

**FIRST ENGROSSMENT
with Conference Committee Amendments
ENGROSSED 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; to provide appropriations; to provide for loans and
3 loan repayment; and to declare an emergency.

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

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

7 **61-40-01. Legislative declarations - Authority of western area water supply authority.**

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

5 **61-40-02. Western area water supply authority.**

6 The western area water supply authority consists of participating political subdivisions
7 located within McKenzie, Williams, Burke, Divide, and Mountrail Counties which enter a water
8 supply contract with the authority. Other cities and water systems, within or outside the authority
9 counties' boundaries, including cities or water systems in Montana, may contract with the
10 authority for a bulk water supply. The authority is a political subdivision of the state, a
11 governmental agency, body politic and corporate, with the authority to exercise the powers
12 specified in this chapter, or which may be reasonably implied. Participating member entities
13 may be required to pay dues or water sale income to the authority, as determined by the bylaws
14 and future resolutions of the authority. Participating member entities may not withdraw from the
15 authority or fail or refuse to pay any water sale income to the authority if the twenty-five million
16 dollar zero interest loan from the state water commission has not been repaid.

17 **61-40-03. Western area water supply authority - Board of directors.**

- 18 1. The initial board of directors of the western area water supply authority consists of two
19 representatives from each of the following entities: Williams rural water district,
20 McKenzie County water resource district, the city of Williston, BDW water system
21 association, and R&T water supply association. The governing body of each member
22 entity shall select two representatives to the authority board who are water users of
23 the member entity. If a vacancy arises for a member entity, the governing body of the
24 member entity shall select a new representative to act on its behalf on the authority
25 board. In addition, the state engineer or designee is a voting member on the
26 authority's board of directors. Directors have a term of one year and may be
27 reappointed.
- 28 2. Additional political subdivisions or water systems may be given membership on the
29 board upon two-thirds majority vote of the existing board. To be eligible for
30 membership on the board, the member entity must first contract with the authority for
31 financial participation in the project.

1 3. A member entity may designate an alternate representative to attend meetings and to
2 act on the member's behalf. The board may designate associate members who are
3 nonvoting members of the board. Notwithstanding this section, except for the state
4 engineer or designee, initial board members must be removed if they have not entered
5 a contract with the authority, before August 1, 2013, for financial participation in the
6 project.

7 **61-40-04. Board of directors - Officers - Meetings.**

8 1. The board of directors shall adopt such rules and bylaws for the conduct of the
9 business affairs of the authority as it determines necessary, including the time and
10 place of regular meetings of the board, financial participation structure for membership
11 in the authority, and membership appointment and changes. Bylaws need to be
12 approved by member entity boards.

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

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

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

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

1 **61-40-05. Authority of the western area water supply authority.**

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

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

5 2. Exercise the power of eminent domain in the manner provided by title 32 or as
6 described in this chapter for the purpose of acquiring and securing any right, title,
7 interest, estate, or easement necessary or proper to carry out the duties imposed by
8 this chapter, and particularly to acquire the necessary rights in land for the
9 construction of an entire part of any pipeline, reservoir, connection, valve, pumping
10 installation, or other facility for the storage, transportation, or utilization of water and all
11 other appurtenant facilities used in connection with the authority. However, if the
12 interest sought to be acquired is a right of way for any project authorized in this
13 chapter, the authority, after making a written offer to purchase the right of way and
14 depositing the amount of the offer with the clerk of the district court of the county in
15 which the right of way is located, may take immediate possession of the right of way,
16 as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty
17 days after notice has been given in writing to the landowner by the clerk of the district
18 court that a deposit has been made for the taking of a right of way as authorized in this
19 subsection, the owner of the property taken may appeal to the district court by serving
20 a notice of appeal upon the acquiring agency, and the matter must be tried at the next
21 regular or special term of court with a jury unless a jury be waived, in the manner
22 prescribed for trials under chapter 32-15.

23 3. Accept funds, property, services, pledges of security, or other assistance, financial or
24 otherwise, from federal, state, and other public or private sources for the purpose of
25 aiding and promoting the construction, maintenance, and operation of the authority.
26 The authority may cooperate and contract with the state or federal government, or any
27 department or agency of state or federal government, or any city, water district, or
28 water system within the authority, in furnishing assurances and meeting local
29 cooperation requirements of any project involving treatment, control, conservation,
30 distribution, and use of water.

