

2025 HOUSE POLITICAL SUBDIVISIONS

HB 1537

2025 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Room JW327B, State Capitol

HB 1537
2/6/2025

A BILL for an Act to amend and reenact section 6-09.4-22 of the North Dakota Century Code, relating to water service agreement protection of service during the term of the loan; and to provide for retroactive application.

10:59 a.m. Chairman Longmuir opened the hearing.

Members Present: Chairman Longmuir, Vice-Chairman Fegley, Vice-Chairman Jonas, Representatives Bolinske, Davis, Hatlestad, Klemin, Motschenbacher, Ostlie, Toman, Warrey

Members Absent: Representatives Hager, Heilman

Discussion Topics:

- East Central Water District v. City of Grand Forks decision
- Reto active application of the bill

11:00 a.m. Representative Emily O'Brien, North Dakota Representative for District 42, introduced the bill and provided testimony #35768 and #35770.

11:12 a.m. Stephanie Engebretson, North Dakota League of Cities, testified in favor and provided testimony #35927.

11:21 a.m. Dan Gaustad, City Attorney for the City of Grand Forks, testified in favor and provided testimony #35455.

11:38 a.m. DeAnn Ament, Executive Director of North Dakota Public Finance Authority, testified in opposition and provided testimony #35798.

11:43 a.m. Eric Volk, Executive Director of ND Rural Water, testified in opposition and provided testimony #35788.

Additional written testimony:

Dwayne Heinrich, Mayor of the City of Jamestown, submitted testimony in favor #35266

Jordyne Lee, General Manager of the Dakota Rural Water District, submitted testimony in opposition #35558

Steven Hansen, General Manager of Southeast Water Users District, submitted testimony in opposition #35566

Bruce Henschel, Secretary of Northeast Regional Water District, submitted testimony in opposition #35773

Geneva Kaiser, Stutsman Rural Water District, submitted testimony in opposition #35814

11:54 p.m. Chairman Longmuir closed the hearing.

House Political Subdivisions Committee

HB 1537

Feb 6, 2025

Page 2

Wyatt Armstrong, Committee Clerk

**Dwaine Heinrich, Mayor
City of Jamestown**

February 4, 2025

Rep. Donald Longmuir Chair and Members of the ND House Political Subdivisions Committee
House Bill 1537 Testimony

Dear Chairman Longmuir and Members of the Committee:

This bill affords you and all members of the North Dakota Legislature an opportunity to see that what has happened to Grand Forks does not happen to another North Dakota municipality. Hopefully you have all had an opportunity to review what has been going on in Grand Forks regarding their water utility.

In my opinion, what Grand Forks has and is experiencing after entering into a good faith agreement with another North Dakota entity should be repugnant to all who have any respect for "The Golden Rule."

Again, please take this opportunity to see that this does not happen to another North Dakota political subdivisions by giving this bill a Do Pass recommendation and a Yes vote in the full House.

Thank you for your consideration.

Respectfully,

A handwritten signature in black ink that reads "Dwaine Heinrich". The signature is written in a cursive, slightly stylized font.

Dwaine Heinrich, Mayor
City of Jamestown

255 N. 4th St.
PO Box 5200
Grand Forks, ND 58206-5200



City of Grand Forks
(701) 746-4636

TESTIMONY ON HOUSE BILL 1537

House Political Subdivision Committee

February 6, 2025

Daniel L. Gaustad, City Attorney, City of Grand Forks, ND

Chairman Longmuir and members of the House Political Subdivision Committee, my name is Daniel L. Gaustad and I am the City Attorney for the City of Grand Forks. I want to thank you for the opportunity to provide testimony and express the City of Grand Forks' support to HB 1537.

To provide some background, there exists a Federal statute (7 U.S.C. § 1926(b)) that provides certain protections against curtailment or limiting rural water services when the rural water district is indebted to a federal agency. Generally, the lender is a USDA entity. The protections under this federal statute only arise if the rural water district has a loan from a federal lending agency. These protections generally relate to situations when a city annexes an area that the rural water district provides water service or in a reasonable period of time could provide water service.

In 1997, N.D.C.C. § 6-09.4-22 was enacted and provides similar protections against curtailment of rural water services. As with the federal statute, the protections under N.D.C.C. § 6-09.4-22 only arise if the rural water district is indebted to state lender. Generally, the state lender is the Public Finance Authority or the Bank of North Dakota.

In recognition of these statutory provisions, back in the year 2000, the City of Grand Forks entered into an agreement with Grand Forks Traill Rural Water Users, Inc. and Agassiz Water Users District. The stated purpose of this Agreement was to address the provisions of both the federal statute (7 U.S.C. § 1926(b)) and the state statute (N.D.C.C. § 6-09.4-22), when City of Grand Forks annexed areas and provided water service to these annexed areas. The annexations were anticipated to occur given the impact of the 1997 flood that inundated the City of Grand Forks.

It took over a year to negotiate the 2000 Agreement and each of the parties were represented by attorneys.

The 2000 Agreement set out areas immediately surrounding the City of Grand Forks, and the number of existing customers and the maximum future capacity that Grand Forks Trail Rural Water Users stated they were either providing water service to, or could provide water service to in the future. The total number of existing and future capacity customers of Grand Forks Rural Water Users represented it had was 447.

The City of Grand Forks paid Grand Forks Traill Rural Water Users a total of \$261,893.10 when the 2000 Agreement was signed, which represented the amount to be paid under the payment methodology set out in this agreement for the City's purchase of a portion of the total 447 existing and future capacity customers identified in the 2000 Agreement. The payment calculation set out in the 2000 Agreement applied to future annexations as well.

Shortly after the 2000 Agreement was executed, Grand Forks Traill Rural Water Users, Inc. became a rural water district under N.D.C.C. ch. 61-35. Importantly, in its petition to the State Engineer to become a water district, Grand Forks Traill Rural Water Users, Inc. specially cited the fact it had entered into the 2000 Agreement with the City of Grand Forks. Even more significant, is that in its petition to the State Engineer, Grand Forks Traill Rural Water Users represented its geographic service area boundary and the State Engineer's Order adopted and set out this geographic service boundary area. None of the areas that are the subject of the 2000 Agreement are within Grand Forks Traill Rural Water Users geographic service area.

In 2018, Grand Forks Traill Rural Water Users then petitioned the State Engineer to allow for its merger with another rural water district. The State Engineer approved this merger and the merged rural water districts became East Central Regional Water District (referred to herein as "East Central"). Significantly, in the merger petition, East Central represented to the State Engineer the geographic boundary of its service area and the State Engineer's Order approving the merger adopted and set out this geographic service boundary area. Again, none of East Central's geographic service area included the areas that are the subject of the 2000 Agreement.

For 20+ years the parties operated under and performed the terms of the 2000 Agreement.

At time of the 2000 Agreement was entered into, Grand Forks Traill Rural Water Users was indebted to a USDA agency and the Bank of North Dakota. These loans were later been paid off. In fact, the \$261,893.10 amount the City of Grand Forks paid in 2000 was used to pay down USDA lender loans. Over the course two plus decades of the 2000 Agreement, Grand Forks Traill Rural Water Users, and then East Central continued to get loans from state agencies – primarily through the Public Finance Authority.

Under N.D.C.C. § 6-09.4-22(2), agreements, like the 2000 Agreement, are allowed to be entered into, but if the rural water provider is indebted to a state lender, then the state lending entity is to be a party to the agreement. Also, N.D.C.C. § 6-09.4-22(2) provides that if the state lender is not a party, the agreement is deemed to be "invalid and unenforceable." Having the lender as a party to the agreement is not required under the Federal Statute (7 U.S.C. § 1926(b)). Nonetheless, concurrence by the USDA lender was secured regarding the 2000 Agreement. However, the Bank of North Dakota was not a party to the 2000 Agreement.

In November, 2020, East Central, the successor entity of Grand Forks Traill Rural Water Users, brought a lawsuit in Federal Court against the City of Grand Forks claiming the 2000 Agreement was void, *ab initio*, or from the very beginning, because the Bank of North Dakota was not a party to the 2000 Agreement – and even though the Bank of North Dakota was not a lender to East Central and had not been for years.

East Central in this lawsuit also claimed the City of Grand Forks was in violation of both 7 U.S.C. § 1926(b) and N.D.C.C. § 6-09.4-22, by “curtailing” its ability to provide water service 130+ subdivisions that are now part of the City. In fact, one of the subdivisions East Central is claiming to have been curtailed contains the City of Grand Forks’ new \$150M+ water treatment plant. However, none of the 130+ subdivisions are within the represented geographic service area that was submitted to and adopted by the State Engineer for Grand Forks Traill Water Users and East Central.

East Central is seeking money damages against the City of Grand Forks in excess of \$60M. East Central’s complaint also demands that “any and all water lines, mains, meters, tanks, pump stations, valves, and other facilities owned or later constructed by Grand Forks and used to serve the disputed territory (being the 130+ subdivisions)” be turned over to them without any payment to the City of Grand Forks.

Because N.D.C.C. §6-09.4-22(2), and the provision that an agreement without the state lending entity as a party renders the agreement “invalid and unenforceable,” was never interpreted, this issue was presented to the North Dakota Supreme Court.

