



North Dakota House of Representatives

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House Bill 1537 Senate Industry & Business Committee

Chairman Barta and members of the Senate Industry & Business Committee,

I am Representative Emily O'Brien, representing District 42 in Grand Forks.

Before you is House Bill 1537, which, as drafted, provides specific protection when a water service agreement is in place during the term of a loan agreement and allows for retroactive application.

To contextualize the need for this legislation, I will outline the core issues while temporarily withholding the identities of the entities involved, which I will disclose at the end of my testimony. My goal is to clearly illustrate how House Bill 1537 was developed and why it is essential.

1. Negotiations commenced among a city, a water user entity, and a water user's district to provide water to rural areas, ensuring service to existing and potential customers.
2. Anticipated annexations were driven by historical flooding events that have affected North Dakota since 1882, with significant occurrences in 1969, 1997, 2009, and 2011.
3. The shared objectives of these parties were to foster public improvements that enhance water quality and service reliability for rural customers.
4. Compliance with Federal Statute 7 U.S.C. 1926(b) was a key consideration, protecting service areas of agency borrowers with outstanding loans, typically from the USDA.
5. Compliance with the North Dakota Century Code - 6-09.4-22 - enacted in 1997, similarly safeguarded rural water services against curtailment and protecting services areas who has a loan from the public finance authority or any other state agency or enterprise. ***Provided that any agreement is invalid and unenforceable unless the public finance authority or other state agency or enterprise is a party to the agreement and unless the agreement contains adequate safeguards to ensure the security and timely payment of bonds.***
6. Extensive negotiations occurred over a year, involving the local public service committee, city council, water user entities, engineers, attorneys, and other stakeholders.

7. A sequence of approvals ensued:

- November 29, 1999: The local public service committee recommended proceeding with an agreement between the city and two water user districts, pending legal review.
 - December 6, 1999: The city council approved this recommendation.
 - December 7, 1999: One water user's district passed a resolution accepting the agreement.
 - December 14, 1999: The second water user entity did the same.
8. On February 7, 2000, the city entered into an Assurance Agreement with the USDA, affirming compliance with the Civil Rights Act of 1964.
9. The 2000 Agreement covered 447 existing and future capacity customers, totaling \$261,893.10.
10. Subsequently, the water user's entity transitioned into a rural water district, approved by the State Engineer. In 2018, the two water user districts merged into one, also state approved.
11. For over 20 years, loans were repaid to the USDA, Bank of North Dakota, and the Public Finance Authority, with all parties operating under and performing the terms of the agreement.
12. In November 2020, the newly merged entity filed a lawsuit against the city, claiming the 2000 Agreement was void from inception due to the absence of the Bank of North Dakota as a part at the time the agreement was executed.
13. In July 2024, the North Dakota Supreme Court ruled that under NDCC 6-09.4-22, agreements without state agency participation are legally non-existent.

This decision has created uncertainty for cities and rural water districts across North Dakota that have relied on these agreements for decades. The entities involved in this case are the City of Grand Forks, Grand Forks Traill Rural Water District, and Traill District—now merged as East Central Regional Water District. East Central alleges that Grand Forks curtailed its ability to provide service and is seeking over \$62 million in damages, along with ownership of city water infrastructure without compensation. Agassiz Water Users District is still in existence and is honoring its promises under the 2000 Agreement.

Despite active participation in negotiations, board approvals, and long-term adherence to the agreement, East Central now contests its validity. Notably, board minutes from 2014 indicate awareness of the missing public finance authority participation—yet no action was taken to amend or renegotiate the contract in good faith.

North Dakota has a long history of cooperative problem-solving in rural water development, dating back to the establishment of the state's first rural water system in 1969. Rural water systems have expanded significantly, ensuring access to clean drinking water across all 53 counties and serving over 300,000 residents. The North Dakota Rural Water Systems Association, formed to tackle infrastructure challenges, has been instrumental in these efforts.

However, rather than continuing this tradition of collaboration, we now face litigation that ultimately burdens taxpayers. When errors occur in contracts, responsible parties should seek amendments, not legal disputes. House Bill 1537 seeks to resolve this uncertainty by clarifying NDCC 6-09.4-22 intent: to protect state-backed financing while preventing unjust invalidation of longstanding agreements.

The amendments I proposed (25.1185.01001) in the other chamber would have strengthen protections for the Public Finance Authority while ensuring cities are not unfairly stripped of negotiated service agreements. These changes uphold contractual integrity without undermining the statute's purpose.

Before you now, is version 25.1185.02000, the bill now as written provides those agreements made prior to January 1, 2025, that did not have the State as a party to the agreement, is voidable upon 30 days written notice from the State. The agreement cannot be voided by the city nor the rural water district. The language specifically states that this does not apply to litigation commenced before January 1, 2025. This will help protect other cities and rural water districts from litigation on these existing agreements.

Adding an emergency clause to the existing language so that the bill would become effective upon the governor's signature would support the purpose of this bill.

Thank you, Mr. Chairman and members of the committee.