

Sixty-third  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2233**

Introduced by

Senators Grindberg, Wardner, Heckaman

Representatives Carlson, Hofstad, Onstad

1 A BILL for an Act to provide a declaration of water policy and goals and objectives for water  
2 project development, the Mouse River enhanced flood control project, the lower Heart River  
3 Morton County enhanced flood control project, the ~~Southwest~~southwest pipeline project, the  
4 Garrison diversion unit, and the Fargo-Moorhead flood control project; to create and enact a  
5 ~~new section to chapter 6-09.4~~new subdivision to subsection 2 of section 28-32-01, a new  
6 subdivision to subsection 1 of section 54-10-14, a new section to chapter 61-02, and four new  
7 sections to chapter 61-40 of the North Dakota Century Code, relating to exempting certain  
8 activities of the industrial commission from the Administrative Agencies Practice Act, western  
9 area water supply authority industrial water sales audits, an infrastructure revolving loan fund,  
10 and franchise protection rights of the western area water supply authority; to amend and  
11 reenact sections ~~57-51.1-07~~, 61-24.7-01, 61-24.7-05, ~~and 61-40-06~~61-40-01, 61-40-02,  
12 61-40-03, 61-40-04, 61-40-05, and 61-40-09 of the North Dakota Century Code, ~~allocation of~~  
13 ~~moneys in the oil extraction tax development fund~~,relating to the Red River valley water supply  
14 project, the location of industrial water depots, and ~~oversight of~~ the western area water supply  
15 project; to repeal sections 61-24.7-02, 61-24.7-03, ~~and 61-24.7-04~~, ~~and 61-40-06~~ of the North  
16 Dakota Century Code, relating to funding of the Red River valley water supply project and  
17 oversight of western area water supply authority projects; ~~and~~ to provide a continuing  
18 appropriation; to provide a statement of legislative intent; and to provide for reports to the  
19 legislative management.

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

21 ~~—SECTION 1. A new section to chapter 6-09.4 of the North Dakota Century Code is created~~  
22 ~~and enacted as follows:~~

1 ~~— **Infrastructure revolving loan fund – Continuing appropriation – Rules:**~~

2 ~~— 1. The purpose of the infrastructure revolving loan fund is to provide loans for public-~~  
3 ~~water-related infrastructure projects, including those for water supply, flood protection,~~  
4 ~~or other water project development.~~

5 ~~— 2. An infrastructure revolving loan fund is established to make loans for the purposes-~~  
6 ~~described in subsection 1. Moneys in the fund are appropriated on a continuing basis-~~  
7 ~~for making loans in accordance with this section. Accounts may be established in the-~~  
8 ~~fund as necessary for its management and administration.~~

9 ~~— 3. The public finance authority shall manage and administer the infrastructure revolving-~~  
10 ~~loan fund and individual accounts in the fund. For those purposes, the authority may-~~  
11 ~~exercise all powers provided in this chapter.~~

12 ~~— 4. An applicant for a loan must submit an application to the Bank of North Dakota on-~~  
13 ~~forms prescribed by the Bank. The applicant must provide the following information:~~

14 ~~— a. The estimated cost of the project and the amount of the loan sought;~~

15 ~~— b. Other possible sources of funding in addition to loans sought from the-~~  
16 ~~infrastructure revolving loan fund;~~

17 ~~— c. The proposed methods and sources of funds to be used for repayment of loans-~~  
18 ~~received; and~~

19 ~~— d. Information showing the financial status and ability of the borrower to repay-~~  
20 ~~loans.~~

21 ~~Each project must be certified by the industrial commission under subsection 5 before-~~  
22 ~~its consideration by the public finance authority.~~

23 ~~— 5. The industrial commission shall consider the following information when evaluating-~~  
24 ~~projects to certify to the public finance authority:~~

25 ~~— a. A description of the nature and purpose of the proposed infrastructure project-~~  
26 ~~including an explanation of the need for the project and the reasons why it is in-~~  
27 ~~the public interest;~~

28 ~~— b. The estimated cost of the project and the amount of loan sought;~~

29 ~~— c. Proposed sources of funding, in addition to loans sought from the infrastructure-~~  
30 ~~revolving loan fund;~~

31 ~~— d. The need for the project as part of the overall infrastructure system;~~

