

SENATE BILL NO. 2298

Introduced by

Senators G. Lee, Anderson, Wanzek

Representatives Berg, S. Kelsh, Pollert

1 A BILL for an Act to create and enact eleven new sections to chapter 61-24 of the North Dakota
2 Century Code, relating to authorizing revenue bonds for the Red River valley water supply
3 project; and to amend and reenact sections 61-24-01, 61-24-08, 61-24-19, 61-39-01, and
4 61-39-03 of the North Dakota Century Code, relating to the Garrison Diversion Conservancy
5 District.

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

7 **SECTION 1. AMENDMENT.** Section 61-24-01 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **61-24-01. Development and utilization of land and water resources declared a**
10 **public purpose - Declaration of intention - Interpretation.** It is hereby declared that more
11 effective development and utilization of the land and water resources of this state, protection
12 and preservation of the benefits therefrom, opportunity for greater economic security, protection
13 of health, property and enterprise, and the promotion of the prosperity and general welfare of all
14 of the people of North Dakota involve, necessitate, and require the exercise of the sovereign
15 powers of the state and concern a public purpose, the accomplishment of which, among other
16 things, demands, and it is hereby declared necessary, that the Garrison diversion unit of the
17 Missouri River basin project as authorized by Act of Congress approved December 22, 1944
18 [58 Stat. 887], and acts amendatory thereof and supplementary thereto, be established and
19 constructed:

- 20 1. To provide for the future economic welfare and prosperity of the people of this
21 state, and particularly of the people residing in the area embraced within the
22 boundaries of the conservancy district created by this chapter.
- 23 2. To provide for the irrigation of lands within the sections of such district periodically
24 afflicted with drought, and to stabilize the production of crops thereon.

- 1 3. To accept funds, property, and services or other assistance, financial or otherwise,
2 from federal, state, and other public or private sources for the purpose of aiding
3 and promoting the construction, maintenance, and operation of the Garrison
4 diversion unit, or any part thereof.
- 5 4. To cooperate and contract with the state, its agencies, or its political subdivisions,
6 or any agency of the United States, in research and investigation or other activities
7 promoting the establishment, construction, development, or operation of the
8 Garrison diversion unit, or any part thereof.
- 9 5. To furnish assurances of cooperation and as principal and guarantor or either to
10 enter into a contract, or contracts, with the United States of America, or any
11 department or agency thereof, and with public corporations of North Dakota for the
12 performance of obligations entered into with the United States for the construction,
13 operation, or maintenance of works of the Garrison diversion unit of the Missouri
14 River basin project as defined by Act of Congress, approved December 22, 1944
15 [58 Stat. 887], and acts amendatory thereof or supplementary thereto.
- 16 6. To construct separately or in cooperation with agencies of the United States, or the
17 state of North Dakota, its agencies or political subdivisions, and to equip, maintain,
18 and operate an office and principal place of business for the district, or other
19 buildings or facilities to carry out activities authorized by this chapter.
- 20 7. To appoint and fix the compensation of such employees as the board shall deem
21 necessary to conduct the business and affairs of the district.
- 22 8. To appoint from their number an executive committee and vest the same with such
23 powers and duties as the board may from time to time delegate thereto, in order to
24 facilitate the duties and work of the board in connection with the business affairs
25 involved in the development, construction, operation, and maintenance of the
26 Garrison diversion unit, or any part thereof.
- 27 9. In 1961 and each year thereafter to levy a tax of not to exceed one mill annually on
28 each dollar of taxable valuation in the district for the payment of the expenses of
29 the district, including, but not limited to, per diem, mileage and other expenses of
30 directors, technical, administrative, clerical, operating and other expenses of the
31 district office, and for the cumulation of a continuing fund through such levy for the

1 performance of obligations entered into with the United States of America in
2 connection with the construction, operation, and maintenance of works of the said
3 Garrison diversion unit of the Missouri River basin project. All moneys collected
4 pursuant to such levy shall be deposited in the Bank of North Dakota to the credit
5 of the district and shall be disbursed only as herein provided. The board may
6 invest any funds on hand, not needed for immediate disbursement or which are
7 held in reserve for future payments, in bonds of the United States, bonds and
8 mortgages or other securities the payment of which is guaranteed by the United
9 States or an instrumentality or agency thereof, or bonds or certificates of
10 indebtedness of the state of North Dakota or any of its political subdivisions. The
11 amount which may be levied in any one year for operating the district prior to
12 authorization by Congress of the Garrison diversion project shall not exceed ten
13 percent of the maximum permissible.

