

**SENATE BILL NO. 2274**

Introduced by

Senators Grindberg, Lyson

Representatives Hofstad, Porter

1 A BILL for an Act to create and enact six new sections to chapter 61-24.5 of the North Dakota  
2 Century Code, relating to the southwest water authority; to amend and reenact sections  
3 61-02.1-04, 61-24.5-01, 61-24.5-02, and 61-24.5-09 of the North Dakota Century Code, relating  
4 to the southwest water authority; to repeal chapter 61-24.3 of the North Dakota Century Code,  
5 relating to the southwest pipeline project; to provide an appropriation; and to provide for  
6 application.

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

8 **SECTION 1. AMENDMENT.** Section 61-02.1-04 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **61-02.1-04. Bonds payable from appropriations and other revenues.**

11 1. Principal and interest on bonds issued for flood control or reduction projects as  
12 provided in this chapter are payable from transfers to be made and appropriated by  
13 the legislative assembly from the water development trust fund as provided in  
14 section 61-02.1-05, then from transfers to be made and appropriated by the legislative  
15 assembly from revenues in the resources trust fund other than revenues from state  
16 taxes, then from appropriations of other available revenues in the then current  
17 biennium, and then from any other revenues the state water commission makes  
18 available during the then current biennium for that purpose, including any federal  
19 moneys received by the state for the construction of flood control or reduction projects  
20 to pay bonds issued for that project. If sufficient funds from these sources are not  
21 available, then from transfers to be made and appropriated by the legislative assembly  
22 from the first available current biennial earnings of the Bank of North Dakota not to  
23 exceed six million five hundred thousand dollars per biennium prorated with any other  
24 bonds payable from transfers to be made and appropriated by the legislative assembly

1 from the available current biennial earnings of the Bank of North Dakota, to be  
2 credited by the trustee to the fund established for paying principal and interest on the  
3 bonds under a trust indenture.

4 2. ~~Principal and interest on bonds issued for continued construction of the southwest~~  
5 ~~pipeline project are payable from transfers to be made and appropriated by the~~  
6 ~~legislative assembly from the water development trust fund as provided in section~~  
7 ~~61-02.1-05, then from transfers to be made and appropriated by the legislative~~  
8 ~~assembly from revenues in the resources trust fund other than revenues from state~~  
9 ~~taxes, then from appropriations of other available revenues in the then current~~  
10 ~~biennium, or from payment from the Perkins County rural water system, and then from~~  
11 ~~any other revenues the state water commission makes available during the then~~  
12 ~~current biennium for that purpose, including any federal moneys received by the state~~  
13 ~~for the construction of the southwest pipeline project to pay bonds issued for the~~  
14 ~~project. If sufficient funds from these sources are not available, then from transfers to~~  
15 ~~be made and appropriated by the legislative assembly from the first available current~~  
16 ~~biennial earnings of the Bank of North Dakota not to exceed six million five hundred~~  
17 ~~thousand dollars per biennium prorated with any other bonds payable from transfers to~~  
18 ~~be made and appropriated by the legislative assembly from the available current~~  
19 ~~biennial earnings of the Bank of North Dakota, to be credited by the trustee to the fund~~  
20 ~~established for paying principal and interest on the bonds under a trust indenture.~~

21 3. Principal and interest on bonds issued under subsection 7 of section 61-02.1-01 are  
22 payable from transfers to be made and appropriated by the legislative assembly from  
23 the water development trust fund as provided in section 61-02.1-05, then from  
24 transfers to be made and appropriated by the legislative assembly from revenues in  
25 the resources trust fund other than revenues from state taxes, then from  
26 appropriations of other available revenues in the then current biennium, and then from  
27 any other revenues the state water commission makes available during the then  
28 current biennium for that purpose, including any federal moneys received by the state  
29 for the construction of an outlet to Devils Lake to pay bonds issued for that project, or  
30 financing a statewide water development program to pay bonds issued for that project.  
31 If sufficient funds from these sources are not available, then from transfers to be made

1 and appropriated by the legislative assembly from the first available current biennial  
2 earnings of the Bank of North Dakota not to exceed six million five hundred thousand  
3 dollars per biennium prorated with any other bonds payable from transfers to be made  
4 and appropriated by the legislative assembly from the available current biennial  
5 earnings of the Bank of North Dakota, to be credited by the trustee to the fund  
6 established for paying principal and interest on the bonds under a trust indenture.

