

**FIRST ENGROSSMENT  
with Senate 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 an appropriation; to provide for loan and  
3 grant 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, water sale income, or bond revenue to the authority, as  
14 determined by the bylaws and future resolutions of the authority. Participating member entities  
15 may not withdraw from the authority or fail or refuse to pay any water sale income or bond  
16 revenue to the authority, if a grant of up to thirty million dollars from the state water commission  
17 has not been repaid.

18 **61-40-03. Western area water supply authority - Board of directors.**

19 1. The initial board of directors of the western area water supply authority consists of one  
20 representative from each of the following entities: Williams rural water district,  
21 McKenzie County water resource district, the city of Williston, BDW water system  
22 association, and R&T water supply association, and one county commissioner each  
23 from Burke County, Divide County, McKenzie County, Mountrail County, and Williams  
24 County. The governing body of each member entity shall select the representative to  
25 the authority board. If a vacancy arises for a member entity, the governing body of the  
26 member entity shall select a new representative to act on its behalf on the authority  
27 board. Directors have a term of one year and may be reappointed. In addition, the  
28 governor shall select one member of the state water commission as a voting member  
29 on the authority's board of directors. The commission member serves on the board at  
30 the pleasure of the governor.

- 1       2. Additional political subdivisions or water systems may be given membership on the  
2       board upon two-thirds majority vote of the existing board. To be eligible for  
3       membership on the board, the member entity must first contract with the authority for  
4       financial participation in the project.
- 5       3. A member entity may designate an alternate representative to attend meetings and to  
6       act on the member's behalf. The board may designate associate members who are  
7       nonvoting members of the board. Notwithstanding this section, except for the state  
8       water commission member and the county commissioners on the board, initial board  
9       members must be removed if they have not entered a contract with the authority,  
10      before August 1, 2013, for financial participation in the project.

11      **61-40-04. Board of directors - Officers - Meetings.**

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

1           purchased, the financial contributions of the stakeholder entities, or any other formula  
2           agreed by a majority of the board.

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

5           **61-40-05. Authority of the western area water supply authority.**

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

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

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

27           3. Accept funds, property, services, pledges of security, or other assistance, financial or  
28           otherwise, from federal, state, and other public or private sources for the purpose of  
29           aiding and promoting the construction, maintenance, and operation of the authority.  
30           The authority may cooperate and contract with the state or federal government, or any  
31           department or agency of state or federal government, or any city, water district, or

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

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

1        20. Accept assignment by member entities of contracts that obligate member entities to  
2            provide a water supply, contracts that relate to construction of water system  
3            infrastructure, or other member entity contracts that relate to authorities transferred to  
4            the authority under this chapter.

5            **61-40-06. Oversight of authority projects.**

6            The authority shall comply with the policy on cost-sharing of the state water commission as  
7            the policy relates to bidding, planning, and construction of the project. The authority shall report  
8            to and consult with the state water commission regarding the operation and financial status of  
9            the project, as requested by the state water commission. In relation to debt repayment, the  
10           authority shall present the overall plan for the project to the state water commission for  
11           concurrence. The attorney general shall assist the authority at the request of the state water  
12           commission. If a grant of up to thirty million dollars from the state water commission has not  
13           been repaid, without the written consent of the state water commission the authority may not  
14           sell, lease, abandon, encumber, or otherwise dispose of any part of property used in a water  
15           system of the authority if the property is used to provide revenue.

16           **61-40-07. Easement granted for ditches, canals, tramways, and transmission lines on**  
17           **any public 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 confirm judicially contracts and other acts.**

25           The authority, before making any contract, issuing bonds, or taking any special action, may  
26           commence a special proceeding in district court by which the proceeding leading up to the  
27           making of such contract or leading up to any other special action must be examined, approved,  
28           and confirmed. The judicial proceedings must comply substantially with the procedure required  
29           in the case of 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. Upon written notice, the  
7 members of the governing board of the authority are immediately removed, and the state water  
8 commission is the governing board from the date of notice. If the state water commission  
9 determines that governance, possession, and ownership of the water system is not necessary  
10 for the authority to be able to reimburse the state in the necessary time period, the state water  
11 commission may develop a plan to return governance, possession, and ownership to the  
12 authority, subject to approval of the plan by the budget section.

13        **61-40-10. Taxing authority.**

14        If projected or actual revenues are insufficient to prevent default, each board of county  
15 commissioners of Burke County, Divide County, McKenzie County, Mountrail County, and  
16 Williams County shall levy property tax in equal mills as is necessary to prevent default within a  
17 maximum of five mills for each county.

18        **SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the permanent  
19 oil tax trust fund in the state treasury, not otherwise appropriated, the sum of \$75,000,000, or so  
20 much of the sum as may be necessary, to the state water commission for the purpose of  
21 providing a loan to the western area water authority for a maximum term of twenty years at five  
22 percent interest per year, for the biennium beginning July 1, 2011, and ending June 30, 2013.

23        **SECTION 3. LOAN AND GRANT REPAYMENT OBLIGATION.** The western area water  
24 authority shall make payments on the loan provided in section 2 of this Act to the state water  
25 commission. The state water commission shall transfer the funds to the state treasurer for  
26 deposit of the principal in the permanent oil tax trust fund and deposit of the interest in the  
27 resources trust fund. Upon the repayment of the principal, the authority shall make payments in  
28 at least the amount of the principal payments to repay any state water commission grant made  
29 to the authority in an amount not to exceed thirty million dollars. In addition, upon repayment of  
30 the state water commission grant, the authority shall provide five percent of the net profits to the

1 state water commission for deposit by the state treasurer in the resources trust fund until  
2 June 30, 2040.

3 **SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.