14 10. To enter into a contract or contracts for a supply of water from the United States
15 and to sell, lease, and otherwise contract to furnish any such water for beneficial
16 use to irrigation districts, persons, other public and private corporations, or limited
17 liability companies within or outside the district.

18 11. To operate and maintain or to contract for the operation and maintenance of water
19 supply and irrigation works serving lands and uses within or outside the district,
20 and in connection therewith, to maintain a reserve fund to meet major unforeseen
21 costs of operation and maintenance.

22 12. To accept, on behalf of the district, appointment of the district as fiscal agent of the
23 United States and authorization to make collections of money for and on behalf of
24 the United States in connection with the Garrison diversion unit.

25 13. To use navigable lakes and streams within the conservancy district for holding,
26 impounding, and conveying water of the Garrison diversion unit.

27 14. To provide administrative aid and assistance in the relocation of buildings and the
28 replacement of land to persons affected by the Garrison diversion development in
29 an effort to make certain that such persons are treated fairly and that they do not
30 suffer financial hardship due to the development of the Garrison diversion unit.

- 1 15. To sell or exchange any and all real property purchased or acquired by the district.
2 All moneys received pursuant to any such sale or exchange shall be deposited in
3 the Bank of North Dakota to the credit of the district and may be disbursed only for
4 the payment of expenses of the district as specified in subsection 9.
- 5 16. To borrow money as is provided in this chapter.
- 6 17. To issue and sell revenue bonds to finance projects in an amount or amounts
7 determined by the board, including an amount for costs of issuance and financing,
8 and any necessary reserve funds, for the purpose of financing the cost of
9 constructing a project, purchasing bulk water, or otherwise making capital
10 payments required under a water purchase contract.
- 11 18. To utilize some or all proceeds of its revenue bonds to acquire, construct,
12 reconstruct, or improve one or more projects, or any feasibility study or preliminary
13 economic, engineering, or legal work relating to any project.
- 14 19. To refund and refinance its bonds from time to time as often as it is advantageous
15 and in the interest of the district.
- 16 20. To pledge any and all income, profits, and revenues received by the district in
17 connection with the operation, lease, sale, or other disposition of all or any part of a
18 water project to secure the payment of bonds issued and sold to finance the project
19 or otherwise. Tangible real or personal nonrevenue property of the district may not
20 be liable to be forfeited or taken in payment of any bonds issued under this chapter
21 and debt on the general credit of the district may not be incurred in any manner for
22 payment of bonds under this chapter.
- 23 21. To prescribe, revise, and collect rates, fees, tolls, or charges for the services,
24 facilities, or commodities furnished by the district and in anticipation of the
25 collection of the revenues of the district, issue revenue bonds to finance all or part
26 of the costs of the acquisition, construction, reconstruction, improvement,
27 betterment, extension, operation, or maintenance of a project.
- 28 22. To pledge district revenues, grants, and any other project-related payments to the
29 punctual payment of principal and interest on bonds or water purchase contract
30 obligations. A pledge under this subsection applies to the revenues of
31 improvements, betterments, or extensions of the district which may be constructed

1 or acquired after the issuance of bonds, the revenues of existing systems, plants,
2 works, instrumentalities, and properties of any part of the district improved,
3 bettered, or extended, and the revenues received from payments made under
4 water sale contracts between the district and persons that contract to purchase
5 water from the district.

6 23. To make all contracts, execute all instruments, and do all things necessary or
7 convenient in the exercise of its powers or in the performance of its covenants or
8 duties or in order to secure the payment of its bonds, but an encumbrance,
9 mortgage, or other pledge of tangible real or personal nonrevenue property of the
10 district may not be created by an such contract or instrument.

11 24. To accept from any authorized federal agency loans or grants for the planning,
12 construction, acquisition, lease, or other provision of a project, and to enter
13 agreements with the agency respecting the loan or grants.

14 25. To contract debts and borrow money and provide for payment of debts and
15 expenses of the district.

16 26. To distribute water to western Minnesota cities that enter water service contracts
17 for water.

18 27. To enter water service contracts with municipalities, water districts, or other
19 political subdivisions in this state and public utilities in Minnesota as part of the Red
20 River valley water supply project, regardless of whether the acquisition,
21 construction, or reconstruction of any Red River valley water supply project is
22 actually completed and whether water actually is delivered under the contracts.
23 These contracts with cities and water districts are authorized to be executed
24 without limitation on term of years notwithstanding any limitation to the contrary.