- 1 ~~\_\_\_\_\_ e. The overall economic impact of the project; and~~  
2 ~~\_\_\_\_\_ f. The extent to which completion of the project will provide a benefit to the state or~~  
3 ~~\_\_\_\_\_ to political subdivisions within the state.~~  
4 ~~\_\_\_\_\_ 6. A loan made under this section must:~~  
5 ~~\_\_\_\_\_ a. Bear interest at or below market rates or as otherwise specified in federal law;~~  
6 ~~\_\_\_\_\_ b. Have a repayment term not longer than fifty years;~~  
7 ~~\_\_\_\_\_ c. Be fully amortized no later than fifty years after project completion;~~  
8 ~~\_\_\_\_\_ d. Be subject to repayment of principal and interest beginning not later than five~~  
9 ~~\_\_\_\_\_ years after the facility financed with a loan has been completed; and~~  
10 ~~\_\_\_\_\_ e. Be disbursed for specific project elements only after all applicable environmental~~  
11 ~~\_\_\_\_\_ requirements have been met.~~  
12 ~~\_\_\_\_\_ 7. The director of the public finance authority, with the approval of the industrial~~  
13 ~~\_\_\_\_\_ commission, shall adopt rules to implement a program to identify and assist with~~  
14 ~~\_\_\_\_\_ development of projects eligible for loans under this section.~~  
15 ~~\_\_\_\_\_ 8. The director of the public finance authority may request the assistance of other~~  
16 ~~\_\_\_\_\_ agencies of the state as may be necessary to the development of projects eligible for~~  
17 ~~\_\_\_\_\_ loans under this section and as may be necessary for the administration of such~~  
18 ~~\_\_\_\_\_ projects that have been certified by the industrial commission and such agencies of~~  
19 ~~\_\_\_\_\_ the state are authorized and directed to provide such assistance.~~  
20 ~~\_\_\_\_\_ 9. A loan may be made to a statutory or home rule charter city to finance projects for the~~  
21 ~~\_\_\_\_\_ purposes described in this section without regard to whether the city is eligible for~~  
22 ~~\_\_\_\_\_ financing under a federal act or program or state law. The loan must be repayable~~  
23 ~~\_\_\_\_\_ under the terms and conditions provided in this section and established by the public~~  
24 ~~\_\_\_\_\_ finance authority and agreed to by the city. The loan must be repaid by the city from~~  
25 ~~\_\_\_\_\_ the proceeds of special assessments, tax increments, or other local taxes, such as~~  
26 ~~\_\_\_\_\_ sales taxes, lodging taxes, liquor taxes, admissions and recreation taxes, and food~~  
27 ~~\_\_\_\_\_ and beverage taxes, authorized to be used for purposes of the project.~~

28 ~~\_\_\_\_\_ **SECTION 2. AMENDMENT.** Section 57-51.1-07 of the North Dakota Century Code is~~  
29 ~~amended and reenacted as follows:~~

1 ~~— **57-51.1-07. Allocation of moneys in oil extraction tax development fund.**~~

2 ~~— Moneys deposited in the oil extraction tax development fund must be transferred monthly by~~  
3 ~~the state treasurer as follows:~~

4 ~~— 1. TwentyEighteen percent must be allocated and credited to the sinking fund~~  
5 ~~established for payment of the state of North Dakota water development bonds,~~  
6 ~~southwest pipeline series, and any moneys in excess of the sum necessary to~~  
7 ~~maintain the accounts within the sinking fund and for the payment of principal and~~  
8 ~~interest on the bonds must be credited to a special trust fund, to be known as the~~  
9 ~~resources trust fund. The resources trust fund must be established in the state~~  
10 ~~treasury and the funds therein must be deposited and invested as are other state~~  
11 ~~funds to earn the maximum amount permitted by law which income must be deposited~~  
12 ~~in the resources trust fund. The principal and income of the resources trust fund may~~  
13 ~~be expended only pursuant to legislative appropriation and are available to:~~

14 ~~— a. The state water commission for planning for and construction of water-related~~  
15 ~~projects, including rural water systems. These water-related projects must be~~  
16 ~~those which the state water commission has the authority to undertake and~~  
17 ~~construct pursuant to chapter 61-02; and~~

18 ~~— b. The industrial commission for the funding of programs for development of energy~~  
19 ~~conservation and renewable energy sources; for studies for development of~~  
20 ~~cogeneration systems that increase the capacity of a system to produce more~~  
21 ~~than one kind of energy from the same fuel; for studies for development of waste~~  
22 ~~products utilization; and for the making of grants and loans in connection~~  
23 ~~therewith.~~

24 ~~— 2. Two percent must be allocated to the infrastructure revolving loan fund.~~

25 ~~— 3. Twenty percent must be allocated to the common schools trust fund and foundation~~  
26 ~~aid stabilization fund as provided in section 24 of article X of the Constitution of North~~  
27 ~~Dakota.~~

28 ~~— 3.4. Thirty percent must be allocated to the legacy fund as provided in section 26 of~~  
29 ~~article X of the Constitution of North Dakota.~~

30 ~~— 4.5. Thirty percent must be allocated and credited to the state's general fund.~~

1     **SECTION 1.** A new subdivision to subsection 2 of section 28-32-01 of the North Dakota  
2 Century Code is created and enacted as follows:

3             The industrial commission with respect to approving or setting water rates under  
4             chapter 61-40.

