, or a pledge of the full faith
12 and credit or unlimited taxing resources of the state, or any agency or institution of the state.
13 Notwithstanding any other law, the state, or any agency or institution of the state, may solicit
14 and accept one or more proposals for a lease transaction, including the arrangement thereof,
15 under this section, and accept any proposal that is determined to be in the public interest. The
16 bond bank, on behalf of the state, or any agency or institution of the state, may do and perform
17 any acts and things authorized by this section, including making, entering, and enforcing all
18 contracts or agreements necessary, convenient, or desirable for the purposes of this section.

19 **SECTION 11.** A new section to chapter 54-17 of the North Dakota Century Code is
20 created and enacted as follows:

21 **Lease of municipal waterworks and sewage systems.** Notwithstanding any other
22 provision of law, the state, acting by and through its industrial commission, may enter
23 agreements to lease all or part of, or an undivided or other interest in, the plant or equipment of
24 any waterworks, mains, or water distribution system and any property related thereto pursuant
25 to section 40-33-01, 61-24.5-09, or 61-35-12 or any sewage system and all related property for
26 the collection, treatment, purification, and disposal in a sanitary manner of sewage pursuant to
27 section 40-34-01.2 or 61-35-12 to or from a municipality or other political subdivision or agency
28 of the state, or to or from any person, for such compensation and upon such terms and
29 conditions as the parties under such agreement may stipulate. For the purposes of this section,
30 such agreements include any lease, sublease, purchase agreement, lease-purchase
31 agreement, installment purchase agreement, leaseback agreement, or other contract,

1 agreement, instrument, or arrangement pursuant to which any rights, interests, or other
2 property are transferred to, by, or from any party to, by, or from one or more parties, and any
3 related documents entered or to be entered, including any operating agreement, service
4 agreement, indemnity agreement, participation agreement, loan agreement, or payment
5 undertaking agreement. Any lease obligation entered under this section is payable solely from
6 revenues to be derived by the state or any agency or institution of the state from the ownership,
7 sale, lease, disposition, and operation of the plant or equipment of any waterworks, mains, or
8 water distribution system and any property related thereto or sewage systems and all related
9 property for the collection, treatment, purification, and disposal in a sanitary manner of sewage;
10 any funds or investments permitted under state law, and any earnings thereon, to the extent
11 pledged therefor; revenues to be derived by the state from any support and operating
12 agreement, service agreement, or any other agreement relating to the waterworks, mains, and
13 water distribution system or sewage system; funds, if any, appropriated annually by the
14 legislative assembly; and income or proceeds from any collateral pledged or provided therefor.
15 A lease obligation entered under this section constitutes an indebtedness of the industrial
16 commission, the state, or any agency or officer or agent thereof, or a pledge of the full faith and
17 credit or unlimited taxing resources of the industrial commission, the state, or any agency or
18 officer or agent thereof. The industrial commission may authorize the bond bank or another
19 agency or institution of the state to do and perform any acts and things authorized by this
20 section, including making, entering, and enforcing all contracts or agreements necessary,
21 convenient, or desirable for the purposes of this section.

22 **SECTION 12.** Three new subsections to section 57-02-08 of the North Dakota Century
23 Code are created and enacted as follows:

24 Notwithstanding any other law, all property, including any possessory interest
25 therein, relating to any waterworks, mains, and water distribution system leased to
26 the state, or any agency or institution of the state, or to a private entity pursuant to
27 section 40-33-01, 61-24.5-09, or 61-35-12, which property is operated by, or
28 providing services to, a municipality or other political subdivision or agency of the
29 state, or its citizens.

30 Notwithstanding any other law, all property, including any possessory interest
31 therein, relating to any sewage systems and facilities for the collection, treatment,

1 purification, and disposal in a sanitary manner of sewage leased to the state, or
2 any agency or institution of the state, or to a private entity pursuant to section
3 40-34-01.2 or 61-35-12, which property is operated by, or providing services to, a
4 municipality or other political subdivision or agency of the state, or its citizens.

5 Notwithstanding any other law, all property, including any possessory interest
6 therein, leased to a private entity pursuant to section 54-01-05.6, which property is
7 operated by, or providing services to, the state or its citizens.

8 **SECTION 13.** A new subsection to section 61-24.5-09 of the North Dakota Century
9 Code is created and enacted as follows:

10 Notwithstanding any other law, to exercise the powers granted to a municipality
11 under section 40-33-01 pursuant to the limitations set forth therein. The authority
12 may pay the cost of leasing any waterworks, mains, and water distribution system
13 and any equipment or appliances connected therewith and any property related
14 thereto pursuant to section 40-33-01 solely from revenues to be derived by the
15 authority from the ownership, sale, lease, disposition, and operation of the
16 waterworks, mains, and water distribution system; the funds or any other amounts
17 invested by the authority pursuant to the laws of the state or invested on the
18 authority's behalf by the state, or any agency or institution of the state, in
19 conformity with policies of the industrial commission, including investment in a
20 guaranteed investment contract and any earnings thereon, to the extent pledged
21 therefor; and funds, if any, appropriated annually by the board of the authority or
22 received from federal or state sources.

23 **SECTION 14.** A new subsection to section 61-35-12 of the North Dakota Century Code
24 is created and enacted as follows:

25 Notwithstanding any other law, exercise the powers granted to a municipality under
26 sections 40-33-01 and 40-34-01.2, pursuant to the limitations set forth therein. A
27 district may pay the cost of leasing any waterworks, mains, and water distribution
28 system and any equipment or appliances connected therewith and any property
29 related thereto pursuant to section 40-33-01, or of any sewage system and all
30 related property for the collection, treatment, purification, and disposal in a sanitary
31 manner of sewage pursuant to section 40-34-01.2, solely from revenues to be

1 derived by the district from the ownership, sale, lease disposition, and operation of
2 the waterworks, mains, and water distribution system or sewage system; the funds
3 or any other amounts invested by such district pursuant to section 21-06-07, or
4 invested on such district's behalf by the state, or any agency or institution of the
5 state, in conformity with policies of the industrial commission, including investment
6 in a guaranteed investment contract and any earnings thereon, to the extent
7 pledged therefor; and funds, if any, appropriated annually by the board of the
8 district or received from federal or state sources.

9 **SECTION 15. EMERGENCY.** This Act is declared to be an emergency measure.