

HOUSE BILL NO. 1206

Introduced by

Representatives Skarphol, Keiser, Kreun

Senators Fischer, Lyson, O'Connell

1 A BILL for an Act to create and enact chapter 61-40 of the North Dakota Century Code, relating
2 to a western area water supply authority.

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

4 **SECTION 1.** Chapter 61-40 of the North Dakota Century Code is created and enacted as
5 follows:

6 **61-40-01. Legislative declarations - Authority of western area water supply authority.**

7 The legislative assembly declares that many areas and localities in western North Dakota
8 do not enjoy adequate quantities of high-quality drinking water; that other areas and localities in
9 western North Dakota do not have sufficient quantities of water to ensure a dependable,
10 long-term domestic or industrial water supply; that greater economic security and the protection
11 of health and property benefits the land, natural resources, and water resources of this state;
12 and that the promotion of the prosperity and general welfare of all of the people of this state
13 depend on the effective development and utilization of the land and water resources of this
14 state and necessitates and requires the exercise of the sovereign powers of this state and
15 concern a public purpose. To accomplish this public purpose, it is declared necessary that a
16 water authority to treat, store, and distribute water to western North Dakota be established to
17 provide for the supply and distribution of water to the people of western North Dakota for
18 purposes, including domestic, rural water, municipal, livestock, industrial, oil and gas
19 development, and other uses, and provide for the future economic welfare and prosperity of the
20 people of this state, and particularly the people of western North Dakota, by the creation and
21 development of a western area water supply project for beneficial and public uses. The western
22 area water supply authority may acquire, construct, improve, develop, and own water supply
23 infrastructure and may enter water supply contracts with member cities, water districts, and

1 private users, such as oil and gas producers, for the sale of water for use within or outside the
2 authority boundaries or the state.

3 **61-40-02. Western area water supply authority.**

4 The western area water supply authority consists of participating political subdivisions
5 located within McKenzie, Williams, Burke, Divide, and Mountrail Counties which enter a water
6 supply contract with the authority. Other cities and water systems, within or outside the authority
7 counties' boundaries, including cities or water systems in Montana, may contract with the
8 authority for a bulk water supply. The authority is a political subdivision of the state, a
9 governmental agency, body politic and corporate, with the authority to exercise the powers
10 specified in this chapter, or which may be reasonably implied. Participating member entities
11 may be required to pay dues, water sale income, or bond revenue to the authority, as
12 determined by the bylaws and future resolutions of the authority.

13 **61-40-03. Western area water supply authority - Board of directors.**

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

29 **61-40-04. Board of directors - Officers - Meetings.**

- 30 1. The board of directors shall adopt such rules and bylaws for the conduct of the
31 business affairs of the authority as it determines necessary, including the time and

1 place of regular meetings of the board, financial participation structure for membership
2 in the authority, and membership appointment and changes. Bylaws need to be
3 approved by member entity boards.

4 2. The board shall elect from its members a chairman and a vice chairman. The board
5 shall elect a secretary and a treasurer, which offices may be held by the same
6 individual, and either or both offices may be held by an individual who is not a member
7 of the board. Special meetings of the board may be called by the secretary on order of
8 the chairman or upon written request of a majority of the qualified members of the
9 board. Notice of a special meeting must be mailed to each member of the board at
10 least six days before the meeting, provided that a special meeting may be held at any
11 time when all members of the board are present or consent in writing.

12 3. Board members are entitled to receive as compensation an amount determined by the
13 board not to exceed the amount per day provided members of the legislative
14 management under section 54-35-10 and must be reimbursed for their mileage and
15 expenses in the amount provided for by sections 44-08-04 and 54-06-09.

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

20 **61-40-05. Authority of the western area water supply authority.**

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

- 23 1. Sue and be sued in the name of the authority.
24 2. Exercise the power of eminent domain in the manner provided by title 32 or as
25 described in this chapter for the purpose of acquiring and securing any right, title,
26 interest, estate, or easement necessary or proper to carry out the duties imposed by
27 this chapter, and particularly to acquire the necessary rights in land for the
28 construction of an entire part of any pipeline, reservoir, connection, valve, pumping
29 installation, or other facility for the storage, transportation, or utilization of water and all
30 other appurtenant facilities used in connection with the authority. However, if the
31 interest sought to be acquired is a right of way for any project authorized in this

1 chapter, the authority, after making a written offer to purchase the right of way and
2 depositing the amount of the offer with the clerk of the district court of the county in
3 which the right of way is located, may take immediate possession of the right of way,
4 as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty
5 days after notice has been given in writing to the landowner by the clerk of the district
6 court that a deposit has been made for the taking of a right of way as authorized in this
7 subsection, the owner of the property taken may appeal to the district court by serving
8 a notice of appeal upon the acquiring agency, and the matter must be tried at the next
9 regular or special term of court with a jury unless a jury be waived, in the manner
10 prescribed for trials under chapter 32-15.