- 1 4. Cooperate and contract with the agencies or political subdivisions of this state or other
2 states, in research and investigation or other activities promoting the establishment,
3 construction, development, or operation of the authority.
- 4 5. Appoint and fix the compensation and reimbursement of expenses of employees as
5 the board determines necessary to conduct the business and affairs of the authority
6 and to procure the services of engineers and other technical experts, and to retain
7 attorneys to assist, advise, and act for the authority in its proceedings.
- 8 6. Operate and manage the authority to distribute water to authority members and others
9 within or outside the territorial boundaries of the authority and this state.
- 10 7. Hold, own, sell, or exchange any and all property purchased or acquired by the
11 authority. All money received from any sale or exchange of property must be deposited
12 to the credit of the authority and may be used to pay expenses of the authority.
- 13 8. Enter contracts to obtain a supply of bulk water through the purchase of infrastructure,
14 bulk water sale or lease, which contracts may provide for payments to fund some or all
15 of the authority's costs of acquiring, constructing, or reconstructing one or more water
16 supply or infrastructure.
- 17 9. Acquire, construct, improve, and own water supply infrastructure, office and
18 maintenance space in phases, in any location, and at any time.
- 19 10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial
20 use to persons within or outside the authority. The contracts may provide for payments
21 to fund some or all of the authority's costs of acquiring, constructing, or reconstructing
22 one or more water system projects, as well as the authority's costs of operating and
23 maintaining one or more projects, whether the acquisition, construction, or
24 reconstruction of any water supply project actually is completed and whether water
25 actually is delivered pursuant to the contracts. The contracts the cities, water districts,
26 and other entities that are members of the western area water supply authority are
27 authorized to execute are without limitation on the term of years.
- 28 11. Borrow money as provided in this chapter.
- 29 12. Make all contracts, execute all instruments, and do all things necessary or convenient
30 in the exercise of its powers or in the performance of its covenants or duties or in order

- 1 to secure the payment of its obligations, but an encumbrance, mortgage, or other
2 pledge of property of the authority may not be created by any contract or instrument.
- 3 13. Accept from any authorized state or federal agency loans or grants for the planning,
4 construction, acquisition, lease, or other provision of a project, and enter agreements
5 with the agency respecting the loans or grants.
- 6 14. Contract debts and borrow money, pledge property of the authority for repayment of
7 indebtedness, and provide for payment of debts and expenses of the authority.
- 8 15. Operate and manage the authority to distribute water to any out-of-state cities or water
9 systems that contract with the authority.
- 10 16. Accept, apply for, and hold water allocation permits.
- 11 17. Adopt rules concerning the planning, management, operation, maintenance, sale, and
12 ratesetting regarding water sold by the authority. The authority may adopt a rate
13 structure with elevated rates set for project industrial water supplies in recognition that
14 a large component of the project expense is being incurred to meet the demands of
15 industrial users.
- 16 18. Develop water supply systems; store and transport water; and provide, contract for,
17 and furnish water service for domestic, municipal, and rural water purposes; milling,
18 manufacturing, mining, industrial, metallurgical, and any and all other beneficial uses;
19 and fix the terms and rates therefore. The authority may acquire, construct, operate,
20 and maintain dams, reservoirs, ground water storage areas, canals, conduits,
21 pipelines, tunnels, and any and all treatment plants, works, facilities, improvements,
22 and property necessary the same without any required public vote before taking
23 action.
- 24 19. Contract to purchase or improve water supply infrastructure or to obtain bulk water
25 supplies without requiring any vote of the public on the projects or contracts. In relation
26 to the initial construction of the system and for the purposes of entering a contract with
27 the authority, municipalities are exempt from the public voting requirements or water
28 contract duration limitations otherwise imposed by section 40-33-16.
- 29 20. Accept assignment by member entities of contracts that obligate member entities to
30 provide a water supply, contracts that relate to construction of water system

1 infrastructure, or other member entity contracts that relate to authorities transferred to
2 the authority under this chapter.

3 **61-40-06. Oversight of authority projects.**

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

16 **61-40-07. Easement granted for pipelines and appurtenant facilities on any public**
17 **lands.**

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

24 **61-40-08. Proceedings to judicially confirm contracts and other acts.**

25 The authority, before making any contract or taking any special action, may commence a
26 special proceeding in district court by which the proceeding leading up to the making of such
27 contract or leading up to any other special action must be examined, approved, and confirmed.
28 The judicial proceedings must comply substantially with the procedure required in the case of
29 judicial confirmation of proceedings, acts, and contracts of an irrigation district.