5     **SECTION 2.** A new subdivision to subsection 1 of section 54-10-14 of the North Dakota  
6 Century Code is created and enacted as follows:

7             Western area water supply authority industrial water sales on an annual basis.

8     **SECTION 3.**

9     **Declaration of policy.**

10     The legislative assembly declares that major water development and water management  
11 goals must be set forth and implemented in order to protect the long-term interests, economic  
12 vitality, and future benefits of the state and its citizens; that such water development and water  
13 management goals are essential for the economic growth and quality of life across the entire  
14 state; that rights to the use and enjoyment of waters of the Missouri River flowing through this  
15 state cannot be restricted by the federal government; that it is necessary to develop and utilize  
16 waters of the Missouri River for municipal, domestic, rural, and industrial purposes in this state;  
17 that flood control works are necessary to protect the lives and property of the citizens of this  
18 state; that major flood control works in and around major cities and other cities are necessary to  
19 address the record and damaging floods that have occurred; that regional water supply and  
20 rural water projects must be completed in order to provide a long-term, dependable quality and  
21 adequate quantity water supply for municipal, domestic, rural, and industrial uses; that irrigation  
22 provides a significant opportunity to further the agricultural opportunities in the state; and that an  
23 infrastructure loan fund will enable these goals and policies to be achieved and implemented,  
24 and will provide significant economic and financial benefits to the people of this state.

25     **SECTION 4.**

26     **Legislative intent - Reports to legislative assembly.**

27     The legislative assembly declares and establishes the following goals and objectives:

- 28     1. That it is necessary for the long-term welfare and economic well-being of the Souris  
29     River basin, and the entire state and its citizens, that the planning, design, and  
30     construction of the Mouse River enhanced flood control project be completed and  
31     implemented.

- 1       2.   That the Red River valley water supply project is critical to provide a dependable water  
2       supply for current and future generations in eastern North Dakota and is essential to  
3       provide for the ~~long term~~long-term welfare, economic well-being, and quality of life for  
4       the entire state.
- 5       3.   That it is necessary for the ~~long term~~long-term welfare and economic well-being of the  
6       Red River basin, and the entire state and its citizens, that the planning, design, and  
7       construction of the Fargo-Moorhead ~~diversion and~~flood control project be completed  
8       and implemented.
- 9       4.   That regional water supply and rural water systems are necessary to provide a  
10      dependable and adequate quantity and quality water supply for municipal, domestic,  
11      rural, and industrial uses.
- 12      5.   That the state water commission and the southwest water authority shall begin the  
13      process of reviewing capital repayment and revenues being returned to the resources  
14      trust fund; payments necessary to meet obligations of existing bonds and other loans;  
15      mill levies; ownership of land and associated facilities; existing construction  
16      documents; liabilities; contracts with cities, bulk users, companies, and other users;  
17      and other items, and shall report to the legislative assembly those steps necessary for  
18      the transfer of ownership and responsibility of the southwest pipeline project from the  
19      state water commission to the southwest water authority.
- 20      6.   That the state water commission and the Garrison diversion conservancy district shall  
21      enter discussions with the bureau of reclamation concerning Garrison diversion unit  
22      facilities.
- 23      7.   That projects receiving state funds for construction and implementation not assert,  
24      claim, or seek to prevent other opportunities, either public or private, to utilize waters  
25      of the Missouri River for industrial uses in this state.
- 26      8.   That local water management and flood control projects are necessary for the  
27      economic well-being and quality of life of citizens in those local areas.
- 28      9.   That irrigation development offers significant opportunities for agriculture in this state.  
29      10. That an infrastructure loan fund for water development and management will provide  
30      significant financial benefits to projects and the citizens of this state, and will provide  
31      new capabilities to implement necessary water infrastructure projects across the state.

1       **SECTION 5.**

2       **Mouse River enhanced flood control project.**

3       1.   The legislative assembly declares its intent to provide ~~state funding for a share~~one-half  
4       of the ~~non-federal~~nonfederal or local cost of constructing the ~~federally approved~~  
5       ~~national economic development alternative for the~~ Mouse River enhanced flood  
6       control project.

7       2.   Any funds appropriated for the construction of the Mouse River enhanced flood control  
8       project may be carried over to future bienniums.

9       3.   State funding for the Mouse River enhanced flood control project may be appropriated  
10      at the time and in the manner determined by the legislative assembly, either  
11      concurrently or separately from federal and local funding for the Mouse River  
12      enhanced flood control project.

13      **SECTION 6.**

14      **Lower Heart River, Morton County, enhanced flood control project.**

15      The legislative assembly declares its intent to provide state funding for fifty percent of the  
16      nonfederal or local cost-share for construction of the lower Heart River, Morton County, flood  
17      control project.