- 11 3. Accept funds, property, services, pledges of security, or other assistance, financial or
12 otherwise, from federal, state, and other public or private sources for the purpose of
13 aiding and promoting the construction, maintenance, and operation of the authority.
14 The authority may cooperate and contract with the state or federal government, or any
15 department or agency of state or federal government, or any city, water district, or
16 water system within the authority, in furnishing assurances and meeting local
17 cooperation requirements of any project involving treatment, control, conservation,
18 distribution, and use of water.
- 19 4. Cooperate and contract with the agencies or political subdivisions of this state or other
20 states, in research and investigation or other activities promoting the establishment,
21 construction, development, or operation of the authority.
- 22 5. Appoint and fix the compensation and reimbursement of expenses of employees as
23 the board determines necessary to conduct the business and affairs of the authority
24 and to procure the services of engineers and other technical experts, and to retain
25 attorneys to assist, advise, and act for the authority in its proceedings.
- 26 6. Operate and manage the authority to distribute water to authority members and others
27 within or outside the territorial boundaries of the authority and this state.
- 28 7. Hold, own, sell, or exchange any and all property purchased or acquired by the
29 authority. All money received from any sale or exchange of property must be deposited
30 to the credit of the authority and may be used to pay expenses of the authority.

- 1 8. Enter contracts to obtain a supply of bulk water through the purchase of infrastructure,
2 bulk water sale or lease, which contracts may provide for payments to fund some or all
3 of the authority's costs of acquiring, constructing, or reconstructing one or more water
4 supply or infrastructure.
- 5 9. Acquire, construct, improve, and own water supply infrastructure, office and
6 maintenance space in phases, in any location, and at any time.
- 7 10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial
8 use to persons within or outside the authority. The contracts may provide for payments
9 to fund some or all of the authority's costs of acquiring, constructing, or reconstructing
10 one or more water system projects, as well as the authority's costs of operating and
11 maintaining one or more projects, whether the acquisition, construction, or
12 reconstruction of any water supply project actually is completed and whether water
13 actually is delivered pursuant to the contracts. The contracts the cities, water districts,
14 and other entities that are members of the western area water supply authority are
15 authorized to execute are without limitation on the term of years.
- 16 11. Borrow money as provided in this chapter.
- 17 12. Issue and sell revenue bonds, including notes, certificates, or other evidences of
18 indebtedness, for the authority's benefit in an amount or amounts determined by the
19 board, including an amount or amounts for costs of issuance and financing, capitalized
20 interest, and any necessary reserve funds, for the purpose of financing the cost of a
21 project, purchasing bulk water, or otherwise making capital payments required under a
22 water purchase contract.
- 23 13. Refund and refinance its bonds from time to time as often as it is advantageous and in
24 the interest of the authority.
- 25 14. Pledge any and all income, profits, and revenues received by the authority with the
26 operation, lease, sale, or other disposition of all or any part of a project to secure the
27 payment of bonds issued and sold to finance the project or otherwise.
- 28 15. Prescribe, revise, and collect rates, fees, tolls, or charges for the services, facilities, or
29 commodities furnished by the authority, and in anticipation of the collection of the
30 revenues of the authority, issue revenue bonds to finance all or part of the costs of the

- 1 acquisition, construction, reconstruction, improvement, betterment, or extension of a
2 project.
- 3 16. Pledge revenues of the authority to the punctual payment of principal and interest on
4 bonds or water purchase contract obligations. A pledge under this subsection applies
5 to the revenues of improvements, betterments, or extensions of the authority which
6 may be constructed or acquired after the issuance of bonds, the revenues of existing
7 systems, plants, works, instrumentalities, and properties of any part of the authority
8 improved, bettered, or extended, and the revenues received from payments made
9 under a water sale contract between the authority and persons that contract to
10 purchase water from the authority.
- 11 17. Make all contracts, execute all instruments, and do all things necessary or convenient
12 in the exercise of its powers or in the performance of its covenants or duties or in order
13 to secure the payment of its bonds, but an encumbrance, mortgage, or other pledge of
14 property of the authority may not be created by any contract or instrument.
- 15 18. Accept from any authorized state or federal agency loans or grants for the planning,
16 construction, acquisition, lease, or other provision of a project, and enter agreements
17 with the agency respecting the loans or grants.
- 18 19. Contract debts and borrow money, pledge property of the authority for repayment of
19 indebtedness other than bonded indebtedness, and provide for payment of debts and
20 expenses of the authority.
- 21 20. Operate and manage the authority to distribute water to any out-of-state cities or water
22 systems that contract with the authority.
- 23 21. Property of the authority may not be liable to be forfeited or taken in payment of any
24 bonds issued under this chapter, and debt on the general credit of the authority may
25 not be incurred in any manner for payment of bonds under this chapter.
- 26 22. Accept, apply for, and hold water allocation permits.
- 27 23. Adopt rules concerning the planning, management, operation, maintenance, sale, and
28 ratesetting regarding water sold by the authority. The authority may adopt a rate
29 structure with elevated rates set for project industrial water supplies in recognition that
30 a large component of the project expense is being incurred to meet the demands of
31 industrial users.