The City of Grand Forks argued this provision of the statute may render the agreement voidable but not void from the beginning – thus, after 20+ years, it would lend itself to finding the 2000 Agreement is no longer subject to be avoided by East Central. East Central, on the other hand, argued this provision rendered the 2000 Agreement void, *ab initio*, or from the very beginning and in turn legally as if this agreement never existed.

The North Dakota Supreme Court issued its decision in July, 2024 concluding the language of “invalid and unenforceable” found in N.D.C.C. § 6-09.4-22(2) renders an agreement without the state lending entity as a party, void, *ab initio*, or from the beginning.

The legislation change by HB 1537 is being proposed to avoid the inequitable result that East Central seeks against the City of Grand Forks by avoiding honoring its promises and commitments made in the 2000 Agreement, and performed for 20+ years thereafter. Moreover, such inequitable result is not confined to simply the City of Grand Forks as it appears there are a number of other municipalities that have similar such long-term agreements which do not include the state lender as a party. Of particular significance is that it has been discovered the state lending agencies have never signed off on any such agreements. Rather, they rely upon their lending documents to address these situations.

Further, this legislation will not imperil any water system financially, when considering in the example of East Central, they continued to receive loans from state agencies without issue. It is important to note that the protections afforded by both the federal and state statutes have no application unless there is a qualifying loan from a federal or state lending agency. Without such a qualifying loan, the statutes and protections under these statutes have no application. Thus, the clear import of these statutes is to protect repayment security of these lending agency. Nothing in the amendments alters these repayment security protections afforded to the state lending agencies.

In addition, when one considers the cost share opportunities with the State Water Commission to rural water districts, the cost and expense for infrastructure development by rural water districts has been greatly reduced. Although it should be noted that under N.D.C.C. § 61-35-26.3, before a grant or loan can be provided by the State Water Commission for a “water service project in any area within the extraterritorial zoning jurisdiction of any affected city” the rural water district is required to have an agreement with the effected municipality. Thus, given East Central’s position that the 2000 Agreement was void from the beginning, it calls into question the status of cost-share grants the State Water Commission has provided to East Central over years.

In sum, the City of Grand Forks seeks this committee’s favorable review of HB 1537 because the legislation is simply directed at having entities that entered into these types of agreement honor their promises and commitments.

The City of Grand Forks asks for a DO PASS for HB 1537.

Dakota Rural Water District

204 4TH STREET WEST
PO BOX 476
FINLEY, NORTH DAKOTA 58230-0476

Phone
1-701-524-2393
1-800-656-2393
TTY-1-800-366-6888
Fax 1-701-524-2394



Jordyne Lee, General Manager

Dakota Rural Water District

In Opposition of House Bill 1537

House Political Subdivisions Committee

February 6, 2025

Chairman Longmuir and members of the House Political Subdivisions Committee. My name is Jordyne Lee and I am the General Manager of Dakota Rural Water District.

Dakota Rural Water District is located on the east side of North Dakota and provides water services to 1100 users through approximately 1370 square miles of pipeline. We serve in seven counties and provide bulk water for six cities. Rural water districts are political subdivisions and only receive dollars for operations based on water rates charged to customers, they do not receive any tax dollars to operate. Some water districts have a combination of federal and state loans. The territorial protections are put in place to ensure that rural water districts can repay these loans.

If HB 1537 was to go through it would wipe away all the hard work that the State of North Dakota has done with financial investments in rural water systems to help improve the quality of water/life for the rural customers. If rural water districts loses customers that are the most economical to them for instance customers that live close to a city it would affect all the remaining customers that live out in the rural areas as the rates would have to increase and would eventually be unaffordable for some.

Thank you for allowing me to provide testimony in opposition of HB 1537. We respectfully ask for a Do Not Pass Recommendation. Jordyne Lee.





SOUTHEAST WATER USERS

PO Box 10
MANTADOR, ND 58058
PHONE (701) 242-7432 • TOLL FREE (800) 400-8888
FAX (701) 242-7807 • EMAIL: sewu@rrt.net

Steve Hansen

Southeast Water Users District

In Opposition of House Bill 1537

House Political Subdivisions Committee

February 5, 2025

Chairman Longmuir and members of the House Political Subdivisions Committee. My name is Steve Hansen, General Manager of Southeast Water Users District. Southeast Water Users District serves approximately 3800 rural customers along with 23 cities within its District.

I am providing testimony in opposition to House Bill 1537. This bill would take away the protection that rural water districts have in state statute 6-09.4-22. HB 1537 will allow other municipalities to infringe on our district and cherry pick the most profitable areas and leave the rest to be served by rural water systems.

Rural Water Systems need state statute 6-09.4-22 to protect the loans they have with state government lenders. State government lending agencies have a large investment in rural water systems throughout North Dakota and HB 1537 will jeopardize those investments.

Thank you for allowing me to provide testimony in opposition of HB1537. We respectfully ask for a Do Not Pass Recommendation. Steve Hansen



North Dakota House of Representatives

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Representative Emily O'Brien

District 42
2029 Second Avenue North
Grand Forks, ND 58203-3311
eobrien@ndlegis.gov

COMMITTEES:

Appropriations
Appropriations - Human Resources Division

02/06/2025

House Bill 1537 House Political Subdivisions Committee

Chairman Longmuir and members of the House Political Subdivisions 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 Public Finance Authority as a party.
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 Trail Rural Water District, and Agassiz Water Users 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.

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 proposed amendments 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.

I urge the committee to advance House Bill 1537—version 25.1185.01001—to provide stability for North Dakota's cities and rural water districts.

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

25.1185.01001
Title.

Prepared by the Legislative Council
staff for Representative O'Brien
February 5, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

HOUSE BILL NO. 1537

Introduced by

Representatives O'Brien, Bahl, Ista, Sanford, Satrom

Senators Barta, Meyer, Patten, Conley

1 A BILL for an Act to amend and reenact section 6-09.4-22 of the North Dakota Century Code,
2 relating to water service agreement protection of service during the term of the loan; and to
3 provide for retroactive application.

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

5 **SECTION 1. AMENDMENT.** Section 6-09.4-22 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **6-09.4-22. Protection of service during term of loan.**

8 1. The ~~water~~-service provided or made available by a political subdivision through the
9 construction or acquisition of an improvement, or the revenues therefrom, financed in
10 whole or in part with a loan to the political subdivision from the public finance authority
11 or any other state agency or enterprise, may not be curtailed or limited by inclusion of
12 all or any part of the area served by the political subdivision within the boundaries of
13 any other political subdivision, or by the granting of any private franchise for similar
14 service within the area served by the political subdivision, during the term of the loan.
15 The political subdivision providing the service may not be required to obtain or secure
16 any franchise, license, or permit as a condition of continuing to serve the area if it is
17 included within the boundaries of another political subdivision during the term of the
18 loan. ~~As used in this section, "water service" means service provided under chapter~~
19 ~~61-28.1.~~

2. Under the circumstances described in subsection 1, nothing prevents the two political subdivisions, ~~with the public finance authority or other state agency or enterprise,~~ from negotiating an agreement for the right or obligation to provide the service in question, ~~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~~ if the agreement contains adequate safeguards to ensure the security and timely payment of any outstanding bonds of the public finance authority issued to fund the loan.

3. Only the public finance authority or other state agency providing the financing described in subsection 1 may enforce the provisions of this section. This section does not create or provide a cause of action or claim to a political subdivision.

SECTION 2. RETROACTIVE APPLICATION. This Act applies retroactively to July 31, 1997.

Bruce Henschel, Secretary

Board of Directors-Northeast Regional Water District

Opposing House Bill 1537

House Political Subdivisions Committee

February 6, 2025

Chairman Longmuir and members of the House Political Subdivisions Committee. My name Bruce Henschel and I am the Secretary of the Board of Directors for Northeast Regional Water District.

We are a rural water system up in the NE corner of the state. We have worked diligently over the years on new projects to bring online new members that have not been served with a safe reliable water source. We now serve over 2600 members along with many bulk users.

I am providing testimony in opposition to HB 1537. Since we have done the aforementioned projects, we also have had to take out loans to complete them. While doing this, the district knew we were protected by ND Statute N.D.C.C. 6-09.4-22 (Senate Bill 2086) and that the new territory being served was protected as well. In order to pay back these loans, we set rates that ensured an affordable rate for the members yet provided revenue for our district for maintenance and funds to repay the loans. This bill removes the safeguards we have which would allow other municipalities to take some of our territory, resulting in loss revenue. This would only put a hardship on the remaining members as we would obviously have to do rate increases to help offset the loss.

In closing, I do not see where this bill would be of any benefit to rural water systems and feel that the protection we now have in place with Senate Bill 2086, should be left alone.

I would like to thank you for giving me the time to provide testimony in opposition of HB 1537. I respectfully ask for a Do Not Pass Recommendation.