18      **SECTION 7.**

19      **Southwest pipeline project - Report to legislative assembly.**

20      The state water commission and the southwest water authority shall begin the process of  
21      reviewing capital repayment and revenues being returned to the resources trust fund; payments  
22      necessary to meet obligations of existing bonds and other loans; ownership of land and  
23      associated facilities; existing construction documents; liabilities; contracts with cities, bulk users,  
24      companies, and other users; and other items, and shall report to the legislative assembly those  
25      steps necessary for the transfer of ownership and responsibility of the southwest pipeline  
26      project from the state water commission to the southwest water authority.

27      **SECTION 8.**

28      **Garrison diversion unit.**

29      The Garrison diversion unit has extensive federal facilities that have been constructed,  
30      ~~including the Snake Creek pumping plant, the McClusky canal, recreation areas, and other~~  
31      ~~facilities.~~ It is the intent of the legislative assembly that the state water commission and Garrison

1 diversion conservancy district begin discussions with the bureau of reclamation concerning the  
2 Garrison diversion unit facilities.

3 **SECTION 9.**

4 **Fargo-Moorhead flood control project.**

- 5 1. The sixty-third legislative assembly declares its intent to provide state funding not to  
6 exceed four hundred fifty million dollars for a share one-half of the nonfederal or local  
7 cost of constructing the federally authorized Fargo-Moorhead flood control project.  
8 2. Notwithstanding any other law, any funds appropriated for the construction of the  
9 Fargo-Moorhead flood control project may be carried over to future bienniums.  
10 3. State funding for the Fargo-Moorhead flood control project may be appropriated at the  
11 time and in the manner determined by the legislative assembly, either concurrently or  
12 separately from federal and local funding for the Fargo-Moorhead flood control project.

13 **SECTION 10.** A new section to chapter 61-02 of the North Dakota Century Code is created  
14 and enacted as follows:

15 **Infrastructure revolving loan fund - Continuing appropriation - Rules.**

- 16 1. An infrastructure revolving loan fund is established on January 1, 2015, within the  
17 resources trust fund to provide loans for water supply, flood protection, or other water  
18 development and water management projects. Ten percent of oil extraction moneys  
19 deposited in the resources trust fund are made available on a continuing basis for  
20 making loans in accordance with this section. Accounts may be established in the  
21 resources trust fund as necessary for its management and administration.  
22 2. The commission shall consider the following information when evaluating projects:  
23 a. A description of the nature and purposes of the proposed infrastructure project,  
24 including an explanation of the need for the project, the reasons why it is in the  
25 public interest, and the overall economic impact of the project.  
26 b. The estimated cost of the project and the amount of the loan sought and other  
27 proposed sources of funding.  
28 c. The extent to which completion of the project will provide a benefit to the state or  
29 regions within the state.  
30 3. The commission shall approve projects and loans from the infrastructure loan fund,  
31 and the Bank of North Dakota shall manage and administer loans from the

infrastructure loan fund and individual accounts in the fund. The commission may adopt policies for the review and approval of loans under this section. Loans made under this section must be made at an interest rate of one and one-half percent.

4. Annually the Bank of North Dakota may deduct a service fee of one-half of one percent for administering the infrastructure loan fund.

5. Projects not eligible for the state revolving fund will be given priority for these funds.

**SECTION 11. AMENDMENT.** Section 61-24.7-01 of the North Dakota Century Code is amended and reenacted as follows:

**61-24.7-01. Legislative findings and intent - Authority to issue bonds.**

4. The legislative assembly finds that the provision of water of sufficient quantity and quality to supply homes, businesses, industries, wildlife, and recreation in the Red River valley within this state is necessary for the protection of health, property, and enterprises and for the promotion of prosperity and the general welfare of the people of the Red River valley and that construction of the Red River valley water supply project involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. Therefore, it is declared necessary and in the public interest that the state by and through the state water commission provide a one-third share of the cost of constructing the Red River valley water supply project.
- ~~2. In furtherance of the public purpose set forth in subsection 1, the state water commission may issue bonds under chapter 61-02 and the proceeds are appropriated for construction of the Red River valley water supply project authorized and funded in part by the federal government and designed to provide reliable sources of water of sufficient quantity and quality to supply homes, businesses, industries, wildlife, and recreation in the Red River valley within this state.~~
- ~~3. This chapter does not affect the state water commission's authority to otherwise issue bonds pursuant to chapter 61-02 or section 61-24.3-01.~~

**SECTION 12. AMENDMENT.** Section 61-24.7-05 of the North Dakota Century Code is amended and reenacted as follows:

1       **61-24.7-05. State funding plan.**

- 2       1. The legislative assembly declares its intent to provide state funding for ~~one-third~~  
3       share of the ~~total~~nonfederal or local cost of constructing the Red River valley water  
4       supply project.
- 5       2. Any ~~general~~ funds appropriated for the construction of the Red River valley water  
6       supply project may be carried over to future bienniums.
- 7       3. State funding for the Red River valley water supply project may be appropriated at the  
8       time and in the manner determined by the legislative assembly, either concurrently or  
9       separately from federal and local funding for the Red River valley water supply project.

