

**FIRST ENGROSSMENT
with Senate Amendments**

Fifty-eighth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1426

Introduced by

Representatives Skarphol, Belter, Glassheim

Senators Andrist, Nelson, Wardner

1 A BILL for an Act to provide for the creation of commerce authorities; to create and enact a new
2 subsection to section 57-15-06.7, a new subsection to section 57-15-10, a new subsection to
3 section 57-15-20.2, a new section to chapter 57-15, a new subdivision to subsection 2 of
4 section 57-38-30.3, and a new subsection to section 57-39.2-04 of the North Dakota Century
5 Code, relating to tax levies for commerce authorities and exemption from income, sales, and
6 use taxes; to provide an effective date; and to declare an emergency.

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

8 **SECTION 1. Definitions.** As used in sections 1 through 15 of this Act, unless the
9 context requires otherwise:

- 10 1. "Bonds" means any bonds, notes, interim certificates, debentures, or similar
11 obligations issued by a commerce authority.
- 12 2. "Commerce authority" means an authority created under section 3 of this Act.
- 13 3. "Political subdivision" means any county, city, or other unit of local government.
14 The term includes a job development authority created under chapter 11-11.1 or
15 40-57.4.
- 16 4. "Project" means facilities including all real and personal property, structures,
17 equipment, and appurtenances owned or operated by a commerce authority.

18 **SECTION 2. Purposes of commerce authority.** A commerce authority may be
19 created to:

- 20 1. Promote, stimulate, develop, and advance commerce, economic development, and
21 general prosperity within its jurisdiction and this state;
- 22 2. Endeavor to increase the volume of commerce within its jurisdiction and this state
23 through planning, advertising, acquisition, development, construction,
24 improvement, maintenance, operation, and regulation, of transportation, storage,

- 1 or other facilities that promote the safe, efficient, and economical handling of
2 commerce;
- 3 3. Cooperate and act in conjunction with other organizations in the development and
4 promotion of commerce, industry, manufacturing, services, natural resources,
5 agriculture, livestock, recreation, tourism, health care, and other economic activity;
6 and
- 7 4. Support the creation, expansion, modernization, retention, and relocation of new
8 and existing businesses and industries and otherwise stimulate, assist in, and
9 support growth of all kinds of economic activity that promote commerce and
10 business development, maintain economic stability and prosperity of its jurisdiction
11 and this state, and thus provide maximum opportunities for employment and
12 improvement in the standard of living of citizens of its jurisdiction and this state.

13 **SECTION 3. Creation of commerce authority.** One or more political subdivisions
14 may form a commerce authority as follows:

- 15 1. Any political subdivision may create, by resolution of its governing body, a public
16 body corporate and politic to be known as a commerce authority that may exercise
17 its functions upon the appointment and qualification of the first commissioners of
18 the commerce authority. The governing body by resolution may determine to
19 exercise any powers granted to a commerce authority until the powers have been
20 conferred upon a commerce authority. Upon the adoption of a resolution creating
21 a commerce authority, the governing body of the political subdivision shall appoint,
22 pursuant to the resolution, no fewer than five individuals as commissioners of the
23 commerce authority.
- 24 2. Two or more political subdivisions, whether in this state or in an adjoining state
25 provided that at least one political subdivision is in this state, may create by
26 execution of a joint agreement authorized by resolution of the governing body of
27 each participating subdivision, a commerce authority that may exercise its
28 functions upon the issuance by the secretary of state of a certificate of
29 incorporation. The governing bodies of the participating political subdivisions shall
30 appoint, pursuant to the joint agreement, no fewer than five persons as
31 commissioners of the commerce authority.

1 3. A commerce authority may be increased to serve one or more additional political
2 subdivisions if each additional political subdivision and each of the political
3 subdivisions then participating in the authority, adopt a resolution consenting to the
4 addition.

5 4. A commerce authority may be decreased if each of the political subdivisions in the
6 commerce authority consent to the decrease and make provisions for the retention
7 or disposition of its assets and liabilities. If the commerce authority has any bonds
8 outstanding, no decrease may be effected unless all of the holders of the bonds
9 consent to the decrease.

10 **SECTION 4. Filing of agreement and resolutions - Certificate of incorporation -**
11 **Beginning of corporate existence.** The joint agreement, if applicable, and a certified copy of
12 the resolution of each political subdivision creating or agreeing to participate in a commerce
13 authority must, be filed with the secretary of state. If the agreement and resolutions conform to
14 the requirements of section 3 of this Act, the secretary of state shall issue a certificate of
15 incorporation that states the name of the commerce authority and the date of incorporation.
16 The existence of the commerce authority as a political subdivision of this state begins upon the
17 issuance of the certificate of incorporation. The certificate of incorporation is conclusive
18 evidence of the existence of the commerce authority.