7 4.3. Obligations issued as provided in this chapter do not constitute a debt, liability, or  
8 obligation of the state of North Dakota or a pledge of the faith and credit of the state of  
9 North Dakota, but are payable solely from the sources as described in this chapter.

10 5.4. The state water commission shall include in its submission to the governor for  
11 inclusion by the governor in the biennial executive budget of the state for each year of  
12 the respective biennium during the term of any bonds issued as provided in this  
13 chapter an amount fully sufficient to pay the principal and interest required to be paid  
14 in each year of the biennium, if any, from moneys from non-general fund sources.  
15 Provided, that should the governor not include in the executive budget for any reason  
16 the amounts required to be included by this section, the state water commission shall  
17 request independently that the legislative assembly amend the executive budget  
18 appropriation so as to include the amounts.

19 6.5. Principal and interest on bonds issued for projects authorized pursuant to section  
20 61-02.1-02.1 are payable from transfers to be made and appropriated by the  
21 legislative assembly from the water development trust fund as provided in section  
22 61-02.1-05, then from transfers to be made and appropriated by the legislative  
23 assembly from revenues in the resources trust fund other than revenues from state  
24 taxes, then from appropriations of other available revenues in the then current  
25 biennium, and then from any other revenues the state water commission makes  
26 available during the then current biennium for that purpose. If sufficient funds from  
27 these sources are not available, then from transfers to be made and appropriated by  
28 the legislative assembly from the first available current biennial earnings of the Bank of  
29 North Dakota not to exceed six million five hundred thousand dollars per biennium  
30 prorated with any other bonds payable from transfers to be made and appropriated by  
31 the legislative assembly from the available current biennial earnings of the Bank of

1 North Dakota, to be credited by the trustee to the fund established for paying principal  
2 and interest on the bonds under a trust indenture.

3 **SECTION 2. AMENDMENT.** Section 61-24.5-01 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **61-24.5-01. Findings and declaration of policy.**

6 It is hereby found and declared by the legislative assembly that many areas and localities in  
7 southwestern North Dakota do not enjoy adequate quantities of high-quality drinking water. It is  
8 also found and declared that other areas and localities in southwestern North Dakota do not  
9 have sufficient quantities of water to ensure a dependable, long-term supply. It is further found  
10 and declared that supplementation of the water resources of southwestern North Dakota, with  
11 water supplies from Lake Sakakawea and the Missouri River, utilizing a pipeline transmission  
12 and delivery system, is a feasible approach to provide southwestern North Dakota with a safe,  
13 good quality, dependable source, and adequate quantity of water.

14 It is further declared that opportunity for greater economic security, protection of health,  
15 property, enterprise, preservation of the benefits from the land and water resources of this state,  
16 and the promotion of the prosperity and general welfare of all of the people of North Dakota  
17 depends on the effective development and utilization of the land and water resources of this  
18 state, and necessitate and require the exercise of the sovereign powers of the state and  
19 concern a public purpose. Therefore, in order to accomplish this public purpose, it is hereby  
20 declared necessary that a project to supply and distribute water to southwestern North Dakota,  
21 ~~as authorized by chapter 61-24.3,~~ and acts amendatory thereof and supplementary thereto, be  
22 established and constructed, to:

- 23 1. Provide for the supply and distribution of water to the people of southwestern North  
24 Dakota through a pipeline transmission and delivery system for purposes including  
25 domestic, rural water, municipal, livestock, light industrial, mining, and other uses, with  
26 primary emphasis on domestic, rural water, and municipal uses.
- 27 2. Provide for the future economic welfare and property of the people of this state, and  
28 particularly the people of southwestern North Dakota, by making available waters from  
29 Lake Sakakawea and the Missouri River for beneficial and public uses.

30 It is also declared necessary to study and further develop water resources to provide adequate  
31 water supplies for energy, industrial, agriculture, and other opportunities in southwest North

1 Dakota. The provisions hereof may not be construed to abrogate or limit the rights, powers,  
2 duties, and functions of the state water commission or the state engineer, but must be  
3 considered supplementary thereto.

