# FIRST ENGROSSMENT

Sixtieth
Legislative Assembly
of North Dakota

# ENGROSSED HOUSE BILL NO. 1128

Introduced by

Government and Veterans Affairs Committee

(At the request of the Industrial Commission)

A BILL for an Act to create and enact chapter 54-17.7 and a new section to chapter 57-06 of the North Dakota Century Code, relating to the North Dakota pipeline authority, to provide for the planning, constructing, owning, financing, maintaining, operating, and disposing of pipeline facilities and related infrastructure, to authorize issuance of revenue bonds, and a tax exemption for pipeline facilities; to amend and reenact subdivision l of subsection 2 of section 28-32-01, subsection 5 of section 54-44.4-02, subsection 2 of section 54-60.1-01, and section 57-51.1-07.3 of the North Dakota Century Code, relating to Administrative Agencies Practice Act exemption for the pipeline authority; and procurement, business incentive exception, and deposits to the oil and gas research fund; to provide a continuing appropriation; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Subdivision l of subsection 2 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

l. The industrial commission with respect to the activities of the Bank of North Dakota, North Dakota housing finance agency, public finance authority, North Dakota mill and elevator association, North Dakota farm finance agency, ~~and~~ the North Dakota transmission authority<u>, and the North Dakota pipeline authority</u>.

**SECTION 2.** Chapter 54-17.7 of the North Dakota Century Code is created and enacted as follows:

<u>**54-17.7-01. North Dakota pipeline authority.** There is created the North Dakota pipeline authority, which shall be governed by the industrial commission.</u>

<u>**54-17.7-02. Definitions.** As used in this chapter:</u>

1. "Authority" means the industrial commission acting as the North Dakota pipeline authority.
2. "Commission" means the North Dakota industrial commission.
3. "Energy-related commodities" means any substance, element, or compound, either gaseous, liquid, or solid, associated with the production, refining, or processing of renewable energy, crude oil, natural gas, coal, or coal byproducts, including oil, natural gas liquids, refined petroleum products, carbon dioxide, hydrogen, ethanol, propane, butane, ethane, methane, sulfur, helium, synthetic fuels, nitrogen, biodiesel, and liquids made from coal.
4. "Natural gas" means hydrocarbons or nonhydrocarbons that at atmospheric conditions of temperature and pressure are in a gaseous phase.
5. "Notice of intent" means the notice a person delivers to the authority indicating willingness to construct pipeline facilities contemplated by the authority or to provide services fulfilling the need for such pipeline facilities.
6. "Pipeline facilities" means pipelines, pumps, compressors, storage, and all other facilities, structures and properties incidental and necessary or useful in the transportation, distribution, and delivery of energy-related commodities to points of sale or consumption or to the point or points of distribution for consumption located within and without this state.
7. "Project area" means the geographic area in which construction of a pipeline facility contemplated by the authority is likely to occur.

**54-17.7-03. Pipeline authority purposes.** The authority is created for the purpose of diversifying and expanding the North Dakota economy by facilitating development of pipeline facilities to support the production, transportation, and utilization of North Dakota energy-related commodities, thereby increasing employment, stimulating economic activity, augmenting sources of tax revenue, fostering economic stability, and improving the state's economy.

**54-17.7-04. Powers.** The authority has all powers necessary to carry out the purposes of this chapter, including the power to:

1. Make grants or loans and to provide other forms of financial assistance as necessary or appropriate for the purposes of this chapter.

2. Make and execute contracts and all other instruments necessary or convenient for the performance of the authority's powers and functions.

3. Acquire, purchase, hold, use, lease, license, sell, transfer, and dispose of an undivided or other interest in or the right to capacity in any pipeline system or systems within or without the state of North Dakota in order to facilitate the production, transportation, distribution, or delivery of energy-related commodities produced in North Dakota as a purchaser of last resort. The obligation of the state may not exceed ten percent of the pipeline authority's acquisition or purchase of a right to capacity in any pipeline system or systems and the state's obligation is limited to the funding available from the oil and gas research fund.