Bruce Henschel

Secretary-Board of Directors

Northeast Regional Water District



Eric Volk, Executive Director

ND Rural Water Systems Association

In Opposition of House Bill 1537

House Political Subdivisions Committee

February 6, 2025

Chairman Longmuir and members of the House Political Subdivisions Committee, my name is Eric Volk. I am the executive director of the North Dakota Rural Water Systems Association (NDRWSA). Our vision is to ensure all of North Dakota has access to affordable, ample, and quality water. NDRWSA is committed to completing and maintaining North Dakota's water infrastructure for economic growth and quality of life. We work with the state's small and rural water/wastewater systems to help increase their technical, managerial, and financial capacity. Today, I am submitting testimony opposing House Bill 1537, which seeks to make 180-degree changes to N.D.C.C. § 6-09.4-22.

Background of State and Federal Laws

North Dakota statute N.D.C.C. § 6-09.4-22 (SB 2086) was overwhelmingly approved by the Legislature in 1997 to protect state government lenders who have loaned money to a North Dakota rural water district and to protect rural communities. The statute prevents neighboring municipalities from taking the collateral pledged to secure the loan (such as taking or encroaching into the territory where the water district provides water service or has made water service available). Loss of territory results in a loss of customers and a loss of the source of revenue to repay loans. Loss of customers and territory also deprives rural residents of the "economy of scale" the statute was intended to create. SB 2086 intent was also *"to encourage rural development by providing a safeguard for the viability and financial security of the rural water system being financed"* (Tom Tudor, Municipal Bond Bank who was the Sponsor of SB 2086).

The North Dakota statute is remarkably similar to a federal statute (Title 7, United States Code, § 1926(b) adopted in 1961). The federal statute was designed to protect the interests of the United States

Department of Agriculture (“USDA”), which loans money to water districts nationwide. The purpose of 1926(b) is to:

1. Encourage Rural Development
2. Spread fixed costs over a large group of users (create an economy of scale)
3. Prevent rural water costs from becoming prohibitively expensive to any particular user
4. Provide fresh and clean water to rural households
5. Protect the federal government as the insurer of the loan

It was evident that the North Dakota Legislature intended to accomplish the same purpose and protection in the state statute that 1926(b) accomplished. SB 2086 testimony also stated, *“This same protection is currently provided under federal law with respect to loans made by USDA Rural Development (formerly FmHA).”*

State Lender Participation in Agreements

It was also very clear through the testimony of the sponsor of SB 2086 that the lending agency must be a party to any agreements between the two political subdivisions, *“SB 2086 expressly prohibits any curtailment or limitation of any Bond Bank-financed services as a result of annexation of all or part of the service area as long as the Bond Bank debt is outstanding unless the two political subdivisions, together with the Bond Bank, negotiate an agreement with respect to payment to the Bond Bank.”* The effect of this bill is to provide financial security for the Bond Bank with respect to loans made to finance facilities providing services as described above Subsection 2, line 21 strips that authority from the lending agency. The current law is designed to preclude/prevent a water district and a municipality from entering into agreements that might impair repayment of the loan, such as the water district selling its territory (which is the bank’s collateral) and leaving the lender uncollateralized or inadequately collateralized. The agreement would be invalid and unenforceable if the public finance authority did not sign off on (approve) the agreement was also removed. There is a similar provision under USDA (Federal) regulations. Also removed in this subsection are the safeguards the agreement must include to ensure that any outstanding bonds issued to fund the loan are secure and paid on time.

Subsection 2 entirely removes the power from the public finance authority to provide financial security for the State with respect to loans made to political subdivisions. The public finance authority or state agency must fully participate in the agreement to ensure the loan is protected and repaid properly.

Subsection 3 is a newly proposed section of law. The new language would mean that only the public finance authority or the state agency that provided the financing has the right to enforce the rules and provisions mentioned in subsection 1 (summary of service area protection). Water districts would have no right to take legal action or make claims based on this subsection. This makes no sense since the statute was designed to benefit the lender, the water district, and rural residents. If your service territory is being limited or restricted, you have no right to defend yourself. The newly proposed subsection 3 is precisely the reverse of what happens under Title 7, United States Code, Section 1926(b) (which is worded almost identically to 6-09.4-22). Federal regulations place the burden of enforcement of the water districts' protection from municipalities seeking to take the water district's customers/territory on the water district, not on the lender. The water district can always re-pay the loan since all it needs to do is increase rates sufficient to produce the required capital – but that is highly detrimental to the interests of rural residents. This right to defend your service area must remain with the water district.

Retroactive Application

Section 2 of HB 1537 attempts to retroactively apply the proposed changes to July 31, 1997. This section is very concerning and problematic. We are here today because of the issues surrounding the East Central Regional Water District and the City of Grand Forks. The retroactive application appears to be an attempt by the City of Grand Forks to change the ND Supreme Court's recent opinion on this matter. The Supreme Court's opinion can be read by following the [link](#). If the Legislature changes the law and makes the law retroactive, an end run on the ND Supreme Court's decision could be made by asking the Federal Court to ignore the previous decision as inapplicable due to the change in the law.

Summary

There are valid reasons for the franchise protection laws. Several early contracts did not have a complete understanding of state and federal protection laws. Many of these contracts allowed the cities to 'buy out' an annexation area served by the rural water system. The problem with that is the areas next to metropolitan areas are the cheapest users to serve – high density water users with very little infrastructure between users. So, these agreements the water districts entered into would give away their best revenue-generating areas by contract, unbeknownst to the state or federal lenders. There is a good reason to have the franchise protection laws in place.

HB 1537 seeks to change state law by removing certain rights of rural water districts, ultimately adversely affecting rural water users across the state. HB 1537 also removes authority from the public finance authority to provide financial security for the State concerning loans made to political subdivisions. We strongly oppose HB 1537 and respectfully request a Do Not Pass recommendation.

Thank you for allowing me to provide opposing testimony on behalf of the NDRWSA. If you have any questions, please contact me at ericvolk@ndrw.org.

Industrial Commission
of North Dakota

Kelly Armstrong
GOVERNOR

Drew H. Wrigley
ATTORNEY GENERAL

Doug Goehring
AGRICULTURE COMMISSIONER



Date: February 6, 2025

From: DeAnn Ament, Executive Director of the North Dakota Public Finance Authority

RE: House Bill 1537 – Water Service Agreement Protection

Chairman Longmuir and members of the Committee – I am DeAnn Ament, Executive Director of the North Dakota Public Finance Authority (PFA). I am attending today's hearing to provide testimony regarding House Bill 1537. In consultation with our special assistant attorney general and our assistant attorney general, we oppose the changes to 6-09.4-22.

Changing this Section 1. would narrow the focus and there isn't just "water service provided by or made available a political subdivision" and financed through our programs. The PFA finances sewer, stormwater and landfills under the State Revolving Fund programs as well as roads, sidewalks, public facilities, airport improvements, schools and more under the Capital Financing Program.

Removing the language in Section 2. would eliminate the State's security in the financing and negatively impact the security of bonds issued by the PFA to finance all or a portion of the projects. The inclusion of such language is a common requirement for financing instruments such as the loans made by PFA. The agency seeks assurance that the borrower can make bond payments if their service area changes. If the borrower fails to make payments, the agency would need to report a default to bondholders, which could jeopardize the state's bond rating.

This concludes my testimony. I would be happy to answer any questions you may have.

Testimony of Geneva Kaiser, General Manager

Stutsman Rural Water District, Jamestown, ND

In opposition to House Bill 1537

Political Subdivisions Committee – February 6, 2025

Chairman Longmuir and members of the Political Subdivisions Committee. My name is Geneva Kaiser, and I am the General Manager of Stutsman Rural Water District, Jamestown, ND.

Stutsman Rural Water District (SRWD) is located in southeast central North Dakota and provides potable water service to 2600 users through approximately 2,000 miles of pipeline within all of Stutsman County and parts of 5 surrounding counties. SRWD holds numerous State and Federal loans and is afforded territorial protections through ND Century Code and Federal USC 1926(b). Most water districts hold a combination of state and federal loans; some just have state loans. SRWD has lender signatures on their territorial agreement which includes both NDPFA and USDA.

Territorial protections are put in place to guarantee that a rural water district can repay its debt. Rural water districts are political subdivisions, however, they do not receive any tax dollars for operations and do business based upon the water rates charged to customers. Generally, the customers that surround a City are the most economical to serve. They are close in proximity to other customers and more concentrated compared to the rural areas where there could be more than a mile between customers. The customers close to a City help to keep rates affordable for the rural customers in the outlying areas that are more expensive to serve, thus providing economy of scale for the water system users.

If a rural water district loses the customers that are the most economical to serve; water rates must be increased to the remaining customers of the water system. At some point, water rates will become unaffordable for some people and they will disconnect from the water system which in turn will create the necessity for another rate increase to the remaining customers. This will continue until there is no longer the customer base and revenue for the water district to meet its debt obligations.

HB 1537 will not change anything for rural water districts that have federal loans, as their territorial protections will remain the same. It appears that this bill will target rural water districts that only have state loans in an attempt to retroactively legislate favoritism for one type of political subdivision over another.

The State of North Dakota has made a substantial financial investment in rural water systems to improve the quality of life for rural people, farms, ranches, and rural businesses. HB 1537 will undo some of the good work that has been done. It is detrimental to rural water districts and the rural customers they serve and is contrary to the intent of past legislatures.

