

April 16, 2013

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1440

That the Senate recede from its amendments as printed on pages 1262-1264 of the House Journal and pages 1149-1151 of the Senate Journal and that Engrossed House Bill No. 1440 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact sections 61-35-26.1, 61-35-26.2, 61-35-26.3, and 61-35-26.4 of the North Dakota Century Code, relating to water services by cities and water districts and state water commission policies on funds for water districts and cities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 61-35-26.1 of the North Dakota Century Code is created and enacted as follows:

61-35-26.1. Statement of intent.

It is the intent of the legislative assembly that potable water should be available in sufficient quality and quantity to meet citizens' needs for a healthy and safe standard of living and to promote economic growth and development. In order to meet this objective in the most economical way, water service districts and city water service systems shall coordinate their service plans. Competition for users and duplication of service must be avoided whenever possible.

SECTION 2. Section 61-35-26.2 of the North Dakota Century Code is created and enacted as follows:

61-35-26.2. Plans for water service by providers - Filing plans - Existing agreements.

1. A city planning to expand water service through annexation shall develop a city water service area plan. The city shall consult with any other water service provider, including a district, whose water service area is affected by the city's water service area plan of the establishment of the plan.
2. The city shall file the city water service area plan with the commission. Upon filing of the plan with the commission, the city may proceed with water service to the annexed area as provided in section 61-35-26. A city water service area plan is enforceable when there is a water service agreement among the water service providers, including a district, that are encompassed by or which abut the water service area boundary.
3. Sections 61-35-26.1 through 61-35-26.4 do not supersede an existing water service agreement between a city and a district.

SECTION 3. Section 61-35-26.3 of the North Dakota Century Code is created and enacted as follows:

61-35-26.3. State water commission funding.

Before providing a grant or loan to a district or city for a water service project in any area within the extraterritorial zoning jurisdiction of any affected city, the commission shall require that district and city to have a water service agreement. The absence of a water service agreement may not affect the funding by the commission of other projects for a district or city which are not related to potable water service and are not located within the extraterritorial zoning jurisdiction.

SECTION 4. Section 61-35-26.4 of the North Dakota Century Code is created and enacted as follows:

61-35-26.4. Water service agreement - Mediation - Administrative law judge.

1. If a water service agreement between the district and the city is not executed within sixty days after the city notifies the district that a city water service area plan has been developed, the matter must be submitted to a committee for mediation. The committee must be comprised of a mediator retained jointly by the city and the district, two members appointed by the governing body of the city, and two members appointed by the district. The retained mediator shall arrange and preside over the mediation proceedings.

2. If the mediation committee is unable to resolve the dispute to the satisfaction of the parties involved, either party may petition the office of administrative hearings to appoint an administrative law judge to determine the terms of the water service agreement. Before a hearing may be held, at least two weeks' written notice must be given to the parties involved in the dispute. At the hearing, the retained mediator who presided over the mediation proceedings may provide information to the administrative law judge on the dispute between the parties involved and any proposed resolutions or recommendations made by a majority of the members appointed to the committee. Any resident of or person owning property in a city or district involved in the dispute, or a representative of such a resident or property owner, and any representative of a city or district involved, may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. A decision by the administrative law judge must consider the following factors related to water service in the annexed area in making a decision under this subsection:
 - a. The recommendation of the mediation committee;
 - b. The firefighting flow capacity of the water system;
 - c. The anticipated growth patterns of the district and city involved in the dispute;
 - d. Special conditions or needs, including topographic or physical features influencing service;
 - e. The system capacity and trunk main delivery structure of each provider;
 - f. The age, condition, and worth of the affected existing infrastructure;

- g. Outstanding debt attributable to current users;
- h. The impact on future revenues lost from existing and future customers;
- i. Whether development would have occurred without annexation; and
- j. Any other factor determined to be relevant by the administrative law judge."

Renumber accordingly