

Sixty-third  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1440

Introduced by

Representatives Kreun, Haak, Hofstad, D. Johnson, Looysen, Maragos, Streyle

Senators Andrist, Grabinger, Larsen

1 A BILL ~~for an Act to create and enact four new sections to chapter 61-35 of the North Dakota~~  
2 ~~Century Code, relating to exclusion of cities from water districts and state water commission~~  
3 ~~policies on funds for water districts.~~ for an Act to create and enact four new sections to chapter  
4 61-35 of the North Dakota Century Code, relating to water services by cities and water districts  
5 and state water commission policies on funds for water districts.

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

7 **~~SECTION 1.~~** ~~A new section to chapter 61-35 of the North Dakota Century Code is created~~  
8 ~~and enacted as follows:~~

9 ~~— **Annexation of lands located in district - Notice.**~~

10 ~~— At least sixty days before the effective date of any ordinance annexing land that is located~~  
11 ~~in a district into the boundaries of any city, the city shall give written notice to the district of the~~  
12 ~~city's intent to annex the land. The notice must contain the description of the land and the city's~~  
13 ~~plan for the provision of water service to the land.~~

14 ~~— **~~SECTION 2.~~** A new section to chapter 61-35 of the North Dakota Century Code is created~~  
15 ~~and enacted as follows:~~

16 ~~— **Contract for city to provide water service - Franchise fee.**~~

17 ~~— Following annexation of district territory by a city, the city and the district may contract for~~  
18 ~~the city to provide water service to any portion of the annexed area.~~

19 ~~— **~~SECTION 3.~~** A new section to chapter 61-35 of the North Dakota Century Code is created~~  
20 ~~and enacted as follows:~~

21 ~~— **City designates different supplier - Purchase of district property - Arbitrators -**~~

22 ~~**Factors - Detachment of territory from district.**~~

23 ~~— 1. Following annexation, the district must remain the water service provider to the~~

24 ~~annexed area unless the city gives written notice designating a different supplier. If the~~

1 ~~city designates a different supplier, the city shall purchase the property, facilities, and~~  
2 ~~improvements of the district. The city shall fairly compensate the district for the~~  
3 ~~district's asset, plus up to ten years of revenue, as a result of the district being~~  
4 ~~precluded from providing water service to the area being annexed. If a water service~~  
5 ~~agreement between the district and the city is not executed within ninety days after~~  
6 ~~delivery of the notice designating a different supplier, the city and the district in good~~  
7 ~~faith shall engage in mediation. Unless an agreement is executed, a change in the~~  
8 ~~water service provider may not occur and an arbitrator may not be appointed until~~  
9 ~~more than one hundred twenty days after delivery of the notice of intent to change the~~  
10 ~~water supplier and the mediation has been terminated.~~

11 ~~2. If the district and the city are unable to reach an agreement, then the fair~~  
12 ~~compensation to the district must be determined in the following manner:~~

13 ~~a. The district and the city each shall select one qualified arbitrator, and the two~~  
14 ~~selected arbitrators shall select a third arbitrator to determine the fair~~  
15 ~~compensation for the district. The arbitration must be conducted in accordance~~  
16 ~~with chapter 32-29.3. Unless the arbitrators agree otherwise, the arbitration~~  
17 ~~proceedings must be conducted in the annexing city. The arbitrators shall~~  
18 ~~consider all elements of value, employing any method of valuation the arbitrators~~  
19 ~~deem appropriate, and shall specifically consider the following factors in~~  
20 ~~determining the fair compensation:~~

21 ~~(1) Whether any property of the district is rendered useless or valueless to the~~  
22 ~~district;~~

23 ~~(2) The amount of damage to property remaining in the ownership of the district~~  
24 ~~following annexation;~~

25 ~~(3) Impact on the existing indebtedness of the district and district's ability to~~  
26 ~~repay that debt;~~

27 ~~(4) The value of the district's service facilities located within the annexed area;~~

28 ~~(5) The amount of any expenditures for planning, design, or construction of~~  
29 ~~service facilities outside the incorporated or annexed area that are allocable~~  
30 ~~to service the annexed area;~~

- 1 ~~(6) The amount of the district's contractual obligations allocable to the annexed~~  
2 ~~area;~~
- 3 ~~(7) If the annexed area consists of land that does not have water service being~~  
4 ~~provided by the system at the time of the annexation, the value of the land~~  
5 ~~based on the planning, design, and construction of improvements located~~  
6 ~~outside the annexed area reasonably made to provide future water service~~  
7 ~~to the annexed area;~~
- 8 ~~(8) Any demonstrated impairment of service or increase of cost to the district's~~  
9 ~~remaining customers after the annexation and the impact on future~~  
10 ~~revenues lost from existing and future customers within the annexed area;~~
- 11 ~~(9) Any necessary and reasonable legal expenses or professional fees;~~
- 12 ~~(10) Any factors relevant to maintaining the district's current financial integrity;~~
- 13 ~~(11) The average increase in the number of benefit units in the area annexed for~~  
14 ~~the three years immediately preceding the annexation;~~
- 15 ~~(12) The reasonable costs of detaching the water system facilities to be sold and~~  
16 ~~all reasonable costs of integrating the remaining water system facilities of~~  
17 ~~the water supplier whose rights are terminated; and~~
- 18 ~~(13) Any other relevant factors agreed to by the three appointed arbitrators.~~
- 19 ~~b. At least two of the three arbitrators must agree to written findings and~~  
20 ~~conclusions that must be presented to the city for payment and the district for~~  
21 ~~acceptance.~~
- 22 ~~3. The compensation required by this section must be paid to the district whether or not~~  
23 ~~the city actually utilizes the facilities of the district for the delivery of water to property~~  
24 ~~within the city. The compensation must be paid within one hundred twenty days~~  
25 ~~following the date upon which the fair market value of the facilities are certified to the~~  
26 ~~city and district, or at a later date as may be mutually agreed upon by the city and~~  
27 ~~district or as determined by the district court.~~
- 28 ~~4. In any event, the district may elect to retain facilities located within the city and used~~  
29 ~~for transmission of water if the district uses those facilities to continue to supply water~~  
30 ~~service to benefit units outside the city. The district may not receive compensation for~~  
31 ~~facilities it elects to retain.~~