19 **SECTION 5. Commissioners - Compensation - Officers.**

20 1. The power of each commerce authority is vested in its commissioners. A
21 commerce authority may adopt and amend rules for its own operation subject to
22 the agreement of the participating political subdivisions and sections 1 through 15
23 of this Act.

24 2. A commissioner of a commerce authority may not receive compensation for
25 services but is entitled to reimbursement of necessary expenses incurred in the
26 discharge of duties at the rates provided in sections 44-08-04 and 54-06-09.

27 3. The commissioners of a commerce authority shall elect a chairman, a vice
28 chairman, and a secretary-treasurer from among the commissioners.

29 4. The commissioners of a commerce authority may appoint or elect an executive
30 director, and any other officers, agents, and employees determined to be
31 necessary and shall determine their qualifications, duties, and compensation. The

1 commissioners of a commerce authority may delegate powers and duties of the
2 commerce authority to one or more of its officers, agents, or employees.

3 **SECTION 6. Powers of political subdivisions in aid of a commerce authority.** A

4 political subdivision creating or participating in a commerce authority may:

- 5 1. Lend or donate money to the commerce authority.
- 6 2. Provide that all or a portion of the taxes or funds available to the political
7 subdivision for economic development purposes be transferred or paid directly to
8 the commerce authority.
- 9 3. Cause water, sewer, drainage, or any other facilities that the political subdivision is
10 authorized to provide to be furnished adjacent to or in connection with a project.
- 11 4. Dedicate, sell, convey, or lease any of the political subdivision's interest in any
12 property or grant easements, licenses, or any other rights or privileges therein to
13 the commerce authority.
- 14 5. Plan, dedicate, close, pave, install, grade, or regrade, to the extent allowed by
15 title 24, streets, roadways, and walks from established streets or roads to a project.
- 16 6. Aid and cooperate with the commerce authority in the planning, construction, or
17 operation of a project.
- 18 7. Enter agreements with the commerce authority regarding action to be taken by the
19 political subdivision under this section.
- 20 8. Establish the geographical boundaries of the commerce authority within or
21 coextensive with the geographical boundaries of one or more of the participating
22 political subdivisions.
- 23 9. Establish the extent to which the financial incentives provided under sections 1
24 through 15 of this Act will apply to the commerce authority.
- 25 10. Acquire property to carry out the purposes of sections 1 through 15 of this Act by
26 condemnation and the exercise of eminent domain in the manner provided in
27 chapter 32-15 and other laws applicable to political subdivisions in exercising the
28 right of eminent domain.

29 **SECTION 7. Powers of commerce authority.** A commerce authority has all the
30 powers necessary or convenient to carry out the purposes of sections 1 through 15 of this Act,
31 including the power to:

- 1 1. Execute contracts and other instruments.
- 2 2. Sue and be sued.
- 3 3. Plan, acquire, develop, construct, improve, maintain, equip, operate, and regulate
- 4 transportation, storage, or other facilities.
- 5 4. Acquire by lease, purchase, gift, or other lawful means and to hold in its name for
- 6 its use and control both real and personal property and easements and rights of
- 7 way within or without the limits of the commerce authority.
- 8 5. Convey, sell, dispose of, or lease personal and real property.
- 9 6. Employ or procure services of engineers, attorneys, technical experts, and other
- 10 persons to assist, advise, and act for the commerce authority.
- 11 7. Accept, receive, disburse, and expend federal, state, local, and other moneys,
- 12 public or private, made available by grant or loan.
- 13 8. Cooperate and contract with this state or any other governmental entity to obtain
- 14 infrastructure and services.
- 15 9. Develop, obtain, and furnish water supply, treatment, storage, and transportation
- 16 facilities and electric, natural gas, and telecommunications facilities and services.
- 17 10. Obtain local, state, and federal permits necessary to develop resources and
- 18 infrastructure authorized by sections 1 through 15 of this Act.
- 19 11. Issue warrants in anticipation of taxes levied to pay current and anticipated
- 20 expenses relative to the development and operation of its assets.
- 21 12. Create a debt service fund and accumulate in the fund a sum determined by the
- 22 commerce authority, together with interest on that sum, for the use, repair,
- 23 maintenance, and capital outlays of the commerce authority.
- 24 13. Adopt, amend, and repeal such reasonable resolutions, regulations, and orders as
- 25 necessary for the management and use of a project owned or operated by the
- 26 commerce authority.