25 **SECTION 3. AMENDMENT.** Section 61-24-19 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **61-24-19. Easement granted for ditches, pipelines, canals, tramways, and**
28 **transmission lines on any public lands.** In connection with the construction and
29 development of the Garrison diversion unit of the Missouri River basin project, there is granted
30 over all the lands belonging to the state, including lands owned or acquired for highway
31 right-of-way purposes, a right of way for ditches, pipelines, or canals and for tunnels, tramways,

1 and telephone and electric transmission lines constructed as part of the Garrison diversion unit;
2 provided, however, that the director of the department of transportation, the board of county
3 commissioners, or the board of township supervisors must approve the plans of the bureau of
4 reclamation with respect to the use of any and all right of way of roads under their respective
5 control prior to such grant becoming effective.

6 **SECTION 4.** Eleven new sections to chapter 61-24 of the North Dakota Century Code
7 are created and enacted as follows:

8 **Resolution authorizing the issuance of revenue bonds.**

- 9 1. The issuance of revenue bonds or refunding bonds must be authorized by a
10 resolution of the board adopted after appropriate notice by the affirmative vote of a
11 majority of the board. Unless otherwise provided in the resolution, the resolution
12 under this section takes effect immediately and need not be laid over, published, or
13 posted.
- 14 2. Each resolution providing for the issuance of bonds provided for in this chapter
15 must contain the purposes for which the bonds are to be issued, the provisions for
16 payment of the bonds, and the revenues or other funds pledged to secure the
17 payment of the bonds.

18 **Provisions governing bonds.** The resolution authorizing the issuance of revenue
19 bonds or refunding bonds under this chapter or resolutions adopted after adoption of the
20 original resolution must prescribe:

- 21 1. The rates of interest, or if an interest rate is variable, the method for calculating the
22 interest rate.
- 23 2. Whether the bonds will be in one or more series.
- 24 3. The dates the bonds will bear.
- 25 4. The times the bonds will mature.
- 26 5. The medium in which the bonds will be payable.
- 27 6. The places where the bonds will be payable.
- 28 7. The terms of redemption, if any, to which the bonds will be subject.
- 29 8. The manner in which the bonds will be executed.
- 30 9. The terms, covenants, and conditions that the bonds will contain.
- 31 10. The form in which the bonds will be issued, either coupon or registered.

- 1 c. The creation, maintenance, regulation, use, and disposition of reserves or
2 sinking funds.
- 3 d. The purpose to which the proceeds of the sale of bonds may be applied and
4 the use and disposition of the proceeds.
- 5 e. The events of default and the rights and liabilities arising upon default and the
6 terms and conditions upon which the holders of bonds issued under this
7 chapter may bring civil action on the bonds.
- 8 f. The creation, priority, and enforcement of liens against the district's income,
9 profits, or revenues.
- 10 g. The issuance of other or additional bonds or instruments payable from, or
11 constituting a charge against, the district's income, profits, or revenues.
- 12 h. The creation and use of synthetic interest rate contracts, interest rate caps,
13 floors, and collars, and other techniques to lower the district's borrowing rate
14 or reduce its exposure to interest rate risk, or both.
- 15 i. The keeping, inspection, and audit of books of account.
- 16 j. The terms and conditions upon which any or all of the bonds become or may
17 be declared due before maturity and the terms and conditions upon which the
18 declaration and its consequences may be waived.
- 19 k. The rights, liabilities, powers, and duties arising upon the breach by the
20 district of any covenants, conditions, or obligations.
- 21 l. The vesting in a trustee of the right to enforce any covenants made to secure,
22 to pay, or in relation to the bonds, the powers and duties of the trustee, and
23 the limitations of liabilities of the trustee.
- 24 m. The terms and conditions upon which the holders of the bonds, or the holders
25 of any proportion or percentage of them, may enforce any covenants made or
26 any duties imposed under this chapter.
- 27 n. A procedure by which the terms of any resolution authorizing bonds or of any
28 other contract with bondholders, including an indenture of trust or similar
29 instrument, may be amended or abrogated, and the amount of bonds that
30 holders of which must consent to the resolution or contract, and the manner in
31 which the consent may be given.