4 **SECTION 3. AMENDMENT.** Section 61-24.5-02 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **61-24.5-02. Definitions.**

7 In this chapter, unless the context or subject matter otherwise requires:

- 8 1. "Authority" means the southwest water authority.
- 9 2. "Board" means the board of directors of the southwest water authority.
- 10 3. ~~"Person" includes any natural person, state agency, municipality, political subdivision,~~  
11 ~~public or private corporation, limited liability company, partnership, or association.~~
- 12 4. "Southwest pipeline project" includes the project and works, or any part thereof,  
13 authorized in and constructed by the state water commission under the former chapter  
14 61-24.3 and any future addition made by the authority under this chapter.
- 15 5. "Works" includes all property rights, easements, and franchises relating thereto and  
16 deemed necessary or convenient for operation of the southwest pipeline project, all  
17 water rights acquired and exercised by the authority in connection with the southwest  
18 pipeline project, and all means of delivering and distributing water through the  
19 utilization of a pipeline transmission and delivery system, as authorized in this chapter  
20 61-24.3.

21 **SECTION 4. AMENDMENT.** Section 61-24.5-09 of the North Dakota Century Code is  
22 amended and reenacted as follows:

23 **61-24.5-09. Powers and duties of the district board of directors.**

24 The board of directors of the southwest water authority has the power:

- 25 1. To sue and be sued in the name of the authority.
- 26 2. To exercise the power of eminent domain in the manner provided by title 32 for the  
27 purpose of acquiring and securing any right, title, interest, estate, or easement  
28 necessary to carry out the duties imposed by this chapter, and particularly to acquire  
29 the necessary rights in land for the construction of pipelines, reservoirs, connections,  
30 valves, and all other appurtenant facilities used in connection with the southwest  
31 pipeline project, or any part thereof.

- 1       3. To accept funds, property, and services or other assistance, financial or otherwise,  
2           from federal, state, and other public or private sources for the purpose of aiding and  
3           promoting the construction, maintenance, and operation of the southwest pipeline  
4           project, or any part thereof.
- 5       4. To cooperate and contract with the state, its agencies, or its political subdivisions, or  
6           any agency of the United States, in research and investigation or other activities  
7           promoting the establishment, construction, development, or operation of the southwest  
8           pipeline project, or any part thereof.
- 9       5. To furnish assurances of cooperation, and as principal and guarantor or either to enter  
10          into a contract, or contracts, with the United States of America, or any department or  
11          agency thereof, and with public corporations and political subdivisions of North Dakota  
12          for the performance of obligations for the construction, operation, or maintenance of  
13          the southwest pipeline project, or any part thereof, or for the delivery of water to any  
14          such department, agency, or political subdivision.
- 15       6. To construct or purchase separately or in cooperation with agencies of the United  
16          States, or the state of North Dakota, its agencies or political subdivisions, and to  
17          equip, maintain, and operate an office and principal place of business for the district,  
18          or other buildings or facilities to carry out activities authorized by this chapter.
- 19       7. To appoint and fix the compensation of such employees as the board shall deem  
20          necessary to conduct the business and affairs of the authority, and to procure the  
21          services of engineers and other technical experts, and to retain an attorney or  
22          attorneys to assist, advise, and act for it in its proceedings.
- 23       8. To appoint from their number an executive committee and vest the same with such  
24          powers and duties as the board may from time to time delegate thereto, in order to  
25          facilitate the duties and work of the board in connection with the business affairs  
26          involved in the development, construction, operation, and maintenance of the  
27          southwest pipeline project, or any part thereof.
- 28       9. To enter into a contract or contracts for a supply of water from the United States or the  
29          state water commission and to sell, lease, and otherwise contract to furnish any such  
30          water for beneficial use to persons or entities within or outside the authority.