SECTION 8. Bonds and other obligations.

- 28 1. A commerce authority may borrow money and issue bonds, including refunding
- 29 bonds, in the form and upon the terms as it may determine, payable out of any
- 30 revenues of the commerce authority.

- 1 2. Any bonds issued under this section are payable, as to principal and interest,
2 solely from revenues of the commerce authority, and must so state on the face of
3 the bond. If any issue of bonds constitutes an indebtedness within the meaning of
4 any constitutional or statutory debt limitation or restriction, each bond of the issue
5 is, subject to the requirements of subsection 8, an equally valid and binding special
6 obligation of the commerce authority or participating political subdivision, as the
7 case may be, in accordance with its terms, in an amount proportionate to the total
8 amount of the issue which is within the limitation or restriction. A commissioner of
9 a commerce authority or an individual executing the bonds is not liable personally
10 on the bonds by reason of the issuance of the bonds, except to the extent that the
11 bonds, if constituting an indebtedness, exceed any applicable limitation or
12 restriction.
- 13 3. If any commissioner or officer of a commerce authority whose signature appears
14 on any bonds or coupons ceases to be a commissioner or officer after
15 authorization but before the delivery of the bonds, the signature, is valid and
16 sufficient for all purposes, the same as if the commissioner or officer had remained
17 in office until delivery.
- 18 4. Any bond reciting in substance that the bond has been issued by the commerce
19 authority under this section and for a purpose authorized by sections 1 through 15
20 of this Act is conclusively deemed, in any proceeding involving the validity or
21 enforceability of the bond or the security of the bond to have been issued under
22 this section and for that purpose.
- 23 5. Bonds issued by a commerce authority under this section are declared to be
24 issued for an essential public government purpose, and together with interest and
25 income on the bonds, are exempt from all individual and corporate taxes imposed
26 under sections 57-35.3-03, 57-38-29, 57-38-30, and 57-38-30.3.
- 27 6. For the security of the bonds, the commerce authority by resolution may make any
28 covenant, agreement, or indenture authorized to be made as security for revenue
29 bonds issued under chapter 40-35. The sums required to pay principal and
30 interest and to create and maintain a reserve for the bonds may be payable from

1 any revenues referred to in sections 1 through 15 of this Act, before the payment
2 of current costs of operation and maintenance of the facilities.

3 7. When bonds are issued under this section and made payable from revenues of a
4 commerce authority involving political subdivisions with a population over ten
5 thousand, subject to the requirements of subsection 8, the governing bodies of the
6 political subdivisions, if at any time all revenues, including taxes, appropriated and
7 to that time collected for the bonds are insufficient to pay the principal or interest
8 then due, shall levy a general tax upon all of the taxable property in the political
9 subdivisions for the payment of the deficiency. If a deficiency is likely to occur
10 within one year for the payment of principal and interest due on the bonds, the
11 governing bodies, in their declaration, may levy a general tax upon all the taxable
12 property in the political subdivisions for the payment of the deficiency. The taxes
13 are not subject to any limitation of rate or amount applicable to other political
14 subdivisions taxes.

15 8. For bonds issued under this section to be an obligation of a political subdivision or
16 commerce authority, the issuance of the bonds must be approved by a majority
17 vote of the governing body of each political subdivision involved or, within thirty
18 days after the commerce authority decides to issue the bonds, the political
19 subdivision or commerce authority must put the question, specifying the amount of
20 the bond at issue, to the electors at any primary, general, or special election. If a
21 majority of the qualified electors voting on the issue vote in favor of issuing the
22 bonds, the commerce authority or political subdivision, to the amount authorized in
23 the election, may pledge the general obligation of the commerce authority or
24 political subdivision to guarantee the repayment of the principal and interest on the
25 bonds.

26 **SECTION 9. Operation and use privileges.**

27 1. In connection with the operation of a project owned or controlled by a commerce
28 authority, the commerce authority may enter a contract, lease, and other
29 arrangement with any person:

30 a. Granting the privilege of using or improving the project or any portion or
31 space in the project for commercial purposes.

- 1 b. Conferring the privilege of supplying goods or services at the project.
2 c. Making available services to be furnished by the commerce authority or its
3 agents at the project.
4 2. The commerce authority may establish the terms and conditions and fix the
5 charges, rentals, or fees for the privileges or services, which must be reasonable
6 and uniform for the same class or privilege or service.