- 1 o. The subordination of the security of any bonds issued under this chapter and
2 the payment of principal and interest on those bonds, to the extent determined
3 feasible and desirable by the governing body, to other bonds or obligations of
4 the district issued to finance or refinance a project or that may be outstanding
5 when the bonds thus subordinated are issued and delivered.
- 6 p. Provisions with respect to the district entering an agreement with a private
7 bond insurer, bank, or other liquidity or credit enhancer for bond insurance, a
8 guarantee, a letter or credit, or any other credit or liquidity enhancement that
9 the district may find to be advantageous or necessary to insure, guaranty, or
10 enhance the payment of the principal of or interest on or liquidity for some or
11 all of the bonds. The cost of the enhancement or liquidity may be paid from
12 bond proceeds or from other funds of the district available for this purpose.
- 13 q. The insurance to be carried upon the project and the use and disposition of
14 insurance moneys.
- 15 2. This section does not authorize the district to do anything in any manner or for any
16 purpose which would result in the creation or incurring of a debt or indebtedness or
17 the issuance of any instrument which would constitute a debt or indebtedness
18 within the meaning of any provision, limitation, or restriction of the Constitution of
19 North Dakota relating to the creation or incurring of a debt or indebtedness or the
20 issuance of an instrument constituting a debt or indebtedness.

21 **Liability of district for notes and bonds - Taxing power prohibited.** Bond
22 anticipation notes, revenue bonds, and refunding bonds issued under this chapter may not be
23 payable from or charged upon any funds other than the revenue pledged to the bond's payment
24 and the district's notes and bonds may not be subject to any pecuniary liability. The holder of
25 any of these notes or bonds may not enforce payment of the notes or bonds against any
26 tangible real or personal nonrevenue property of the district. Notes and bonds issued under
27 this chapter do not constitute a charge, lien, or encumbrance upon any tangible real or personal
28 nonrevenue property of the district, other than the revenues pledged to their payments. Each
29 note and each bond issued under this chapter must recite in substance that the note or bond
30 and interest on the note or bond is payable solely from the revenue pledged to the payment and

1 that the note or bond does not constitute a debt of the state within the meaning of any
2 constitutional or statutory limitation.

3 **Duties of district and officers relative to the issuance of bonds.**

4 1. To adequately secure the payment of bonds and interest on the bonds, the district
5 and its officers, agents, and employees shall:

6 a. Pay or cause to be paid punctually the principal and interest of every bond on
7 the dates, at the places, in the manner, and out of the funds provided in the
8 refunding bond and in accordance with the resolution authorizing its issuance.

9 b. Make certain any project financed by the district is operated in an efficient and
10 economical manner, enforce all water purchase and water sales contracts,
11 and establish, levy, maintain, and collect related necessary or proper fees,
12 tolls, rentals, rates, and other charges. The fees, tolls, rentals, rates, and
13 other charges must be sufficient, after making due and reasonable allowances
14 for contingencies and for a margin of error in the estimates, at least to:

15 (1) Pay all current expenses of operation and maintenance of any project;

16 (2) Make all payments required under any water purchase contract the
17 district may execute;

18 (3) Pay the interest and principal on the district's notes and bonds as they
19 become due;

20 (4) Comply with the terms of the resolution authorizing the issuance of the
21 bonds or any other contract or agreement with the holders of the
22 funding bonds; and

23 (5) Meet any other obligations of the district that are charges, liens, or
24 encumbrances upon the revenues of the district.

25 c. Operate, maintain, preserve, and keep every part of any tangible project
26 financed and owned or operated by the district in good repair, working order,
27 and condition.

28 d. Enforce the provisions of all water purchase and sale contracts that produce
29 revenues pledged to payment of bonds.

- 1 e. Preserve and protect the security of the bonds and the rights of the
2 bondholders and warrant and defend such rights against all claims and
3 demands.
- 4 f. Pay and discharge all lawful claims for labor, materials, and supplies which, if
5 unpaid, might become by law a lien or charge upon the revenues, or any part
6 of the revenues, superior to the lien of the bonds or which might impair the
7 security of the bonds.
- 8 g. Hold in trust the revenues pledged to the payment of the bonds for the benefit
9 of the holders of the bonds and apply the revenues only as provided by the
10 resolution authorizing the issuance of the bonds or, if the resolution is
11 modified, as provided in the modified resolution.
- 12 h. Keep proper separate books of record and accounts of the project in which
13 complete and correct entries must be made of all transactions relating to any
14 part of the project. All books and papers of the district are subject to
15 inspection by the holders of ten percent or more of the outstanding bonds or
16 of their representatives authorized in writing.
- 17 2. The duties contained in this section do not require any expenditure by the district of
18 any funds other than revenue received from a project or water sale contract. The
19 performance of the duties in this section is of the essence of the contract of the
20 district with the bondholders.