Thank you for the opportunity to submit testimony in opposition to HB 1537. I respectfully request a do not pass recommendation.



February 6, 2025

House Political Subdivisions

HB 1537

Rep. Donald W. Longmuir, Chair

For the record, I am Stephanie Dassinger Engebretson. I am the deputy director and attorney for the North Dakota League of Cities (NDLC). The NDLC appears in support of HB 1537.

The goals of HB 1537 are simple:

1. Carry out the legislative intent when enacted NDCC § 6-09.4-22;
2. Ensure the state interests remain protected when they are loaning money; and
3. Ensure agreements that were negotiated between cities and rural water districts for water districts are valid and that the parties who negotiated and entered into the agreements will honor their promises and commitments

The reason HB 1537 is here is because it was recently discovered that a requirement in N.D.C.C. § 6-09.4-22 that requires that the Public Finance Authority, the Bank of North Dakota, or the other state agency (hereinafter, the State) to be a party to an agreement between a city and a rural water district to provide water in a territory when the State has outstanding debt associated with water service was overlooked in some agreements. A number of these agreements are over 20 years old.

This situation came to the NDLC's attention due to current litigation involving the East Central Rural Water District and the City of Grand Forks. The North Dakota Supreme Court recently held that the language in § 6-09.4-22 means that if the state was not a party to the agreement, the agreement never existed. In the case involving the city of Grand Forks, East Central Rural Water District's complaint seeks recovery and transfer of ownership of all of the city's water service infrastructure pipes in the ground in the area relating to over 130 subdivisions now part of the City of Grand Forks, and over \$62 million in damages.

Based on the legislative history from when NDCC § 6-09.4-22 was enacted, the statute was intended to protect the state when these agreements occur, not to allow one party to these agreements to invalidate the agreement after operating under it for many years. As such, HB 1537 provides that an action under this section may be initiated by the State and not by a political subdivision.

Additionally, HB 1537 has a retroactivity clause to July 31, 1997. This is the date that NDCC § 6-09.4-22 became effective. This is to ensure that no agreement is voided due to a technicality and the language in the statute.

The NDLC respectfully requests a Do Pass recommendation on HB 1537.

2025 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Room JW327B, State Capitol

HB 1537
2/6/2025

A BILL for an Act to amend and reenact section 6-09.4-22 of the North Dakota Century Code, relating to water service agreement protection of service during the term of the loan; and to provide for retroactive application.

2:29 p.m. Chairman Longmuir opened the hearing.

Members Present: Chairman Longmuir, Vice-Chairman Fegley, Vice-Chairman Jonas, Representatives Bolinske, Davis, Hager, Hatlestad, Heilman, Klemin, Motschenbacher, Ostlie, Toman, Warrey

Discussion Topics:

- Communities with water service agreements

2:30 p.m. Neil Breidenbach, East Central Regional Water District, testified in opposition.

2:44 p.m. Lance Gaebe, Policy Strategist at North Dakota Farmers Union, testified in opposition and provided testimony #35769.

2:47 p.m. Chairman Longmuir closed the hearing.

Wyatt Armstrong, Committee Clerk

**Testimony of Lance Gaebe
North Dakota Farmers Union
In Opposition to HB 1537
House Political Subdivisions Committee
February 6, 2025**

Chairman Longmuir and members of the Political Subdivisions Committee,

Thank you for the opportunity to testify on behalf of the North Dakota Farmers Union (NDFU) in opposition to House Bill No. 1537. My name is Lance Gaebe.

NDFU strongly supports rural water systems, recognizing their vital role in providing affordable, clean, and safe drinking water. Our members understand that a reliable rural water supply is essential for both a thriving agricultural sector and vital rural communities.

NDFU opposes HB 1537 because it weakens the longstanding state policy protecting state lenders to rural water districts and the rural communities they serve. The bill reverses franchise protections, allowing municipalities to annex territory served by rural water districts. This protection is critical because:

- **Revenue Loss:** Annexation deprives rural water districts of customers and revenue, threatening loan repayment and financial stability.
- **Economies of Scale:** Current law promotes efficient service delivery by preventing unnecessary infrastructure duplication. HB 1537 undermines this.
- **Jeopardizing Territory Integrity:** HB 1537 allows "cherry-picking" of profitable areas, destabilizing service territories.

These principles mirror NDFU's long-standing support for rural electric cooperatives, ensuring service reliability, avoiding duplication, and protecting investments through territorial integrity.

HB 1537 negatively impacts rural water users by jeopardizing the financial stability of essential service providers. Current law rightly requires the rural water lending agency to be a party to agreements between a water district and a municipality, preventing deals that could impair loan repayment (like selling off the lender's collateral). HB 1537 removes this protection.

NDFU opposes HB 1537 and requests a Do Not Pass recommendation. Strong rural water systems are crucial for thriving rural communities and the future of North Dakota agriculture. We are deeply concerned about efforts to encroach on these vital state investments made in partnership with rural residents and small communities.

Thank you. I welcome your questions.

2025 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Room JW327B, State Capitol

HB 1537
2/13/2025

A BILL for an Act to amend and reenact section 6-09.4-22 of the North Dakota Century Code, relating to water service agreement protection of service during the term of the loan; and to provide for retroactive application.

9:01 a.m. Chairman Longmuir opened the hearing.

Members Present: Chairman Longmuir, Vice-Chairman Fegley, Vice-Chairman Jonas, Representatives Bolinske, Hager, Hatlestad, Heilman, Klemin, Motschenbacher, Ostlie, Warrey

Members Absent: Representatives Davis, Toman

Discussion Topics:

- Public finance authority
- Federal court mediation

9:04 a.m. Stephanie Engebretson, North Dakota League of Cities, testified in favor #37599.

9:36 a.m. Chairman Longmuir closed the hearing.

Wyatt Armstrong, Committee Clerk

Proposed Amendments to HB 1537

1 **SECTION 1. AMENDMENT.** Section 6-09.4-22 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **6-09.4-22. Protection of service during term of loan.**

4 1. The ~~water~~ service provided or made available by a political subdivision through the
5 construction or acquisition of an improvement, or the revenues therefrom, financed in
6 whole or in part with a loan to the political subdivision from the public finance authority
7 or any other state agency or enterprise, may not be curtailed or limited by inclusion of
8 all or any part of the area served by the political subdivision within the boundaries of
9 any other political subdivision, or by the granting of any private franchise for similar
10 service within the area served by the political subdivision, during the term of the loan.

11 The political subdivision providing the service may not be required to obtain or secure
12 any franchise, license, or permit as a condition of continuing to serve the area if it is
13 included within the boundaries of another political subdivision during the term of the
14 loan. ~~As used in this section, "water service" means service provided under chapter~~
15 ~~61-28.1.~~

16 2. Under the circumstances described in subsection 1, nothing prevents the two political
1 subdivisions, from negotiating an agreement for the right or obligation to provide the
service in question, ~~provided that any agreement is invalid and unenforceable~~ voidable
only at the option of the public finance authority or other state agency or enterprise during
the term of the loan ~~if~~ unless:

- a. The public finance authority or other state agency or enterprise is ~~not~~ a party to the
agreement; ~~or and unless~~
- b. ~~†The agreement does not contain~~s adequate safeguards to ensure the security and timely
payment of any outstanding bonds of the public finance authority issued to fund the loan.

2 3. ~~Only the public finance authority or other state agency providing the financing~~
3 ~~described in subsection 1 may enforce the provisions of this section. This section~~ An
agreement not complying with the provisions of subdivisions a and b of subdivision 2 of
this section does not create or provide a cause of action or claim to a political
subdivision.

4 ~~SECTION 2. RETROACTIVE APPLICATION. This Act applies retroactively to July 31,~~

2025 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Room JW327B, State Capitol

HB 1537
2/14/2025

A BILL for an Act to amend and reenact section 6-09.4-22 of the North Dakota Century Code, relating to water service agreement protection of service during the term of the loan; and to provide for retroactive application.

9:00 a.m. Chairman Longmuir opened the hearing.

Members Present: Chairman Longmuir, Vice-Chairman Jonas, Representatives Bolinske, Davis, Hager, Hatlestad, Klemin, Motschenbacher, Ostlie

Members Absent: Vice-Chairman Fegley, Representatives Heilman, Toman, Warrey

Discussion Topics:

- Retro application of the bill
- Committee action

9:00 a.m. Stephanie Engebretson, North Dakota League of Cities, testified in favor and provided testimony #37712.

9:06 a.m. Erik Volk, Executive Director of North Dakota Rural Water, answered committee questions.

9:08 a.m. Representative Ostlie moved to Adopt the Amendments proposed in testimony #37712.

9:08 a.m. Representative Bolinske seconded the motion.

Representatives	Vote
Representative Donald W. Longmuir	Y
Representative Clayton Fegley	A
Representative Jim Jonas	Y
Representative Macy Bolinske	Y
Representative Jayme Davis	Y
Representative LaurieBeth Hager	N
Representative Patrick R. Hatlestad	Y
Representative Matthew Heilman	A
Representative Lawrence R. Klemin	Y
Representative Mike Motschenbacher	Y
Representative Mitch Ostlie	Y
Representative Nathan Toman	A
Representative Jonathan Warrey	A

9:09 a.m. Motion passed 8-1-4

9:10 a.m. Representative Ostlie moved a Do Pass as Amended.