10     ~~—SECTION 18. AMENDMENT. Section 61-40-06 of the North Dakota Century Code is~~  
11     ~~amended and reenacted as follows:~~

12     ~~—61-40-06. Oversight of authority projects.~~

13     ~~—The authority shall comply with the policypolicies of the state water commission as the~~  
14     ~~policy relates to bidding, planning, and construction of the project. The policypolicies must~~  
15     ~~include provisions for insurance, including general liability insurance, in adequate amounts. The~~  
16     ~~authority shall report to and consult with the state water commission regarding the operation~~  
17     ~~and financial status of the project, as requested by the state water commission. In relation to~~  
18     ~~initial construction of the system and debt repayment, the~~The authority shall present the overall  
19     ~~plan and ongoing contract plans and specifications for the project to the state water commission~~  
20     ~~for approval. The attorney general shall assist the authority at the request of the state water~~  
21     ~~commission. If the twenty-five million dollar zero interest loan from the state water commission~~  
22     ~~has not been repaid, without the written consent of the state water commission the authority~~  
23     ~~may not sell, lease, abandon, encumber, or otherwise dispose of any part of property used in a~~  
24     ~~water system of the authority if the property is used to provide revenue.~~

25     **SECTION 13. AMENDMENT.** Section 61-40-01 of the North Dakota Century Code is  
26     amended and reenacted as follows:

27       **61-40-01. Legislative declarations - Authority of western area water supply authority.**

28       The legislative assembly declares that many areas and localities in western North Dakota  
29       do not enjoy adequate quantities of high-quality drinking water; that other areas and localities in  
30       western North Dakota do not have sufficient quantities of water to ensure a dependable,  
31       long-term domestic or industrial water supply; that greater economic security and the protection

1 of health and property benefits the land, natural resources, and water resources of this state;  
2 and that the promotion of the prosperity and general welfare of all of the people of this state  
3 depend on the effective development and utilization of the land and water resources of this  
4 state and necessitates and requires the exercise of the sovereign powers of this state and  
5 concern a public purpose. To accomplish this public purpose, it is declared necessary that a  
6 water authority to treat, store, and distribute water to western North Dakota be established to  
7 provide for the supply and distribution of water to the people of western North Dakota for  
8 purposes, including domestic, rural water, municipal, livestock, industrial, oil and gas  
9 development, and other uses, and provide for the future economic welfare and prosperity of the  
10 people of this state, and particularly the people of western North Dakota, by the creation and  
11 development of a western area water supply project for beneficial and public uses. The western  
12 area water supply authority may acquire, construct, improve, develop, and own water supply  
13 infrastructure and may enter water supply contracts with member cities, water districts, and  
14 private users, such as oil and gas producers, for the sale of water for use within or outside the  
15 authority boundaries or the state. The western area water supply authority shall consider in the  
16 process of locating industrial water depots the location of private water sellers so as to minimize  
17 the impact on private water sellers. The independent water providers shall consider in the  
18 process of locating industrial water depots the location of private water sellers so as to minimize  
19 the impact on private water sellers.

20 **SECTION 14. AMENDMENT.** Section 61-40-02 of the North Dakota Century Code is  
21 amended and reenacted as follows:

22 **61-40-02. Western area water supply authority.**

23 The western area water supply authority consists of participating political subdivisions  
24 located within McKenzie, Williams, Burke, Divide, and Mountrail Counties which enter a water  
25 supply contract with the authority. Other cities and water systems, within or outside the authority  
26 counties' boundaries, including cities or water systems in Montana, may contract with the  
27 authority for a bulk water supply. The authority is a political subdivision of the state, a  
28 governmental agency, body politic and corporate, with the authority to exercise the powers  
29 specified in this chapter, or which may be reasonably implied. Participating member entities  
30 may be required to pay dues or water sale income to the authority, as determined by the bylaws  
31 and future resolutions of the authority. Participating member entities may not withdraw from the

1 authority or fail or refuse to pay any water sale income to the authority ~~if the twenty-five million-~~  
2 ~~dollar zero interest loan from the state water commission has not been repaid~~until the  
3 state-guaranteed loans have been repaid. The provisions of subsections 1 through 5 of section  
4 61-35-02.1 apply if the authority's board of directors unanimously votes to convert to a water  
5 district.