1 **61-40-09. Default.**

2 If the authority is in default in the payment of the principal of or interest on any of the
3 obligations of the authority under this chapter and if the budget section determines that the
4 authority is unable to reimburse the state in the time period required by the budget section, the
5 budget section may give written notice to the governing board of the authority that the state has
6 taken possession and ownership of the water system of the authority and the liabilities of the
7 authority. In addition, the state assumes the powers of the authority. If the authority is in default
8 in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a
9 loan for which the Bank of North Dakota is the source of funds for the loan, the state water
10 commission shall request funding from the legislative assembly to repay the principal and
11 interest due. Upon written notice, the members of the governing board of the authority are
12 immediately removed, and the state water commission is the governing board from the date of
13 notice. If the state water commission determines that governance, possession, and ownership
14 of the water system is not necessary for the authority to be able to reimburse the state in the
15 necessary time period, the state water commission may develop a plan to return governance,
16 possession, and ownership to the authority, subject to approval of the plan by the budget
17 section.

18 **SECTION 2. LOANS FROM BANK OF NORTH DAKOTA AND STATE WATER**

19 **COMMISSION.** The Bank of North Dakota shall provide a loan of \$50,000,000 to the western
20 area water supply authority for construction of the project. The terms and conditions of the loan
21 must be negotiated by the western area water supply authority and the Bank of North
22 Dakota. However, the term of the loan is a maximum of seven years after June 30, 2014. The
23 state water commission shall make available from funding appropriated to the commission for
24 the 2011-13 biennium \$25,000,000 as a zero interest loan to the western area water supply
25 authority, and the Bank of North Dakota shall manage this loan. The maximum term of this loan
26 is five years from the completion of the \$10,000,000 loan from the resources trust fund.

27 **SECTION 3. APPROPRIATION.** There is appropriated out of any moneys in the general
28 fund in the state treasury, not otherwise appropriated, the sum of \$25,000,000 or so much of the
29 sum as may be necessary, to the Bank of North Dakota for the purpose of providing a loan to
30 the western area water supply authority for a maximum term of eight years from the completion

1 of the \$50,000,000 loan from the Bank of North Dakota and at five percent interest per year, for
2 the biennium beginning July 1, 2011, and ending June 30, 2013.

3 **SECTION 4. APPROPRIATION.** There is appropriated out of any moneys in the resources
4 trust fund in the state treasury, not otherwise appropriated, the sum of \$10,000,000, or so much
5 of the sum as may be necessary, to the Bank of North Dakota for the purpose of providing a
6 loan to the western area water supply authority for a maximum term of two years from the
7 completion of the \$25,000,000 loan from the general fund and at five percent interest per year,
8 for the biennium beginning July 1, 2011, and ending June 30, 2013.

9 **SECTION 5. LOAN FUNDING AND REPAYMENT PRIORITY.** Funding from sections 2, 3,
10 and 4 of this Act must be structured so that funding is provided, as needed, first from the
11 \$25,000,000 zero interest loan from the state water commission, second from the \$50,000,000
12 loan from the Bank of North Dakota, third from the \$25,000,000 loan from the general fund, and
13 last from the \$10,000,000 loan from the resources trust fund. Repayment of loans must be
14 structured so that repayment is first of the \$50,000,000 loan from the Bank of North Dakota,
15 second of the \$25,000,000 loan from the general fund for deposit of the principal in the general
16 fund and interest in the resources trust fund, third from the \$10,000,000 loan from the resources
17 trust fund for deposit in the resources trust fund, and last of the \$25,000,000 zero interest loan
18 from the state water commission for deposit in the resources trust fund. The western area water
19 supply authority shall repay the loans for the project from revenues from the project, and the
20 authority may prepay loans within the priority without penalty. Upon repayment of the state
21 water commission zero interest loan, the authority shall provide five percent of the net profits to
22 the state water commission for deposit by the state treasurer in the resources trust fund until
23 June 30, 2040.

24 **SECTION 6. SECOND PHASE ANTICIPATED FUNDING.** At the request of the western
25 area water supply authority, the state water commission shall consider a loan of \$40,000,000
26 from the resources trust fund for inclusion within the state water commission's budget. The state
27 water commission shall consult and work cooperatively with the water-related topics overview
28 committee in setting the priority of the loan within the budget.

29 **SECTION 7. EMERGENCY.** This Act is declared to be an emergency measure.