9:10 a.m. Representative Motschenbacher seconded the motion.

Representatives	Vote
Representative Donald W. Longmuir	Y
Representative Clayton Fegley	A
Representative Jim Jonas	Y
Representative Macy Bolinske	Y
Representative Jayme Davis	N
Representative LaurieBeth Hager	Y
Representative Patrick R. Hatlestad	Y
Representative Matthew Heilman	A
Representative Lawrence R. Klemin	Y
Representative Mike Motschenbacher	Y
Representative Mitch Ostlie	Y
Representative Nathan Toman	A
Representative Jonathan Warrey	A

9:10 a.m. Motion passed 8-1-4

9:11 a.m. Representative Motschenbacher will carry the bill.

9:11 a.m. Chairman Longmuir closed the hearing.

Wyatt Armstrong, Committee Clerk

February 14, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

HOUSE BILL NO. 1537

Introduced by

Representatives O'Brien, Bahl, Ista, Sanford, Satrom

Senators Barta, Meyer, Patten, Conley

2-14-25
1 of 2
JL

1 A BILL for an Act to amend and reenact section 6-09.4-22 of the North Dakota Century Code,
2 relating to ~~water~~ service agreement protection of service during the term of the loan; ~~and to~~
3 ~~provide for retroactive application.~~

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

5 **SECTION 1. AMENDMENT.** Section 6-09.4-22 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **6-09.4-22. Protection of service during term of loan.**

8 1. The ~~water~~ service provided or made available by a political subdivision through the
9 construction or acquisition of an improvement, or the revenues therefrom, financed in
10 whole or in part with a loan to the political subdivision from the public finance authority
11 or any other state agency or enterprise, may not be curtailed or limited by inclusion of
12 all or any part of the area served by the political subdivision within the boundaries of
13 any other political subdivision, or by the granting of any private franchise for similar
14 service within the area served by the political subdivision, during the term of the loan.
15 The political subdivision providing the service may not be required to obtain or secure
16 any franchise, license, or permit as a condition of continuing to serve the area if it is
17 included within the boundaries of another political subdivision during the term of the
18 loan. ~~As used in this section, "water service" means service provided under chapter~~
19 ~~61-28.1.~~

- 1 2. Under the circumstances described in subsection 1, nothing prevents the two political
2 subdivisions, with the public finance authority or other state agency or enterprise, from
3 negotiating an agreement for the right or obligation to provide the service in question,
4 provided that any agreement is invalid and unenforceable unless the public finance
5 authority or other state agency or enterprise is a party to the agreement and unless
6 the agreement contains adequate safeguards to ensure the security and timely
7 payment of any outstanding bonds of the public finance authority issued to fund the
8 loan.
- 9 3. ~~Only the public finance authority or other state agency providing the financing~~
10 ~~described in subsection 1 may enforce the provisions of this section. This section does~~
11 ~~not create or provide a cause of action or claim to a political subdivision.~~ An agreement
12 made before January 1, 2025, and in violation of subsection 2 is voidable only at the
13 option of the public finance authority or other state agency or enterprise upon thirty
14 days written notice from the public finance authority or other state agency or enterprise
15 to the parties of the agreement. This subsection does not apply to litigation
16 commenced before January 1, 2025.
- 17 **~~SECTION 2. RETROACTIVE APPLICATION. This Act applies retroactively to July 31,~~**
18 **~~1997.~~**

**REPORT OF STANDING COMMITTEE
HB 1537**

Political Subdivisions Committee (Rep. Longmuir, Chairman) recommends
AMENDMENTS ([25.1185.01003](#)) and when so amended, recommends **DO PASS** (8 YEAS,
1 NAY, 4 ABSENT OR EXCUSED AND NOT VOTING). HB 1537 was placed on the Sixth
order on the calendar.

1. The service provided or made available by a political subdivision through the construction or acquisition of an improvement, or the revenues therefrom, financed in whole or in part with a loan to the political subdivision from the public finance authority or any other state agency or enterprise, may not be curtailed or limited by inclusion of all or any part of the area served by the political subdivision within the boundaries of any other political subdivision, or by the granting of any private franchise for similar service within the area served by the political subdivision, during the term of the loan. The political subdivision providing the service may not be required to obtain or secure any franchise, license, or permit as a condition of continuing to serve the area if it is included within the boundaries of another political subdivision during the term of the loan.
2. Under the circumstances described in subsection 1, nothing prevents the two political subdivisions, with the public finance authority or other state agency or enterprise, from negotiating an agreement for the right or obligation to provide the service in question, 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 any outstanding bonds of the public finance authority issued to fund the loan.
3. An agreement made prior to January 1, 2025, and in violation of subsection 2 is only voidable at the option of the public finance authority or other state agency or enterprise upon 30 days' written notice from the public finance authority or other state agency or enterprise to the parties to the agreement. This section does not impact litigation that commenced prior to January 1, 2025.

2025 SENATE INDUSTRY AND BUSINESS

HB 1537

2025 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

HB 1537
3/31/2025

A bill relating to service agreement protection of service during the term of the loan.

9:00 a.m. Chairman Barta called the meeting to order.

Members present: Chairman Barta, Vice-Chair Boehm, Senator Klein, Senator Kessel, Senator Enget

Discussion Topics:

- Water service agreement protection
- Security and timely payment of bonds
- Assurance Agreement with the USDA
- Retroactive application
- Historical flooding events
- Federal statue compliance
- Rural water districts and liabilities
- East Central Regional Water
- Tax payer dollars spent and burdens
- Public Finance Authority
- Emergency clause
- ND State Water Commission
- Integrity of funding sources
- ND Rural Water Systems Association

9:00 a.m. Representative Emily O'Brien, District 42, testified in favor, introduced the bill, and submitted testimony #44464.

9:12 a.m. Stephanie Engebretson, Deputy Director and Attorney, ND League of Cities, testified in favor and submitted testimony #44430.

9:18 a.m. Eric Volk, Executive Director, ND Rural Water, testified in favor and submitted testimony #44423.

9:19 a.m. Kory Sondreal, Board President, East Central Regional Water District, testified in favor and submitted testimony #44410.

9:32 a.m. DeAnn Ament, Executive Director, ND Public Finance Authority, testified in favor and submitted testimony #44402.

Additional written testimony:

Dan Gaustad, City Attorney, City of Grand Forks, submitted testimony #44397 in favor.

Senate Industry, Business and Labor Committee
HB 1537
3/31/25
Page 2

9:34 a.m. Chairman Barta closed the hearing.

Audrey Oswald, Committee Clerk

255 N. 4th St.
PO Box 5200
Grand Forks, ND 58206-5200



City of Grand Forks
(701) 746-4636

TESTIMONY ON HOUSE BILL 1537

Senate Industry and Business Committee

March 31, 2025

Daniel L. Gaustad, City Attorney, City of Grand Forks, ND

Chairman Barta and members of the Senate Industry and Business Committee, my name is Daniel L. Gaustad and I am the City Attorney for the City of Grand Forks. I want to thank you for the opportunity to provide testimony and express the City of Grand Forks' support to HB 1537.

To provide some background, there exists a Federal statute (7 U.S.C. § 1926(b)) that provides certain protections against curtailment or limiting rural water services when the rural water district is indebted to a federal agency. Generally, the lender is a USDA entity. The protections under this federal statute only arise if the rural water district has a loan from a federal lending agency. These protections generally relate to situations when a city annexes an area that the rural water district provides water service or in a reasonable period of time could provide water service.

In 1997, N.D.C.C. § 6-09.4-22 was enacted and provides similar protections against curtailment of rural water services. As with the federal statute, the protections under N.D.C.C. § 6-09.4-22 only arise if the rural water district is indebted to state lender. Generally, the state lender is the Public Finance Authority or the Bank of North Dakota.

In recognition of these statutory provisions, back in the year 2000, the City of Grand Forks entered into an agreement with Grand Forks Traill Rural Water Users, Inc. and Agassiz Water Users District. The stated purpose of this Agreement was to address the provisions of both the federal statute (7 U.S.C. § 1926(b)) and the state statute (N.D.C.C. § 6-09.4-22), when City of Grand Forks annexed areas and provided water service to these annexed areas. The annexations were anticipated to occur given the impact of the 1997 flood that inundated the City of Grand Forks.

It took over a year to negotiate the 2000 Agreement and each of the parties were represented by attorneys.

The 2000 Agreement set out areas immediately surrounding the City of Grand Forks, and the number of existing customers and the maximum future capacity that Grand Forks Trail Rural Water Users stated they were either providing water service to, or could provide water service to in the future. The total number of existing and future capacity customers of Grand Forks Rural Water Users represented it had was 447.

The City of Grand Forks paid Grand Forks Traill Rural Water Users a total of \$261,893.10 when the 2000 Agreement was signed, which represented the amount to be paid under the payment methodology set out in this agreement for the City's purchase of a portion of the total 447 existing and future capacity customers identified in the 2000 Agreement. The payment calculation set out in the 2000 Agreement applied to future annexations as well.