6 **SECTION 15. AMENDMENT.** Section 61-40-03 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **61-40-03. Western area water supply authority - Board of directors.**

- 9 1. The initial board of directors of the western area water supply authority consists of two  
10 representatives from each of the following entities: Williams rural water district,  
11 McKenzie County water resource district, the city of Williston, BDW water system  
12 association, and R&T water supply association. The governing body of each member  
13 entity shall select two representatives to the authority board who are water users of  
14 the member entity. If a vacancy arises for a member entity, the governing body of the  
15 member entity shall select a new representative to act on its behalf on the authority  
16 board. ~~In addition, the state engineer or designee is a voting member on the~~  
17 ~~authority's board of directors.~~ Directors have a term of one year and may be  
18 reappointed.
- 19 2. Additional political subdivisions or water systems may be given membership on the  
20 board upon two-thirds majority vote of the existing board. To be eligible for  
21 membership on the board, the member entity must first contract with the authority for  
22 financial participation in the project.
- 23 3. A member entity may designate an alternate representative to attend meetings and to  
24 act on the member's behalf. The board may designate associate members who are  
25 nonvoting members of the board. Notwithstanding this section, ~~except for the state-~~  
26 ~~engineer or designee,~~ initial board members must be removed if they have not entered  
27 a contract with the authority, before August 1, 2013, for financial participation in the  
28 project.

29 **SECTION 16. AMENDMENT.** Section 61-40-04 of the North Dakota Century Code is  
30 amended and reenacted as follows:

**61-40-04. Board of directors - Officers - Meetings.**

1. The board of directors shall adopt such rules and bylaws for the conduct of the business affairs of the authority as it determines necessary, including the time and place of regular meetings of the board, financial participation structure for membership in the authority, and membership appointment and changes. Bylaws need to be approved by member entity boards.
2. The board shall elect from its members a chairman and a vice chairman. The board shall elect a secretary and a treasurer, which offices may be held by the same individual, and either or both offices may be held by an individual who is not a member of the board. Special meetings of the board may be called by the secretary on order of the chairman or upon written request of a majority of the qualified members of the board. Notice of a special meeting must be mailed to each member of the board at least six days before the meeting, provided that a special meeting may be held at any time when all members of the board are present or consent in writing.
3. Board members are entitled to receive as compensation an amount determined by the board not to exceed the amount per day provided members of the legislative management under section 54-35-10 and must be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09.

~~4. The initial board bylaws must direct board voting protocol. A weighted voting structure for board members is acceptable if the voting is based upon the volume of water purchased, the financial contributions of the stakeholder entities, or any other formula agreed by a majority of the board.~~

~~5. Before the bylaws become effective, the bylaws must be reviewed and approved by the attorney general.~~

**SECTION 17. AMENDMENT.** Section 61-40-05 of the North Dakota Century Code is amended and reenacted as follows:

**61-40-05. Authority of the western area water supply authority.**

In addition to authority declared under section 61-40-01, the board of directors of the western area water supply authority may:

1. Sue and be sued in the name of the authority.

- 1       2.   Exercise the power of eminent domain in the manner provided by title 32 or as  
2       described in this chapter for the purpose of acquiring and securing any right, title,  
3       interest, estate, or easement necessary or proper to carry out the duties imposed by  
4       this chapter, and particularly to acquire the necessary rights in land for the  
5       construction of an entire part of any pipeline, reservoir, connection, valve, pumping  
6       installation, or other facility for the storage, transportation, or utilization of water and all  
7       other appurtenant facilities used in connection with the authority. However, if the  
8       interest sought to be acquired is a right of way for any project authorized in this  
9       chapter, the authority, after making a written offer to purchase the right of way and  
10      depositing the amount of the offer with the clerk of the district court of the county in  
11      which the right of way is located, may take immediate possession of the right of way,  
12      as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty  
13      days after notice has been given in writing to the landowner by the clerk of the district  
14      court that a deposit has been made for the taking of a right of way as authorized in this  
15      subsection, the owner of the property taken may appeal to the district court by serving  
16      a notice of appeal upon the acquiring agency, and the matter must be tried at the next  
17      regular or special term of court with a jury unless a jury be waived, in the manner  
18      prescribed for trials under chapter 32-15.
- 19      3.   Accept funds, property, services, pledges of security, or other assistance, financial or  
20      otherwise, from federal, state, and other public or private sources for the purpose of  
21      aiding and promoting the construction, maintenance, and operation of the authority.  
22      The authority may cooperate and contract with the state or federal government, or any  
23      department or agency of state or federal government, or any city, water district, or  
24      water system within the authority, in furnishing assurances and meeting local  
25      cooperation requirements of any project involving treatment, control, conservation,  
26      distribution, and use of water.
- 27      4.   Cooperate and contract with the agencies or political subdivisions of this state or other  
28      states, in research and investigation or other activities promoting the establishment,  
29      construction, development, or operation of the authority.
- 30      5.   Appoint and fix the compensation and reimbursement of expenses of employees as  
31      the board determines necessary to conduct the business and affairs of the authority