4. Borrow money and issue evidences of indebtedness as provided in this chapter.

5. Receive and accept aid, grants, or contributions of money or other things of value from any source, including aid, grants, or contributions from any department, agency, or instrumentality of the United States, subject to the conditions upon which the aid, grants, or contributions are made and consistent with the provisions of this chapter.

6. Issue and sell evidences of indebtedness in an amount or amounts as the authority may determine, but not to exceed eight hundred million dollars, plus costs of issuance, credit enhancement, and any reserve funds required by agreements with or for the benefit of holders of the evidences of indebtedness for the purposes for which the authority is created under this chapter, provided that the amount of any refinancing shall not be counted toward such eight hundred million dollar limitation to the extent it does not exceed the outstanding amount of the obligations being refinanced.

7. Refund and refinance its evidences of indebtedness.

8. Make and execute interest rate exchange contracts.

9. Enter lease-sale contracts.

10. Pledge any and all revenues derived by the authority under this chapter or from a pipeline facility, service, or activity funded under this chapter to secure payment or redemption of the evidences of indebtedness.

11. To the extent and for the period of time necessary for the accomplishment of the purposes for which the authority was created plan, finance, develop, acquire, own in whole or in part, lease, rent, and dispose of pipeline facilities.
12. Enter contracts to construct, maintain, and operate pipeline facilities.
13. Consult with the public service commission, regional organizations, and any other relevant state or federal authority or persons as necessary and establish reasonable fees, rates, tariffs, or other charges for pipeline facilities and all services rendered by the authority.
14. Lease, rent, and dispose of pipeline facilities owned pursuant to this chapter.
15. Investigate, plan, prioritize, and propose corridors for the transport of energy-related commodities.
16. Make and execute contracts and all other instruments necessary or convenient for the performance of the authority's powers and functions with other state pipeline authorities.
17. Cooperate with and participate in joint projects, research projects, and other activities with other state pipeline authorities and participate in and join regional pipeline organizations.
18. Do any and all things necessary or expedient for the purposes of the authority provided in this chapter.

**54-17.7-05. Authority may act.**

1. Before exercising its powers to construct pipeline facilities granted to it in this chapter except for subsection 3 of section 54-17.7-04, the authority shall publish in a newspaper of general circulation in North Dakota and in a newspaper in the project area a notice describing the need for pipeline facilities contemplated by the authority. A person willing to construct the pipeline facilities or furnish services to satisfy the needs described in the notice has a period of one hundred eighty days from the date of last publication of the notice within which to delivery to the authority a notice of intent. After receipt of a notice of intent, the authority may not exercise its powers to construct pipeline facilities unless the authority finds that exercising its authority would be in the public interest. In making such a finding, the authority shall consider factors, including economic impact to the state,

economic feasibility, technical performance, reliability, past performance, and the likelihood of successful completion and ongoing operation.

2. The authority may require a person giving a notice of intent to provide a bond and to submit a plan for completion of the pipeline facilities or commencement of services within a period of time acceptable to the authority. If no person submits an adequate plan or bond as required by the authority, the authority may proceed with contracting for construction of the facility described in the authority's published notice.

**54-17.7-06. Authority may participate upon request.** The authority may participate in a pipeline facility through financing, planning, joint ownership, or other arrangements at the request of a person giving a notice of intent.

**54-17.7-07. Evidences of indebtedness.**

1. Evidences of indebtedness of the authority must be authorized by resolution of the industrial commission and may be issued in one or more series and must bear such date or dates, mature at such time or times, bear interest at such rate or rates of interest per year, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable from such sources in such medium of payment at such place or places within or without the state, and be subject to such terms of redemption, with or without premium, as such resolution or resolutions may provide. Evidences of indebtedness of the authority are to mature not more than forty years from the date of issue. Evidences of indebtedness of the authority may be sold at such time or times and at such price or prices as the authority determines.