Shortly after the 2000 Agreement was executed, Grand Forks Traill Rural Water Users, Inc. became a rural water district under N.D.C.C. ch. 61-35. Importantly, in its petition to the State Engineer to become a water district, Grand Forks Traill Rural Water Users, Inc. specially cited the fact it had entered into the 2000 Agreement with the City of Grand Forks. Even more significant, is that in its petition to the State Engineer, Grand Forks Traill Rural Water Users represented its geographic service area boundary and the State Engineer's Order adopted and set out this geographic service boundary area. None of the areas that are the subject of the 2000 Agreement are within Grand Forks Traill Rural Water Users geographic service area.

In 2018, Grand Forks Traill Rural Water Users then petitioned the State Engineer to allow for its merger with another rural water district. The State Engineer approved this merger and the merged rural water districts became East Central Regional Water District (referred to herein as "East Central"). Significantly, in the merger petition, East Central represented to the State Engineer the geographic boundary of its service area and the State Engineer's Order approving the merger adopted and set out this geographic service boundary area. Again, none of East Central's geographic service area included the areas that are the subject of the 2000 Agreement.

For 20+ years the parties operated under and performed the terms of the 2000 Agreement.

At time of the 2000 Agreement was entered into, Grand Forks Traill Rural Water Users was indebted to a USDA agency and the Bank of North Dakota. These loans were later been paid off. In fact, the \$261,893.10 amount the City of Grand Forks paid in 2000 was used to pay down USDA lender loans. Over the course two plus decades of the 2000 Agreement, Grand Forks Traill Rural Water Users, and then East Central continued to get loans from state agencies – primarily through the Public Finance Authority.

Under N.D.C.C. § 6-09.4-22(2), agreements, like the 2000 Agreement, are allowed to be entered into, but if the rural water provider is indebted to a state lender, then the state lending entity is to be a party to the agreement. Also, N.D.C.C. § 6-09.4-22(2) provides that if the state lender is not a party, the agreement is deemed to be "invalid and unenforceable." Having the lender as a party to the agreement is not required under the Federal Statute (7 U.S.C. § 1926(b)). Nonetheless, concurrence by the

USDA lender was secured regarding the 2000 Agreement. However, the Bank of North Dakota was not a party to the 2000 Agreement.

In November, 2020, East Central, the successor entity of Grand Forks Traill Rural Water Users, brought a lawsuit in Federal Court against the City of Grand Forks claiming the 2000 Agreement was void, *ab initio*, or from the very beginning, because the Bank of North Dakota was not a party to the 2000 Agreement – and even though the Bank of North Dakota was not a lender to East Central and had not been for years.

East Central in this lawsuit also claimed the City of Grand Forks was in violation of both 7 U.S.C. § 1926(b) and N.D.C.C. § 6-09.4-22, by “curtailing” its ability to provide water service 130+ subdivisions that are now part of the City. In fact, one of the subdivisions East Central is claiming to have been curtailed contains the City of Grand Forks’ new \$150M+ water treatment plant. However, none of the 130+ subdivisions are within the represented geographic service area that was submitted to and adopted by the State Engineer for Grand Forks Traill Water Users and East Central.

East Central is seeking money damages against the City of Grand Forks in excess of \$60M. East Central’s complaint also demands that “any and all water lines, mains, meters, tanks, pump stations, valves, and other facilities owned or later constructed by Grand Forks and used to serve the disputed territory (being the 130+ subdivisions)” be turned over to them without any payment to the City of Grand Forks.

Because N.D.C.C. §6-09.4-22(2), and the provision that an agreement without the state lending entity as a party renders the agreement “invalid and unenforceable,” was never interpreted, this issue was presented to the North Dakota Supreme Court.

The City of Grand Forks argued this provision of the statute may render the agreement voidable but not void from the beginning – thus, after 20+ years, it would lend itself to finding the 2000 Agreement is no longer subject to be avoided by East Central. East Central, on the other hand, argued this provision rendered the 2000 Agreement void, *ab initio*, or from the very beginning and in turn legally as if this agreement never existed.

The North Dakota Supreme Court issued its decision in July, 2024 concluding the language of “invalid and unenforceable” found in N.D.C.C. § 6-09.4-22(2) renders an agreement without the state lending entity as a party, void, *ab initio*, or from the beginning.

The legislation change by HB 1537 is being proposed to avoid the inequitable result that East Central seeks against the City of Grand Forks by avoiding honoring its promises and commitments made in the 2000 Agreement, and performed for 20+ years thereafter. Moreover, such inequitable result is not confined to simply the City of Grand Forks as it appears there are a number of other municipalities that have similar such long-term agreements which do not include the state lender as a party. Of particular significance is that it has been discovered the state lending agencies have never signed

off on any such agreements. Rather, they rely upon their lending documents to address these situations.

Further, this legislation will not imperil any water system financially, when considering in the example of East Central, they continued to receive loans from state agencies without issue. It is important to note that the protections afforded by both the federal and state statutes have no application unless there is a qualifying loan from a federal or state lending agency. Without such a qualifying loan, the statutes and protections under these statutes have no application. Thus, the clear import of these statutes is to protect repayment security of these lending agency. Nothing in the amendments alters these repayment security protections afforded to the state lending agencies.

In addition, when one considers the cost share opportunities with the State Water Commission to rural water districts, the cost and expense for infrastructure development by rural water districts has been greatly reduced. Although it should be noted that under N.D.C.C. § 61-35-26.3, before a grant or loan can be provided by the State Water Commission for a “water service project in any area within the extraterritorial zoning jurisdiction of any affected city” the rural water district is required to have an agreement with the effected municipality. Thus, given East Central’s position that the 2000 Agreement was void from the beginning, it calls into question the status of cost-share grants the State Water Commission has provided to East Central over years.

In sum, the City of Grand Forks supported the original version of HB 1537, as it simply directed entities that entered into these types of agreements honor their promises and commitments. Although changes to HB 1537 have occurred, the City of Grand Forks continues to support the legislation to assure these entities will honor their promises and commitments.

The City of Grand Forks asks for a DO PASS for HB 1537.

Industrial Commission
of North Dakota

Kelly Armstrong
GOVERNOR

Drew H. Wrigley
ATTORNEY GENERAL

Doug Goehring
AGRICULTURE COMMISSIONER



Date: March 31, 2025

From: DeAnn Ament, Executive Director of the North Dakota Public Finance Authority

RE: House Bill 1537 – Water Service Agreement Protection

Chairman Barta and members of the Committee – I am DeAnn Ament, Executive Director of the North Dakota Public Finance Authority (PFA). I am attending today's hearing to provide testimony regarding Engrossed House Bill 1537.

In consultation with our special assistant attorney general and our assistant attorney general, we support the engrossed version of this bill. It maintains the original statutory language of 6-09.4-22, which our legal professionals have determined provides the strongest security for the bonds issued by the PFA to finance all or part of the projects.

This concludes my testimony. I would be happy to answer any questions you may have.



East Central Regional Water District

PO Box 287
1401 7th Avenue NE
Thompson, ND 58278

Neil Breidenbach
System Manager

Phone: 701-599-2963
Fax: 701-599-2056
Website: www.ecrwd.com

Date: March 30, 2025

From: Kory Sondreal, Board President, East Central Regional Water District

RE: In Support of House Bill 1537

Chairman Barta and members of the Senate Industry, Business & Labor Committee, my name is Kory Sondreal. I am the current Board President of East Central Regional Water District. I have served as the Board President of East Central Regional Water District since the merger of two water districts (GF-Traill / Traill) in 2018. Prior to 2018, I served as a board member of the GF-Traill Water District from 2012 to 2018.

The GF-Traill Water District was the first rural water district created in the state of ND. It was incorporated in 1969. It merged with the Traill Water District in 2018 to become the newly formed East Central Regional Water District. Today, we are 1 of the 5 largest rural water systems in the state. We serve 4 counties in North Dakota (GF, Traill, Steele, Cass), 11 incorporated ND cities and 1 city in MN. Our service territory covers approximately 1,450 square miles with 2,500 miles of underground pipe. We have over 3,775 hookups. We are committed to delivering clean, safe, sustainable drinking water to our patrons.

Since our inception, we have been privileged to have access to numerous funding sources from the ND State Water Commission, the Bank of North Dakota, ND State Revolving Loan Fund, USDA Rural Development & limited Federal MR & I funding. Unlike municipalities that have the advantages of scale, rural water districts provide their services to customers who live in thinly populated areas over many square miles. Along with the revenues derived from our patron's usage fees, it is these grants & low-interest loans that have been the life-blood for rural water districts. Those additional funding sources provide the means by which rural water districts are able to extend water services for new hookups, repair aging lines, make improvements to infrastructure, replace equipment & have access to new technologies. Without grants & low-interest loans, our monthly water rates would become very unaffordable for our patrons & we eventually would have to close our doors.

As a borrower & grant recipient, we believe that the integrity of the funding sources is paramount. Having certain protections in place ensures the livelihood of both borrowers & lenders. In the spirit of this, it was Federal Statute 1926(b) and later ND Century Code 6-09.4-22 that were crafted to protect water districts & those that lend money to them. The current version of HB1537 will continue to provide future protections for cities, rural water systems and the agencies that lend to them.