1 24. Develop water supply systems; store and transport water; and provide, contract for,
2 and furnish water service for domestic, municipal, and rural water purposes; irrigation,
3 milling, manufacturing, mining, industrial, metallurgical, and any and all other
4 beneficial uses; and fix the terms and rates therefore. The authority may acquire,
5 construct, operate, and maintain dams, reservoirs, ground water storage areas,
6 canals, conduits, pipelines, tunnels, and any and all treatment plants, works, facilities,
7 improvements, and property necessary the same without any required public vote
8 before taking action.

9 25. Contract to purchase or improve water supply infrastructure or to obtain bulk water
10 supplies without requiring any vote of the public on the projects or contracts. For the
11 purposes of entering a contract with the authority, municipalities are exempt from the
12 public voting requirements or water contract duration limitations otherwise imposed by
13 section 40-33-16.

14 26. Accept assignment by member entities of contracts that obligate member entities to
15 provide a water supply, contracts that relate to construction of water system
16 infrastructure, or other member entity contracts that relate to authorities transferred to
17 the authority under this chapter.

18 **61-40-06. Resolution authorizing the issuance of revenue bonds.**

19 The issuance of revenue bonds or refunding bonds must be authorized by a resolution of
20 the board adopted by the affirmative vote of a majority of the board. Unless otherwise provided
21 in the resolution, the resolution under this section takes effect immediately and need not be laid
22 over, published, or posted. Each resolution providing for the issuance of bonds provided for in
23 this chapter must set forth the purpose or purposes for which the bonds are to be issued, the
24 provisions for payment of the bonds, and the revenues or other funds pledged to secure the
25 payment of the bonds.

26 **61-40-07. Sale of bonds - When private sale authorized - Public sale and notice.**

27 Revenue bonds or refunding bonds may be sold at public or private sale on the terms,
28 conditions, and payment provisions as the board deems appropriate.

29 **61-40-08. Bonds or certificates issued pending preparation of bonds - Negotiability.**

30 Pending the issuance of bonds, bond anticipation notes may be issued and sold in the form
31 and with the provisions determined by the board.

1 **61-40-09. Validity of bonds.**

2 Revenue bonds or refunding bonds bearing the manual or facsimile signatures of the
3 appropriate officers who are in office on the date of signing are valid and binding obligations
4 notwithstanding that before the delivery and payment any or all of the persons whose
5 signatures appear on the bonds have ceased to be officers of the issuing authority. The
6 resolution authorizing the bonds may provide that the bonds must contain a recital that they are
7 issued under this chapter and the recital is conclusive evidence of their validity and of the
8 regularity of their issuance.

9 **61-40-10. Bonds exempt from taxation.**

10 Notwithstanding any restriction contained in any other law, the state and all public officers,
11 boards, and agencies, and political subdivisions and agencies of the state, all national banking
12 associations, state banks, trust companies, savings banks and institutions, credit unions,
13 savings and loan associations, investment companies, and other persons carrying on a banking
14 business, and executors, administrators, guardians, trustees, and other fiduciaries, may legally
15 invest any sinking funds, moneys, or other funds belonging to them or within their control in any
16 bonds issued by the authority under this chapter, and the bonds are authorized security for
17 public deposits. Bonds, including refunding bonds, issued under this chapter and their income
18 are exempt from all taxation by the state or by any political subdivision except inheritance,
19 estate, and transfer taxes.

20 **61-40-11. Liability of authority for bonds - Taxing power prohibited.**

21 Revenue bonds and refunding bonds issued under this chapter may not be payable from or
22 charged upon any funds other than the revenue pledged to payment of the bonds and the
23 authority issuing the bonds may not be subject to any pecuniary liability. The holder of these
24 bonds may not enforce payment of the bonds against any property of the authority. Bonds
25 issued under this chapter do not constitute a charge, lien, or encumbrance upon any property of
26 the authority, other than the revenues pledged to their payments. Each bond issued under this
27 chapter must recite in substance that the bond and interest on the bond is payable solely from
28 the revenue pledged to the payment and that the bond does not constitute a debt of the
29 authority within the meaning of any constitutional or statutory limitation.