- 1       10. To accept, on behalf of the district, appointment of the district as fiscal agent of the  
2           United States or the state water commission and authorization to make collections of  
3           money for and on behalf of the United States or the state water commission in  
4           connection with the southwest pipeline project, or any part thereof.
- 5       11. To sell or exchange any and all real property purchased or acquired by the authority.  
6           All moneys received pursuant to any such sale or exchange shall be deposited to the  
7           credit of the authority and may be disbursed for the payment of expenses of the  
8           authority.
- 9       12. Notwithstanding any other law, to exercise the powers granted to a municipality under  
10          subsection 5 of section 40-33-01 pursuant to the limitations set forth therein. The  
11          authority may pay the cost of leasing any waterworks, mains, and water distribution  
12          system and any equipment or appliances connected therewith and any property  
13          related thereto pursuant to subsection 5 of section 40-33-01 solely from revenues to  
14          be derived by the authority from the ownership, sale, lease, disposition, and operation  
15          of the waterworks, mains, and water distribution system; the funds or any other  
16          amounts invested by the authority pursuant to the laws of the state or invested on the  
17          authority's behalf by the state, or any agency or institution of the state, in conformity  
18          with policies of the industrial commission, including investment in a guaranteed  
19          investment contract and any earnings thereon, to the extent pledged therefor; and  
20          funds, if any, appropriated annually by the board of the authority or received from  
21          federal or state sources.
- 22       13. To study and analyze options for providing additional water supplies to southwest  
23          North Dakota for purposes, including domestic, rural water, municipal, livestock,  
24          energy development, industrial, mining, and other uses.
- 25       14. To conduct engineering, legal, financial, educational, and other activities to further the  
26          completion of the southwest pipeline project, or any part thereof, or any other works or  
27          projects necessary to provide adequate water supplies for southwest North Dakota.
- 28       15. To construct the southwest pipeline project as provided in this chapter.
- 29       16. To operate and maintain, or provide for the operation and maintenance of the  
30          southwest pipeline project.

- 1        17. To exercise all express and implied rights, powers, and authorities, including all  
2            powers and authorities granted to the state water commission in chapter 61-02,  
3            necessary to carry out the provisions and purposes of this chapter.
- 4        18. To make and enforce orders, rules, and bylaws for the operation and maintenance of  
5            the southwest pipeline project.
- 6        19. To sell, transfer, or exchange property acquired for the southwest pipeline project  
7            provided the state water commission determines the property is not necessary for the  
8            operation, maintenance, or construction of the southwest pipeline project. For a period  
9            of sixty days, the property must first be offered for sale, transfer, or exchange to the  
10           current owner of the surrounding property from which the property was obtained. Any  
11           parcel of property sold, transferred, or exchanged under this section may not exceed  
12           two acres [.81 hectare]. Sections 54-01-05.2 and 54-01-05.5 do not apply to the sale,  
13           transfer, or exchange of property pursuant to this subsection.

14        **SECTION 5.** A new section to chapter 61-24.5 of the North Dakota Century Code is created  
15 and enacted as follows:

16        **Preference for resident pipeline manufacturers and bidders for labor and services.**

17        Any contracts for the purchase of pipeline materials, labor, or services awarded by the  
18 authority in regard to the construction of the southwest water pipeline project must be awarded  
19 to North Dakota resident pipeline manufacturers and North Dakota resident bidders for labor  
20 and services making the lowest responsible bids if those bids do not exceed by more than five  
21 percent the lowest responsible bid submitted by a nonresident pipeline manufacturer or bidder  
22 for labor or services. As used in this section, "North Dakota resident pipeline manufacturers and  
23 bidders for labor or services" means bidders or sellers who have maintained a bona fide place  
24 of business within this state for at least five years before the date on which the contract bid is  
25 awarded. If the authority awards any contract for pipeline materials, labor, or services in regard  
26 to construction of the southwest water pipeline project to a nonresident bidder, the authority  
27 shall publicly give notice in a newspaper of general circulation regarding the specific reasons  
28 why it did not award the contract to a resident bidder. This section does not apply to contracts  
29 that involve federal moneys when a preference would be contrary to federal laws or regulations,  
30 contracts covered under chapter 48-01.2, or to architect, engineer, professional right of way, or  
31 land surveying services.

1       **SECTION 6.** A new section to chapter 61-24.5 of the North Dakota Century Code is created  
2 and enacted as follows:

3       **Authority to fix water rates for the southwest water pipeline project.**

4       The authority shall establish the payments for water service to be paid by water user  
5 entities for purchase of water from the southwest pipeline project. The payments for water  
6 service include each water user entity's proportionate share of the operation, maintenance, and  
7 replacement costs, and also include a component for payment for capital costs. The authority  
8 shall include in its determination of each water user entity's share of operation, maintenance,  
9 and replacement costs an amount to be deposited in the southwest pipeline project reserve  
10 fund for replacement and extraordinary maintenance of southwest pipeline project works. The  
11 amount of such reserve fund for replacement and extraordinary maintenance must be  
12 determined by the authority.