As you are aware, the East Central Regional Water District is currently involved in a lawsuit with the City of GF over an agreement that was struck in January of 2000 between GF-Traill Water District, Agassiz Water District and the City of GF. The 2000 Agreement named specific residential customers and businesses that GF-Traill was willing to relinquish to the City of GF in exchange for an agreed upon payment. Those transfers happened & were honored by both parties. There was nothing else in the Agreement beyond those transfers. Since 2000, the City of Grand Forks has continued to grow to its south & west pushing farther into the areas served by East Central. GF now extends southward approximately 2 ½ miles beyond the areas that were previously served by East Central at the time of the Agreement. East Central had infrastructure in the areas that were taken over by the City of GF without any consideration or compensation given to East Central. This has resulted in a great

amount of lost revenue to East Central during the last 25 years. East Central continuously has had loans during this window of time that were "protected" by Federal & State statutes. It was never our intent to get involved in a lawsuit with the City of GF. We felt it would be better if we could find a way to work together to mutually serve these growth areas. In late 2018, the Board of Directors of East Central made the decision to begin a reach out to the City of GF to see if we could start a dialogue about the 2000 Agreement to either discuss some possible changes to the Agreement or to work out an entirely new agreement. Listed below is a history of those attempts:

January 2019: A joint meeting was held at the Advanced Engineering & Environmental Services (AE2S) office in GF between East Central & the City of GF. The 2000 Agreement was reviewed & the discussion went well. It was agreed to have a follow-up meeting & one was scheduled for February. The February meeting got postponed but was rescheduled for April.

April 2019: A second meeting was held at the AE2S office in GF. Again we had some good discussion and we started talking about the joint agreement that Cass Rural Water had struck with the City of Fargo. Everyone agreed that it seemed to be working for those entities & maybe it was a model we could follow or possibly pull some of the best parts out of it to begin crafting a new agreement. The next meeting was scheduled for May.

May 2019: A third meeting was held at the AE2S office in GF. The discussion surrounded around creating a new Agreement between East Central & the City of GF. As a start to this process, AE2S stated that crafting a draft of Engineering Scope of Services might be a good way to start. The meeting ended without any future meeting scheduled.

July 2019: East Central reached out & a breakfast meeting was held in GF at a local restaurant between 3 individuals from East Central & 2 officials from the City of GF. No individuals from AE2S attended this meeting. After a brief discussion of our 3 previous meetings, the tone of the meeting changed. The City of GF stated that they wanted to stay with the current Agreement & did not want to look at a new agreement. We scheduled another meeting for August 16, 2019 but that meeting never happened.

September 2019: East Central's attorney drafted a letter that was sent to the City of GF attorney. The letter spelled out the reasons that supported East Central's right to serve the growth areas. It also indicated that East Central was willing to meet with the City of GF to discuss the matter. No response was provided by the City of GF.

November 2019: East Central sent a follow-up letter to its September 2019 letter. The letter was brief but it addressed the 2000 Agreement & indicated that East Central was taking the position that the Agreement should be considered void since the proper lending authorities had not signed off on the Agreement as required by 1926(b) and ND Century Code 6-09.4-22. The letter also addressed the fact that the City of GF had disconnected East Central customers in the growth area and switched them over to the City of GF. The letter finished by stating that East Central remained willing to discuss a resolution and if there was no response from the City of GF, East Central may be forced to file a federal suit to resolve the matter. No response was provided by the City of GF.

March 2020: 3 board members from East Central and its manager arranged a meeting with new mayor Brandon Bochenski at the GF City Hall. The purpose of the meeting was to introduce ourselves, provide some history on the Agreement and our previous attempts to reach out to the City of GF. We were making one last effort to see if the GF Mayor could get involved to help continue the discussions. No response came from the City of GF.

May 2021: East Central brought its lawsuit against the City of GF.

March 2022: A mediation meeting was held virtually between the 2 parties to attempt a settlement. No settlement agreement could be reached.

Summer 2024: The 2000 Agreement was brought before the ND Supreme Court. After depositions by the attorney for East Central & the attorney for the City of GF, the ND Supreme Court determined that the Agreement is "null & void" since the proper lending authority had not signed off on the Agreement.

Currently, we are awaiting the final step in this process which is a date with the Federal District Court in Fargo where a jury trial will hear the case. This has been a long drawn out process for all involved and at a great expense for both parties. The State of North Dakota & the Federal Government have long-standing support for seeing that clean drinking water is made available to patrons of both cities & rural areas. HB 1537 will continue this support & the East Central Regional Water District casts its vote for a "Do Pass" recommendation.

Thank you for allowing me to provide testimony in support of House Bill 1537. Kory Sondreal



Eric Volk, Executive Director

ND Rural Water Systems Association

In Support of Engrossed House Bill 1537

Senate Industry, Business & Labor Committee

March 31, 2025

Chairman Barta and members of the Senate Industry, Business & Labor Committee, my name is Eric Volk. I am the executive director of the North Dakota Rural Water Systems Association (NDRWSA). Our vision is to ensure all of North Dakota has access to affordable, ample, and quality water. NDRWSA is committed to completing and maintaining North Dakota's water infrastructure for economic growth and quality of life. We collaborate with the state's small and rural water and wastewater systems to enhance their technical, managerial, and financial capabilities. Today, I am submitting testimony in support of Engrossed House Bill 1537, which seeks to make changes to N.D.C.C. § 6-09.4-22.

Background of State and Federal Laws

North Dakota statute N.D.C.C. § 6-09.4-22 (SB 2086) was overwhelmingly approved by the Legislature in 1997 to protect state government lenders who have loaned money to a North Dakota rural water district and to protect rural communities. The statute prevents neighboring municipalities from taking the collateral pledged to secure the loan (such as taking or encroaching into the territory where the water district provides water service or has made water service available). Loss of territory results in a loss of customers and a loss of the source of revenue to repay loans. Loss of customers and territory also deprives rural residents of the "economy of scale" the statute was intended to create. The intent of SB 2086 was also *"to encourage rural development by providing a safeguard for the viability and financial security of the rural water system being financed"* (Tom Tudor, Municipal Bond Bank, who was the lead Sponsor of SB 2086).

The North Dakota statute is remarkably similar to a federal statute (Title 7, United States Code, § 1926(b) adopted in 1961). The federal statute was designed to protect the interests of the United States

Department of Agriculture (USDA), which loans money to water districts nationwide. The purpose of 1926(b) is to:

1. Encourage Rural Development
2. Spread fixed costs over a large group of users (create an economy of scale)
3. Prevent rural water costs from becoming prohibitively expensive to any particular user
4. Provide fresh and clean water to rural households
5. Protect the federal government as the insurer of the loan

It was evident that the North Dakota Legislature intended to accomplish the same purpose and protection in the state statute that 1926(b) accomplished. SB 2086 testimony also stated, *“This same protection is currently provided under federal law with respect to loans made by USDA Rural Development (formerly FmHA).”*

State Lender Participation in Agreements

It was also very clear through the testimony of the sponsor of SB 2086 that the lending agency must be a party to any agreements between the two political subdivisions, *“SB 2086 expressly prohibits any curtailment or limitation of any Bond Bank-financed services as a result of annexation of all or part of the service area as long as the Bond Bank debt is outstanding unless the two political subdivisions, together with the Bond Bank, negotiate an agreement with respect to payment to the Bond Bank.”* The current law is designed to preclude/prevent a water district and a municipality from entering into agreements that might impair repayment of the loan, such as the water district selling its territory (which is the bank’s collateral) and leaving the lender uncollateralized or inadequately collateralized. The agreement would be invalid and unenforceable if the public finance authority did not sign off on (approve) the agreement. There is a similar provision under USDA (Federal) regulations. The public finance authority or state agency must fully participate in the agreement to ensure the loan is protected and repaid properly.

Subsection 3

In July 2024, the North Dakota Supreme Court issued an opinion on N.D.C.C. § 6-09.4-22(2).