- 1 and to procure the services of engineers and other technical experts, and to retain  
2 attorneys to assist, advise, and act for the authority in its proceedings.
- 3 6. Operate and manage the authority to distribute water to authority members and others  
4 within or outside the territorial boundaries of the authority and this state.
- 5 7. Hold, own, sell, or exchange any and all property purchased or acquired by the  
6 authority. All money received from any sale or exchange of property must be deposited  
7 to the credit of the authority and may be used to pay expenses of the authority.
- 8 8. Enter contracts to obtain a supply of bulk water through the purchase of infrastructure,  
9 bulk water sale or lease, which contracts may provide for payments to fund some or all  
10 of the authority's costs of acquiring, constructing, or reconstructing one or more water  
11 supply or infrastructure.
- 12 9. Acquire, construct, improve, and own water supply infrastructure, office and  
13 maintenance space in phases, in any location, and at any time.
- 14 10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial  
15 use to persons within or outside the authority. The contracts may provide for payments  
16 to fund some or all of the authority's costs of acquiring, constructing, or reconstructing  
17 one or more water system projects, as well as the authority's costs of operating and  
18 maintaining one or more projects, whether the acquisition, construction, or  
19 reconstruction of any water supply project actually is completed and whether water  
20 actually is delivered pursuant to the contracts. The contracts the cities, water districts,  
21 and other entities that are members of the western area water supply authority are  
22 authorized to execute are without limitation on the term of years.
- 23 11. Borrow money as provided in this chapter.
- 24 12. Make all contracts, execute all instruments, and do all things necessary or convenient  
25 in the exercise of its powers or in the performance of its covenants or duties or in order  
26 to secure the payment of its obligations, but an encumbrance, mortgage, or other  
27 pledge of property of the authority may not be created by any contract or instrument.
- 28 13. Accept from any authorized state or federal agency loans or grants for the planning,  
29 construction, acquisition, lease, or other provision of a project, and enter agreements  
30 with the agency respecting the loans or grants. Other than state-guaranteed loans,  
31 [additional debt that may form the basis of a claim for territorial or franchise protection](#)

for industrial water sales for oil and gas exploration and production may be acquired by the authority or member entities only upon approval by the industrial commission and the emergency commission.

14. Contract debts and borrow money, pledge property of the authority for repayment of indebtedness, and provide for payment of debts and expenses of the authority.
15. Operate and manage the authority to distribute water to any out-of-state cities or water systems that contract with the authority.
16. Accept, apply for, and hold water allocation permits.
17. Adopt rules concerning the planning, management, operation, maintenance, sale, and ratesetting regarding water sold by the authority. The authority may adopt a rate structure with elevated rates set for project industrial water depot and lateral supplies in recognition that a large component of the project expense is being incurred to meet the demands of industrial users. The industrial water depot and lateral rate structure must be approved in accordance with section 19 of this Act.
18. Develop water supply systems; store and transport water; and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes; milling, manufacturing, mining, industrial, metallurgical, and any and all other beneficial uses; and fix the terms and rates therefore. The authority may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all treatment plants, works, facilities, improvements, and property necessary the same without any required public vote before taking action.
19. Contract to purchase or improve water supply infrastructure or to obtain bulk water supplies without requiring any vote of the public on the projects or contracts. In relation to the initial construction of the system and for the purposes of entering a contract with the authority, municipalities are exempt from the public voting requirements or water contract duration limitations otherwise imposed by section 40-33-16.
20. Accept assignment by member entities of contracts that obligate member entities to provide a water supply, contracts that relate to construction of water system infrastructure, or other member entity contracts that relate to authorities transferred to the authority under this chapter.

1       **SECTION 18.** A new section to chapter 61-40 of the North Dakota Century Code is created  
2 and enacted as follows:

3       **Industrial water depot and lateral sales.**

- 4       1. An accounting of industrial water depot and lateral sales collected and distributed by  
5 the authority must be reported to the industrial commission on a monthly basis.  
6 Participating member entities shall transfer industrial water depot and lateral sales to  
7 the authority within thirty days of receipt of the revenues. The boards of the authority  
8 and participating member entities must be notified of the sweep of revenues; however,  
9 board approval is not required. Upon the receipt of industrial water depot and lateral  
10 revenues by the authority, the authority shall apply immediately all revenues each  
11 month in the following order:
- 12       a. One hundred fifty thousand dollars per biennium to the industrial commission for  
13 one additional full-time equivalent position to implement this Act.
  - 14       b. Reimburse the authority for industrial water depot capital improvements and the  
15 cost for delivery of potable or nonpotable water sold at industrial water depots  
16 and lateral lines, at a cost no greater than the participating member, or  
17 submember, if applicable, entity rate at the location of the depot or lateral line.
  - 18       c. Regular payments on the participating member entity debt as described in the  
19 agreements with the authority as of March 31, 2013, and baseline 2010 industrial  
20 water sales included in the authority and participating member agreements as of  
21 March 31, 2013. Baseline 2010 industrial water sales for the city of Tioga in the  
22 year 2013 are limited to the lesser of legally permitted industrial water sales or  
23 the amount in the member agreement.
  - 24       d. Required monthly payments on state-guaranteed loans. The required transfer  
25 must occur no later than the twentieth day of the following month.
  - 26       e. Additional principal payment on state-guaranteed loans.
  - 27       f. Payment to the resources trust fund.
- 28       2. If the state-guaranteed loans have not been repaid, without the written consent of the  
29 industrial commission the authority may not sell, lease, abandon, encumber, or  
30 otherwise dispose of any part of the property used in a water system of the authority if  
31 the property is used to provide revenue. Any requirements on the state-guaranteed

