Sixty-eighth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2196

Introduced by

Senators Patten, Beard, Bekkedahl, Kannianen

Representatives J. Olson, Richter

A BILL for an Act to create and enact two new sections to chapter 61-40 of the North Dakota Century Code, relating to the infrastructure revolving loan fund and accrued and unpaid interest in western area water supply authority loans; to amend and reenact section 61-02-79, subsection 13 of section 61-40-05, and sections 61-40-09, 61-40-10, and 61-40-11 of the North Dakota Century Code, relating to the operation and oversight of the western area water supply authority and the authorized line of credit.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-02-79 of the North Dakota Century Code is amended and reenacted as follows:

61-02-79. Bank of North Dakota - Line of credit.

The Bank of North Dakota shall extend a line of credit not to exceed fifty million dollars at ~~a rate of one and one-half percent over the three month London interbank offered rate, but may not exceed three percent to the state water commission~~the prevailing interest rate charged to North Dakota governmental entities. The state water commission shall repay the line of credit from funds available in the resources trust fund, water development trust fund, or other funds, as appropriated by the legislative assembly. The state water commission may access the line of credit, as necessary, to provide funding as authorized by the legislative assembly for the northwest area water supply project during the biennium beginning July 1, ~~2021~~2023, and ending June 30, ~~2023~~2025.

SECTION 2. AMENDMENT. Subsection 13 of section 61-40-05 of the North Dakota Century Code is amended and reenacted as follows:

13. Accept from any authorized state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and enter agreements with the agency respecting the loans or grants. Other than state-guaranteed loans,

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~~state water commission and the emergency commission.

SECTION 3. AMENDMENT. Section 61-40-09 of the North Dakota Century Code is amended and reenacted as follows:

61-40-09. Default.

~~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 61-40-10, 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~~If the western area water supply authority defaults on its payment of the principal or interest on the infrastructure revolving loan provided for in section 6 of this Act, the Bank of North Dakota shall notify the legislative council, and the state water commission shall provide a payment, subject to budget section approval, to the Bank of North Dakota in an amount of the default as certified to the budget section by the Bank of North Dakota.

SECTION 4. AMENDMENT. Section 61-40-10 of the North Dakota Century Code is amended and reenacted as follows:

61-40-10. ~~Industrial water depot and lateral sales~~Revenue.

1. An accounting of ~~industrial water depot and lateral sales~~revenue collected and distributed by the authority must be reported to the ~~industrial~~state water commission on a monthly basis. Participating member entities shall transfer ~~industrial water depot and lateral sales~~revenue to the authority within thirty days of receipt of the revenues. The boards of the authority and participating member entities must be notified of the sweep of revenues; however, board approval is not required. Upon the receipt of ~~industrial water depot and lateral~~ revenues by the authority, the authority shall apply immediately all revenues each month in the following order:

a. ~~One hundred fifty thousand dollars per biennium to the industrial commission for one additional full-time equivalent position to implement this section.~~

~~b.~~ Reimburse the authority for ~~industrial water depot~~ capital improvements and the cost for delivery of potable or nonpotable water ~~sold at industrial water depots and lateral lines~~, at a cost no greater than the participating member, or submember, if applicable, entity rate at the location of the depot or lateral line.

~~c.~~b. Regular payments on the participating member entity debt as described in the agreements with the authority as of March 31, 2013, and baseline 2010 industrial water sales included in and subject to the terms of the authority and participating member agreements as of March 31, 2013. Baseline 2010 industrial water sales for the city of Tioga in the year 2013 are limited to the lesser of legally permitted industrial water sales or the amount in the member agreement.

~~d.~~c. Required monthly payments on state-guaranteed loans. The required transfer must occur no later than the twentieth day of the following month.

~~e.~~d. Additional principal payment on state-guaranteed loans.

~~f.~~e. Payment to the resources trust fund.

2. If the ~~state-guaranteed loans have~~debt has not been repaid, without the written consent of the ~~industrial~~state water commission the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of the property used in a water system of the authority if the property is used to provide revenue. Any requirements on the state-guaranteed loans for establishment of reserve funds for operation and maintenance or debt service are waived.

3. The ~~state water commission shall approve the planning, location, and water supply contracts of any authority depots, laterals, taps, turnouts, and risers for industrial sales for oil and gas exploration and production after July 1, 2013~~western area water supply authority shall make additional principal payments on the infrastructure revolving fund loan, authorized in section 6 of this Act, in any month in which the debt service coverage ratio exceeds one and one-tenth. Any amount in excess of one and one-tenth must be paid as an additional principal reduction on the infrastructure revolving fund loan. Debt service coverage ratio means net income before capital

expenditures, interest expense, and depreciation expense divided by the sum of interest expenses and the required principal and interest payment.

SECTION 5. AMENDMENT. Section 61-40-11 of the North Dakota Century Code is amended and reenacted as follows:

61-40-11. Water rates.

~~The industrial commission may authorize the authority to contract at competitive, floating, market rates for industrial water depot and lateral retail sales.~~ The authority shall provide a report on the rates to the commission and legislative management's water topics overview committee on a regular basis. The authority shall develop domestic water rates and industrial water depot and lateral sales rates that must include all costs for operation, maintenance, and operating and capital reserves, and debt repayment of all infrastructure managed or constructed by the authority~~, with the exception of the costs identified in section 61-40-10 which are paid for by industrial water depot and lateral sales~~.

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

Western area water supply authority - Bank of North Dakota loan - Transfer.

The Bank of North Dakota shall transfer the outstanding principal balance of the consolidation loan authorized in section 9 of chapter 19 of the 2017 Session Laws to the infrastructure revolving loan fund, on August 1, 2023. Any accrued and unpaid interest of the consolidation loan authorized in section 9 of chapter 19 of the 2017 Session Laws must be consolidated with the principal balance of the loan transferred to the infrastructure revolving loan fund. The loan must have an interest rate of two percent and a final maturity date not to extend beyond July 1, 2053.

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

Western area water supply authority accrued and unpaid interest.

All accrued and unpaid interest on the twenty-five million dollar loan from the general fund to the western area water supply authority authorized in section 3 of chapter 500 of the 2011 Session Laws must be ~~forgiven~~transferred to the infrastructure revolving loan fund on August 1, 2023. All accrued and unpaid interest on the ten million dollar, twenty million dollar, and nineteen million five hundred thousand dollar loans from the resources trust fund to the western

area water supply authority must be ~~forgiven~~transferred to the infrastructure revolving loan fund on August 1, 2023. The loan must have an interest rate of two percent and a final maturity date not to extend beyond July 1, 2053.