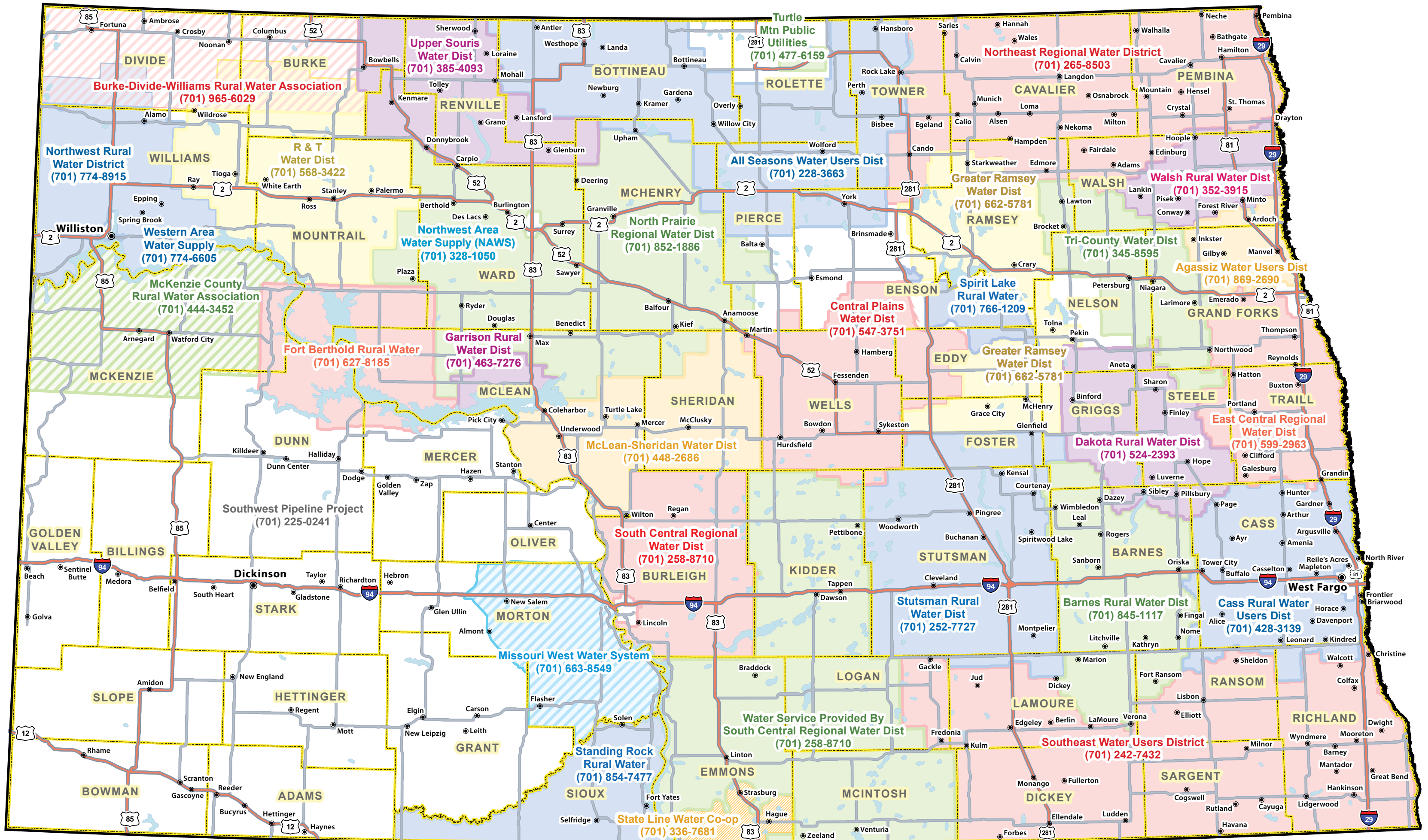
“We conclude the language “invalid and unenforceable” in N.D.C.C. § 6-09.4-22(2) means an agreement made without the public lending authority as a party is void ab initio. Our answer to the first certified question is “yes,” the language “invalid and unenforceable” means void ab initio, and our answer to the second question is “no,” it does not mean voidable and capable of ratification.”

Void ab initio means the agreement was void from the beginning if the Public Finance Authority (PFA) did not sign it. Subsection 3 of Engrossed HB 1537 will help ensure that any agreements not signed by the PFA remain valid and enforceable unless the PFA determines that the agreement lacks adequate safeguards to ensure the security and timely payment of any outstanding bonds issued to fund the loan.

This section of the law impacts cities, rural water systems, and state lending agencies in North Dakota. The North Dakota League of Cities, the North Dakota Rural Water Systems Association, and the Public Finance Authority have agreed on the current version of HB 1537. This legislation aims to address future issues with unsigned agreements without affecting ongoing litigation. The passage of HB 1537 will allow any unsigned agreements to remain in effect as is. If not, the unsigned agreements will also be considered void from the beginning.

Thank you for allowing me to provide supporting testimony on behalf of the NDRWSA. If you have any questions, please contact me at ericvolk@ndrw.org.

Incorporated Cities on a Rural or Regional System





March 31, 2025
Senate Industry and Business
HB 1537
Senator Jeff Barta, Chair

For the record, I am Stephanie Dassinger Engebretson. I am the deputy director and attorney for the North Dakota League of Cities (NDLC). The NDLC appears in support of HB 1537.

The reason HB 1537 is here is because it was recently discovered that a requirement in N.D.C.C. § 6-09.4-22 was overlooked in many water service agreements between cities and rural water districts. That statute requires that the Public Finance Authority, the Bank of North Dakota, or the other state agency (hereinafter, the State) be a party to an agreement between a city and a rural water district to provide water in a territory when the State has outstanding debt associated with the political subdivision's water service. Further, the statute provides that if the State is not a party, the agreement is invalid and unenforceable.

This situation came to the NDLC's attention due to current litigation involving a city and a rural water district where the rural water district brought a claim in federal court to invalidate an existing agreement. A lot of work was done in the House Political Subdivisions Committee to come up with language to address this situation for similarly situated cities and rural water districts, without impacting the existing litigation.

As such, the bill as now 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 the provision does not apply to litigation that commenced prior to January 1, 2025. The NDLC believes this language will protect other cities and rural water districts from litigation on these existing agreements.

One addition that may help ensure that the bill achieves its purpose would be to add an emergency clause to the existing language so that the bill would become effective upon the governor's signature.

The NDLC respectfully requests a Do Pass recommendation on HB 1537.



North Dakota House of Representatives

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Representative Emily O'Brien

District 42
2029 Second Avenue North
Grand Forks, ND 58203-3311
eobrien@ndlegis.gov

COMMITTEES:

Appropriations
Appropriations - Human Resources Division

03/31/2025

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.

2025 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

HB 1537
3/31/2025

A bill relating to service agreement protection of service during the term of the loan.

9:49 a.m. Chairman Barta opened the hearing.

Members present: Chairman Barta, Vice-Chair Boehm, Senator Klein, Senator Kessel, Senator Enget

Discussion Topics:

- Emergency clause
- Protection from future lawsuits
- Committee action

9:50 a.m. Senator Boehm moved to adopt amendment "emergency clause".

9:51 a.m. Senator Klein seconded the motion.

Senators	Vote
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Mark Enget	Y
Senator Greg Kessel	Y
Senator Jerry Klein	Y

Motion passed 5-0-0.

9:51 a.m. Senator Klein moved a Do Pass As Amended.

9:51 a.m. Senator Enget seconded the motion.

Senators	Vote
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Mark Enget	Y
Senator Greg Kessel	Y
Senator Jerry Klein	Y

Motion passed 5-0-0.

Chairman Barta will carry the bill.

9:55 a.m. Chairman Barta adjourned the meeting.

Senate Industry, Business and Labor Committee

HB 1537

3/31/25

Page 2

Audrey Oswald, Committee Clerk

March 31, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

**PROPOSED AMENDMENTS TO
FIRST ENGROSSMENT**

ENGROSSED HOUSE BILL NO. 1537

Introduced by

Representatives O'Brien, Bahl, Ista, Sanford, Satrom

Senators Barta, Meyer, Patten, Conley

CO
3/31/25
1 of 2

1 A BILL for an Act to amend and reenact section 6-09.4-22 of the North Dakota Century Code,
2 relating to service agreement protection of service during the term of the loan; and to declare an
3 emergency.

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

5 **SECTION 1. AMENDMENT.** Section 6-09.4-22 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **6-09.4-22. Protection of service during term of loan.**

- 8 1. The service provided or made available by a political subdivision through the
9 construction or acquisition of an improvement, or the revenues therefrom, financed in
10 whole or in part with a loan to the political subdivision from the public finance authority
11 or any other state agency or enterprise, may not be curtailed or limited by inclusion of
12 all or any part of the area served by the political subdivision within the boundaries of
13 any other political subdivision, or by the granting of any private franchise for similar
14 service within the area served by the political subdivision, during the term of the loan.
15 The political subdivision providing the service may not be required to obtain or secure
16 any franchise, license, or permit as a condition of continuing to serve the area if it is
17 included within the boundaries of another political subdivision during the term of the
18 loan.
- 19 2. Under the circumstances described in subsection 1, nothing prevents the two political
20 subdivisions, with the public finance authority or other state agency or enterprise, from

Sixty-ninth
Legislative Assembly

1 negotiating an agreement for the right or obligation to provide the service in question,
2 provided that any agreement is invalid and unenforceable unless the public finance
3 authority or other state agency or enterprise is a party to the agreement and unless
4 the agreement contains adequate safeguards to ensure the security and timely
5 payment of any outstanding bonds of the public finance authority issued to fund the
6 loan.

7 3. An agreement made before January 1, 2025, and in violation of subsection 2 is
8 voidable only at the option of the public finance authority or other state agency or
9 enterprise upon thirty days written notice from the public finance authority or other
10 state agency or enterprise to the parties of the agreement. This subsection does not
11 apply to litigation commenced before January 1, 2025.

12 **SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

**REPORT OF STANDING COMMITTEE
ENGROSSED HB 1537**

Industry and Business Committee (Sen. Barta, Chairman) recommends **AMENDMENTS** ([25.1185.02001](#)) and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT OR EXCUSED AND NOT VOTING). Engrossed HB 1537 was placed on the Sixth order on the calendar. This bill does not affect workforce development.