1 loans for establishment of reserve funds for operation and maintenance or debt  
2 service are waived.

3 3. The state water commission shall approve the planning, location, and water supply  
4 contracts of any authority depots, laterals, taps, turnouts, and risers for industrial sales  
5 for oil and gas exploration and production after the effective date of this Act.

6 **SECTION 19.** A new section to chapter 61-40 of the North Dakota Century Code is created  
7 and enacted as follows:

8 **Water rates.**

9 The authority shall develop an industrial water depot and lateral retail rate and present the  
10 rate to the industrial commission for approval. Any industrial water depot and lateral rate  
11 adjustment must have approval of the industrial commission before going into effect. The  
12 authority shall develop domestic water rates that must include all costs for operation,  
13 maintenance, and operating and capital reserves, and debt repayment of all infrastructure  
14 managed or constructed by the authority, with the exception of the costs identified in section 18  
15 of this Act which are paid for by industrial water depot and lateral sales.

16 **SECTION 20.** A new section to chapter 61-40 of the North Dakota Century Code is created  
17 and enacted as follows:

18 **Construction funding.**

19 The authority shall follow the state water commission requirements for funding through the  
20 resources trust fund or Bank of North Dakota state-guaranteed loans and shall present the  
21 overall plan and project components to the state water commission for funding approval. Priority  
22 on project funding first is reserved for state-guaranteed loan payments if not met by industrial  
23 water depot and lateral sales, second is for full repayment of existing federal debt if 7 U.S.C.  
24 1926(b) protection for oil and gas exploration and production industrial water sales is asserted,  
25 and third for expanding domestic water supply to areas currently not served. In accepting  
26 construction funding, the authority and participating member entities agree to not hinder or  
27 prevent depot and lateral industrial water sales for oil and gas exploration and production.

28 **SECTION 21. AMENDMENT.** Section 61-40-09 of the North Dakota Century Code is  
29 amended and reenacted as follows:

**61-40-09. Default.**

~~If the authority is in default in the payment of the principal of or interest on any of the obligations of the authority under this chapter and if the budget section determines that the authority is unable to reimburse the state in the time period required by the budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority and the liabilities of the authority. In addition, the state assumes the powers of the authority. The industrial commission may review the ability of water depot and lateral sales to meet expenses in subdivisions a through d of subsection 1 of section 18 of this Act, and if the industrial commission is uncertain of that ability, the industrial commission shall provide written notification to the state water commission and direct the Bank of North Dakota to consider revision of the terms of the loan repayments. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due. ~~Upon written notice, the members of the governing board of the authority are immediately removed, and the state water commission is the governing board from the date of notice. If the state water commission determines that governance, possession, and ownership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the state water commission may develop a plan to return governance, possession, and ownership to the authority, subject to approval of the plan by the budget section.~~~~

**SECTION 22.** A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

**Franchise protection.**

Notwithstanding any other provision of law, neither the authority nor its participating member entities may be required to waive the right to assert franchise protection under state or federal law with regard to water used for purposes other than industrial sales for oil and gas exploration and production.

**SECTION 23. REPEAL.** Sections 61-24.7-02, 61-24.7-03, ~~and 61-24.7-04,~~ and 61-40-06 of the North Dakota Century Code are repealed.

1     **SECTION 24. LEGISLATIVE INTENT.** It is the intent of the sixty-third legislative assembly  
2 that after all loans to the state of North Dakota and contractual responsibilities to participating  
3 members are fulfilled, that any revenues generated by industrial water related sales for oil and  
4 gas exploration and production be prioritized for use for infrastructure development in oil and  
5 gas-impacted areas of the state.

6     **SECTION 25. REPORTS TO THE LEGISLATIVE MANAGEMENT.** The independent water  
7 providers and the western area water supply authority shall report to the water-related topics  
8 overview committee on a regular basis and collaborate with the committee and the state water  
9 commission to monitor water usage, rates, and market share. The water-related topics overview  
10 committee shall report to the legislative management with recommendations to assure the  
11 state's ability to maintain its payment schedule. The legislative management shall report its  
12 findings and recommendations, together with any legislation required to implement the  
13 recommendations, to the sixty-fourth legislative assembly.