21 **Remedies of bondholders in general.**

- 22 1. Subject to any contractual limitations binding upon the holders of any issue of
23 bonds, or a trustee for the holders, including the restriction of the exercise of any
24 remedy to a specified proportion or percentage of the holders, any holder of bonds
25 or trustee, for the equal benefit and protection of all bondholders similarly situated,
26 may:
- 27 a. By mandamus or other civil action, enforce the holder's rights against the
28 district and its board and any of its officers, agents, or employees and may
29 require the district or the board or any officers, agents, or employees of the
30 district or board to perform their duties and obligations under this chapter and
31 their covenants and agreements with bondholders.

1 including domestic, rural water, municipal, livestock, light industrial, and other uses, with
2 primary emphasis on domestic, rural water, and municipal uses; and provide for the future
3 economic welfare and prosperity of the people of this state, and particularly the people of
4 eastern North Dakota, by the bulk purchase of water from the Garrison Diversion Conservancy
5 District delivered by the Red River valley water supply project for beneficial and public uses.
6 The Garrison Diversion Conservancy District may acquire, construct, improve, and own the Red
7 River valley water supply project and may enter water supply contracts with member cities and
8 water districts for the sale of water for consumption within or outside the district or the state.
9 Alternatively, the Lake Agassiz water authority may enter one or more contracts to provide for
10 the authority to acquire bulk water from the Garrison Diversion Conservancy District and may
11 enter water supply contracts with member cities and water districts for the resale of this water
12 for consumption within or outside the state.

13 The legislative assembly acknowledges that North Dakota and Minnesota communities
14 jointly use the Red River as a water resource. It is in the best interest of eastern North Dakota
15 also to study and possibly provide for the water needs of those Minnesota communities through
16 a Red River valley water supply project, particularly if that project maintains the use of the Red
17 River for North Dakota communities.

18 In furtherance of this public purpose, the state water commission may provide for the
19 issuance of bonds in accordance with chapter 61-02 to finance the costs of any project to
20 deliver water to eastern North Dakota. This chapter does not abrogate or limit the rights,
21 powers, duties, and functions of the state water commission or state engineer, but is
22 supplementary to those rights, powers, duties, and functions.

23 **SECTION 6. AMENDMENT.** Section 61-39-03 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **61-39-03. Lake Agassiz water authority - Board of directors.** The authority must be
26 governed by a board of directors selected as follows:

- 27 1. One member from a city with a population greater than forty thousand located east
28 of state highway 1 and north of state highway 200.
- 29 2. One member from a city with a population greater than forty thousand located east
30 of state highway 1 and south of state highway 200.

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- 1 3. One member from a city with a population of five thousand but not more than forty
- 2 thousand located east of state highway 1.
- 3 4. One member from a city with a population of less than five thousand located east
- 4 of state highway 1.
- 5 5. Two members from water districts located east of state highway 1 and north of
- 6 state highway 200.
- 7 6. Two members from water districts located east of state highway 1 and south of
- 8 state highway 200.
- 9 7. One member from water districts located east of state highway 1.
- 10 8. One member from a Minnesota city with a population of more than thirty thousand
- 11 and which is located within five miles [8.05 kilometers] of this state.
- 12 North Dakota city members must be selected for two-year terms by election by cities located
- 13 east of state highway 1 during the annual meeting of the North Dakota league of cities in every
- 14 odd-numbered year beginning in 2003. Water district members must be selected for two-year
- 15 terms by election by water districts located east of state highway 1 during the annual meeting of
- 16 the North Dakota rural water systems association in every even-numbered year beginning in
- 17 2004. The initial selection of members must be at a meeting held by the board of directors of
- 18 the North Dakota league of cities and by the board of directors of the North Dakota rural water
- 19 systems association. The initial city members shall serve until the annual meeting of the North
- 20 Dakota league of cities in 2003 and the initial water district members shall serve until the annual
- 21 meeting of the North Dakota rural water systems association in 2004. The initial Minnesota city
- 22 is Moorhead, as it is an associate member of the authority. Moorhead will serve in this capacity
- 23 until the league of Minnesota cities annual conference in 2006. During even-numbered years
- 24 thereafter, Minnesota cities within five miles [8.05 kilometers] of the Red River or that use the
- 25 Red River as a primary water supply may elect their representative. A member may designate
- 26 an alternate to attend meetings and to act on the member's behalf. The board of directors may
- 27 designate associate members who are nonvoting members of the board. Notwithstanding the
- 28 provisions of this section, within two years of the first delivery of water by the Red River valley
- 29 water supply project, board members must be from a city or water district that has entered a
- 30 water service contract with the Lake Agassiz water authority or the Garrison Diversion
- 31 Conservancy District.