Sixty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2023

SENATE BILL NO. 2196
(Senators Patten, Beard, Bekkedahl, Kannianen)
(Representatives J. Olson, Richter)

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 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 oversight of the western area water supply authority and infrastructure revolving loan fund payments; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 2. 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 5 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 3. 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.

1. An accounting of industrial water depot and lateral sales 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 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 payments on the infrastructure revolving fund loan, authorized in section 5 of this Act, in any month in which the debt service coverage ratio exceeds one and one-tenth. 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 4. 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 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 5. 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 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 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 transferred to the general fund. 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.

SECTION 7. APPROPRIATION - DEPARTMENT OF WATER RESOURCES - RESOURCES TRUST FUND. There is appropriated out of any moneys in the resources trust fund in the state treasury, not otherwise appropriated, the sum of $2,000,000, or so much of the sum as may be necessary, to the department of water resources for the purpose of paying accrued and unpaid interest on the $25,000,000 loan from the general fund to the western area water supply authority authorized in section 3 of chapter 500 of the 2011 Session Laws, for the biennium beginning July 1, 2023, and ending June 30, 2025.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2196.

Senate Vote:	Yeas 46	Nays 1	Absent 0
House Vote:	Yeas 84	Nays 8	Absent 2

Secretary of the Senate

Received by the Governor at _____M. on _____, 2023.

Approved at _____M. on _____, 2023.

Governor

Filed in this office this _____day of _____, 2023,

at _____ o'clock _____M.

Secretary of State