1 ~~5. Except as otherwise provided, this section does not limit the authority of a city to select~~  
2 ~~water service suppliers to areas within the city limits or to adopt and enforce~~  
3 ~~regulations for the operation of a water service supplier, including standards of water~~  
4 ~~quality, classification of water customers, capacity of water system, water system~~  
5 ~~connections to sanitary sewer systems, rates and billing practices, and other~~  
6 ~~regulations for protection of the public health, safety, and welfare.~~

7 ~~6. If a district will no longer be the water supplier to an area because of annexation and~~  
8 ~~notice under subsection 1, the district shall continue to provide the service until the city~~  
9 ~~gives notice of its assumption of responsibility for service, designating the date that the~~  
10 ~~service must transfer to the city's designated supplier. The district and the city shall~~  
11 ~~cooperate to minimize the inconvenience to water customers because of the transfer.~~  
12 ~~The city shall give written notice to each customer of the district for whom water~~  
13 ~~service is being transferred, specifying the new supplier's name and address, the~~  
14 ~~effective transfer date, the reason for the transfer, and an applicable rate schedule.~~  
15 ~~During the negotiation period, the district may not discontinue or limit service to~~  
16 ~~customers who were supplied water by the district at the time of annexation unless the~~  
17 ~~customer has violated district bylaws, rules, or regulations.~~

18 ~~7. Following the transfer of water service, the annexed land for which water service has~~  
19 ~~been transferred to the city must be deleted from the district's territory and all benefit~~  
20 ~~units attached to the land must be canceled without compensation. The district shall~~  
21 ~~provide notice of the deletion of territory to the state engineer.~~

22 ~~**SECTION 4.** A new section to chapter 61-35 of the North Dakota Century Code is created~~  
23 ~~and enacted as follows:~~

24 ~~**State water commission funding.**~~

25 ~~The state water commission, before providing grants or loans to a district or city, shall~~  
26 ~~consider whether a district and city within a district have developed a mutually acceptable water~~  
27 ~~service agreement to accommodate anticipated future growth of a city within a district, but the~~  
28 ~~commission may not have these considerations affect the funding of other projects within a~~  
29 ~~district.~~

30 **SECTION 1.** A new section to chapter 61-35 of the North Dakota Century Code is created  
31 and enacted as follows:

1 **Statement of intent.**

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

8 **SECTION 2.** A new section to chapter 61-35 of the North Dakota Century Code is created  
9 and enacted as follows:

10 **Plans for water service by providers - Filing plans - Existing agreements.**

11 1. A city planning to expand water service through annexation shall establish a city water  
12 service area plan. The city shall notify any other water service provider whose water  
13 service area is affected by the city's water service area plan of the establishment of  
14 the plan.

15 2. The city shall file the city water service area plan with the commission. Upon filing of  
16 the plan with the commission, the city may proceed with water service to the annexed  
17 area. A city water service area plan is perfected by a water service agreement among  
18 the water service providers that are encompassed by or which abut the water service  
19 boundary.

20 3. The provisions of this Act do not supersede an existing water service agreement  
21 between a city and a district.

22 **SECTION 3.** A new section to chapter 61-35 of the North Dakota Century Code is created  
23 and enacted as follows:

24 **State water commission funding.**

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

1       **SECTION 4.** A new section to chapter 61-35 of the North Dakota Century Code is created  
2 and enacted as follows:

3       **Water service agreement - Mediation - Administrative law judge.**

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

11       2.   If the mediation committee is unable to resolve the dispute to the satisfaction of the  
12       parties involved, either party may petition the office of administrative hearings to  
13       appoint an administrative law judge to determine the terms of the water service  
14       agreement. Before a hearing may be held, at least two weeks' written notice must be  
15       given to the parties involved in the dispute. At the hearing, the retained mediator who  
16       presided over the mediation proceedings may provide information to the administrative  
17       law judge on the dispute between the parties involved and any proposed resolutions or  
18       recommendations made by a majority of the members appointed to the committee.  
19       Any resident of or person owning property in a city or district involved in the dispute, or  
20       a representative of such a resident or property owner, and any representative of a city  
21       or district involved, may appear at the hearing and present evidence on any matter to  
22       be determined by the administrative law judge. A decision by the administrative law  
23       judge must consider the following factors related to water service in the annexed area  
24       in making a decision under this subsection:

25       a.   The recommendation of the mediation committee;

26       b.   The firefighting flow capacity of the water system;

27       c.   The anticipated growth patterns of the district and city involved in the dispute;

28       d.   Special conditions or needs, including topographic or physical features  
29       influencing service;

30       e.   The system capacity and trunk main delivery structure of each provider;

31       f.   The age, condition, and worth of the affected existing infrastructure;

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