7 **SECTION 10. Sales and use tax incentives.** The elected governing body of a
8 participating political subdivision may offer sales and use tax exemptions from sales and use
9 taxes the participating political subdivision has imposed for tangible personal property
10 purchased and made a part of the commerce authority's infrastructure if the tangible personal
11 property is placed within the geographic boundaries of the political subdivision and is necessary
12 and directly services infrastructure needs of the commerce authority.

13 **SECTION 11. Commerce authority property and income exempt from taxation.**
14 Any property in this state acquired by a commerce authority for the purposes of the commerce
15 authority, and any income derived by the commerce authority from the ownership, operation, or
16 control of the property, is exempt from taxation to the same extent as other property used for
17 public purposes.

18 **SECTION 12. Out-of-state jurisdiction authorized - Reciprocity with adjoining**
19 **governmental agencies.** A political subdivision creating a commerce authority may exercise
20 those powers within any political subdivision or jurisdiction adjoining this state, subject to the
21 laws of that political subdivision.

22 **SECTION 13. Tax levy by political subdivision.** The commerce authority may certify
23 annually to the governing bodies the amount of tax requested to be levied by each political
24 subdivision participating in the commerce authority. The governing body of each political
25 subdivision shall consider the levy request of the commerce authority and determine the
26 amount to be levied. The levy may not exceed the maximum levy permitted for commerce
27 authority purposes. Each political subdivision shall collect the taxes levied on behalf of a
28 commerce authority in the same manner as other taxes are levied and collected. The proceeds
29 of the taxes must be deposited in a special account or accounts in which other revenues of the
30 commerce authority are deposited and may be expended by the commerce authority as
31 provided in sections 1 through 15 of this Act. Before issuance of bonds under section 9 of this

1 Act, the commerce authority by resolution may covenant and agree that the total amount of the
2 taxes authorized by law, or the portion of the taxes specified by the resolution, will be certified
3 and deposited annually until the bonds and interest are fully paid.

4 **SECTION 14. Maximum tax levy - county levy not applied in political subdivision**
5 **making levy.** In a political subdivision that is a party to an agreement creating a commerce
6 authority, a levy, not exceeding four mills, may be made for the purposes of the commerce
7 authority. A county levy under section 57-15-06.7 does not apply to any other political
8 subdivision within that county making a levy for the purposes of the commerce authority.

9 **SECTION 15. Favorable rates.** A commerce authority may charge favorable rates for
10 services provided by the commerce authority to persons taxed for the commerce authority.

11 **SECTION 16.** A new subsection to section 57-15-06.7 of the North Dakota Century
12 Code is created and enacted as follows:

13 Counties supporting commerce authorities may levy a tax not exceeding four mills
14 in accordance with section 14 of this Act.

15 **SECTION 17.** A new subsection to section 57-15-10 of the North Dakota Century Code
16 is created and enacted as follows:

17 Taxes levied for commerce authority purposes may be levied in an amount not
18 exceeding four mills.

19 **SECTION 18.** A new subsection to section 57-15-20.2 of the North Dakota Century
20 Code is created and enacted as follows:

21 A township levying a tax for commerce authority purposes may levy a tax not
22 exceeding four mills.

23 **SECTION 19.** A new section to chapter 57-15 of the North Dakota Century Code is
24 created and enacted as follows:

25 **Township levy for commerce authority purposes.** The electors of each township
26 may vote at the annual meeting to levy a tax for the purpose of supporting a commerce
27 authority in an amount not exceeding the limitation in section 18 of this Act. The tax levy
28 provided in this section does not apply to any city, park district, or other taxing district that
29 already has a commerce authority levy.

30 **SECTION 20.** A new subdivision to subsection 2 of section 57-38-30.3 of the North
31 Dakota Century Code is created and enacted as follows:

1 Reduced by interest and income from bonds issued under this Act.

2 **SECTION 21.** A new subsection to section 57-39.2-04 of the North Dakota Century
3 Code is created and enacted as follows:

4 Gross receipts from all sales of tangible personal property purchased by a
5 commerce authority and made a part of the infrastructure of a commerce authority,
6 otherwise taxable under this chapter, if the personal property is placed within the
7 geographic boundaries of the political subdivisions that created the commerce
8 authority and is necessary and directly services infrastructure needs of the
9 commerce authority. The commissioner shall issue a certificate of exemption to a
10 political subdivision exempted by this subsection, and the political subdivision shall
11 present the certificate of exemption to each retailer whenever the exemption is
12 claimed.

13 **SECTION 22. EFFECTIVE DATE.** This Act is effective for taxable years beginning
14 after December 31, 2002.

15 **SECTION 23. EMERGENCY.** This Act is declared to be an emergency measure.