1 **61-40-12. Duties of authority and officers relative to the issuance of bonds.**

2 To adequately secure the payment of bonds and interest on the bonds, the authority and its
3 officers, agents, and employees shall:

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

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

13 a. To pay all current expenses of operation and maintenance of any project;

14 b. To make all payments required under any water purchase contract the authority
15 may execute;

16 c. To pay the interest and principal on the authority's bonds as they become due;

17 d. To comply with the terms of the resolution authorizing the issuance of the bonds
18 or any other contract or agreement with the holders of the refunding bonds; and

19 e. To meet any other obligations of the authority that are charges, liens, or
20 encumbrances upon the revenues of the authority.

21 3. Operate, maintain, preserve, and keep every part of any tangible project financed and
22 owned or operated by the authority in good repair, working order, and condition.

23 4. Enforce the provisions of all water purchase and sale contracts that produce revenues
24 pledged to payment of bonds.

25 5. Preserve and protect the security of the bonds and the rights of the bondholders and
26 warrant and defend such rights against all claims and demands.

27 6. Pay and discharge all lawful claims for labor, materials, and supplies which, if unpaid,
28 might become by law a lien or charge upon the revenues, or any part of the revenues,
29 superior to the lien of the bonds or which might impair the security of the bonds.

30 7. Hold in trust the revenues pledged to the payment of the bonds for the benefit of the
31 holders of the bonds and apply the revenues only as provided by the resolution

1 authorizing the issuance of the bonds or, if the resolution is modified, as provided in
2 the modified resolution.

3 8. Keep proper separate books of record and accounts of the project in which complete
4 and correct entries must be made of all transactions relating to any part of the project.
5 All books and papers of the authority are subject to inspection by the holders of ten
6 percent or more of the outstanding bonds or by representatives authorized in writing.
7 The duties contained in this section may not require any expenditure by the authority
8 of any funds other than revenue received from a project or water sale contract. The
9 performance of the duties enumerated in this section is of the essence of the contract
10 of the authority with the bondholders.

11 **61-40-13. Remedies of bondholders in general.**

12 1. Subject to any contractual limitations binding upon the holders of any issue of bonds,
13 or a trustee for the holders, including the restriction of the exercise of any remedy to a
14 specified proportion or percentage of the holders, any holder of bonds or trustee, for
15 the equal benefit and protection of all bondholders similarly situated, may:

16 a. By mandamus or other civil action, enforce the holder's rights against the
17 authority and its board and any of its officers, agents, or employees and may
18 require the authority or the board or any officers, agents, or employees of the
19 authority or board to perform their duties and obligations under this chapter and
20 their covenants and agreements with bondholders.

21 b. By civil action, require the authority and the board to account as if they were the
22 trustees of an express trust.

23 c. By civil action, enjoin any acts or things that may be unlawful or in violation of the
24 rights of the bondholders.

25 d. Bring suit upon the bond.

26 2. A right or remedy conferred by this chapter upon any bondholder, or upon any trustee
27 for a bondholder, is not intended to be exclusive of any other right or remedy, but each
28 right or remedy is cumulative and in addition to every other right or remedy and may
29 be exercised without exhausting and without regard to any other remedy conferred by
30 this chapter or by any other law of this state.

1 **61-40-14. Easement granted for ditches, canals, tramways, and transmission lines on**
2 **any public lands.**

3 In connection with the construction and development of the project, there is granted over all
4 the lands belonging to the state, including lands owned or acquired for highway right-of-way
5 purposes, a right of way for pipelines, connections, valves, and all other appurtenant facilities
6 constructed as part of the project. However, the director of the department of transportation and
7 the state engineer must approve the plans of the authority with respect to the use of right of way
8 of roads before the grant becomes effective.

9 **61-40-15. Proceedings to confirm judicially contracts and other acts.**

10 The authority, before making any contract, issuing bonds, or taking any special action, may
11 commence a special proceeding in district court by which the proceeding leading up to the
12 making of such contract or leading up to any other special action must be examined, approved,
13 and confirmed. The judicial proceedings must comply substantially with the procedure required
14 in the case of judicial confirmation of proceedings, acts, and contracts of an irrigation district.

15 **61-40-16. Debt service reserve - Legislative appropriation requirement.**

16 In order to assure the maintenance of any required debt service reserve for bonds issued
17 under this chapter, the legislative assembly shall appropriate to the authority for deposit in the
18 reserve fund or funds for the bonds, such sums if any, as are certified by the authority as
19 necessary to restore the reserve fund or funds to an amount equal to the required debt service
20 reserve. However, the appropriation must be limited to an annual amount that does not exceed
21 eighty percent of the required debt service reserve. This section is applicable to any required
22 debt service reserve for bonds issued under this chapter in an aggregate amount not to exceed
23 one hundred fifty million dollars plus costs of issuance, capitalized interest, credit enhancement,
24 and any reserve funds required by agreements with or for the benefit of holders of the bonds for
25 the purposes for which the authority is created under this chapter.