13       **SECTION 7.** A new section to chapter 61-24.5 of the North Dakota Century Code is created  
14 and enacted as follows:

15       **Operation and maintenance - Authority to employ manager and employees.**

16       The authority shall obtain the assistance necessary for the operation and maintenance of  
17 the southwest pipeline project. To that end, it may appoint a manager, and may appoint  
18 subordinate officers and employees. It may designate the manager its general agent in respect  
19 to the operation and maintenance of the southwest pipeline project. It may appoint or employ  
20 such contractors, engineers, attorneys, and other experts, agents, and servants as in the  
21 judgment of the authority the interests of the project may require, and shall define the duties,  
22 designate the titles, and fix the compensation and the bonds of all such persons so engaged.  
23 The manager of the southwest pipeline project may appoint and employ such deputies and  
24 other subordinates, and such contractors, engineers, attorneys, and other experts, agents, and  
25 servants as the manager shall deem required. The total compensation of such appointees and  
26 employees, together with other expenditures for the operation and maintenance of the  
27 southwest pipeline project, shall remain within the earnings lawfully available in each year for  
28 such purpose.

29       **SECTION 8.** A new section to chapter 61-24.5 of the North Dakota Century Code is created  
30 and enacted as follows:

1        **Removal and discharge of appointees.**

2        The authority may remove and discharge any and all persons appointed in the exercise of  
3 powers granted by this chapter, whether by the authority or by the manager of the southwest  
4 pipeline project. Any such removal may be made whenever in the judgment of the authority, the  
5 public interests and the interests of the southwest pipeline project require it. All appointments  
6 and removals contemplated by this chapter must be made as the authority deems most fit to  
7 promote the purpose and efficiency of the southwest pipeline project.

8        **SECTION 9.** A new section to chapter 61-24.5 of the North Dakota Century Code is created  
9 and enacted as follows:

10       **Validation of water service contracts.**

11       Water service contracts entered by the authority for the distribution and sale of water to  
12 water user entities from the southwest pipeline project are confirmed and approved by the  
13 legislative assembly. The authority may commence a special proceeding in and by which the  
14 proceedings of the authority and the making of water service contracts are judicially examined,  
15 approved and confirmed, or disapproved and disaffirmed. The proceeding must comply as  
16 nearly as possible with the procedure authorized by sections 61-07-22 through 61-07-28 for  
17 irrigation district contracts. The requirements of section 40-33-16 are not applicable to contracts  
18 between the authority and cities for water service from the southwest pipeline project, provided  
19 the contracts were approved by the city governing body and executed before January 1, 1999.

20       **SECTION 10.** A new section to chapter 61-24.5 of the North Dakota Century Code is  
21 created and enacted as follows:

22       **Other pipelines - Authority approval required.**

23       Upon construction of the southwest pipeline project, utilities, corporations, limited liability  
24 companies, companies, or any other person or entity which proposes to install or construct a  
25 pipeline or other underground conveyance system which crosses or intersects the southwest  
26 pipeline project may do so only with the approval of the authority, in accordance with the  
27 requirements and conditions imposed by the authority for the pipeline or other crossing.

28       **SECTION 11. REPEAL.** Chapter 61-24.3 of the North Dakota Century Code is repealed.

29       **SECTION 12. APPROPRIATION.** There is appropriated out of any moneys in the resources  
30 trust fund in the state treasury, not otherwise appropriated, the sum of \$65,000,000, or so much  
31 of the sum as may be necessary, to the southwest water authority for the purpose of

1 construction, operation, and maintenance of the southwest pipeline project, for the biennium  
2 beginning July 1, 2013, and ending June 30, 2015.

3 **SECTION 13. APPLICATION.** Notwithstanding any other provision of law, this Act transfers  
4 all powers and duties over the southwest pipeline project from the state water commission to  
5 the southwest water authority. The authority may operate and expand the project as deemed  
6 appropriate by the authority if the expansion is funded from revenues allowed under chapter  
7 61-24.5. The authority shall pay for operation, construction, or expansion from these revenues  
8 and has no obligation to repay any funds obtained from the state by the commission or the  
9 authority before the effective date of this Act.