2. Evidences of indebtedness and grants, loans, or other forms of financial assistance issued by the authority are payable solely from:

   a. Revenues that may be received by the authority from pipeline facilities, services, or activities funded under this chapter with the proceeds of the authority's evidences of indebtedness, subject only to prior payment of the reasonable and necessary expenses of operating and maintaining such pipeline facilities except depreciation.

b. Amounts received by the authority under loans authorized under this chapter.

c. Revenues received by the authority under this chapter from any source other than general tax revenues.

3. The evidences of indebtedness are not subject to taxation by the state or any of its political subdivisions and do not constitute a debt of the state of North Dakota within the meaning of any statutory or constitutional provision and must contain a statement to that effect on their face.

4. The authority may establish and maintain a reserve fund for evidences of indebtedness issued under this chapter. There must be deposited in the reserve fund:

a. All moneys appropriated by the legislative assembly to the authority for the purpose of the reserve fund.

b. All proceeds of evidences of indebtedness issued under this chapter required to be deposited in the reserve fund by the terms of any contract between the authority and the holders of its evidences of indebtedness or any resolution of the authority.

c. Any lawfully available moneys of the authority which it may determine to deposit in the reserve fund.

d. Any moneys from any other source made available to the authority for deposit in the reserve fund or any contractual right to the receipt of moneys by the authority for the purpose of the fund, including a letter of credit, surety bond, or similar instrument.

5. The authority must include in its biennial request to the office of the budget the amount, if any, necessary to restore any reserve fund established under this section to an amount equal to the amount required to be deposited in the fund by the terms of any contract or resolution approved by the commission.

6. Any pledge of revenue made by the industrial commission as security for the authority's evidences of indebtedness is valid and binding from time to time when the pledge is made. The revenues or other moneys so pledged and thereafter received by the authority are immediately subject to the lien of any such pledge without any physical delivery thereof or further act, and the lien of any such pledge

is valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority, regardless of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be filed or recorded except in the records of the authority.

7. The authority may obtain from any entity of the state, any department or agency of the United States, or any nongovernmental insurer, any insurance, guaranty, or liquidity facility, or from a financial institution, a letter of credit to the extent such insurance, guaranty, liquidity facility, or letter of credit now or hereafter available, as to, or for, the payment or repayment of, interest or principal, or both, or any part thereof, on any evidences of indebtedness issued by the authority pursuant to this chapter, and may enter into any agreement or contract with respect to any such insurance, guaranty, letter of credit, or liquidity facility, and pay any required fee, unless the same would impair or interfere with the ability of the authority to fulfill the terms of any agreement made with the holders of its evidences of indebtedness.

8. After issuance, all evidences of indebtedness of the authority are conclusively presumed to be fully authorized and issued under the laws of the state, and any person or governmental unit is estopped from questioning their authorization, sale, issuance, execution, or delivery by the authority.

9. When the authority has issued evidences of indebtedness and pledged the revenues of the pipeline facilities for the payment thereof as herein provided, the authority shall operate and maintain the pipeline facilities and shall impose and collect fees and charges for the services furnished by the pipeline facilities, including those furnished to the authority itself, in the amounts and at the rates as are fully sufficient at all times to:

   a. Pay the expenses of operating and maintaining the pipeline facilities.

   b. Provide a debt service fund sufficient to assure the prompt payment of principal and interest on the evidences of indebtedness at maturity.

   c. Provide a reasonable fund for contingencies as may be required by the resolution authorizing the evidences of indebtedness.

**54-17.7-08. Public service commission jurisdiction and consultation.**

1. Until sold or disposed of by the authority, the authority and the pipeline facilities built under this chapter are exempt from the provisions of title 49 except for chapter 49-22 and section 49-02-01.2. Upon sale or disposal by the authority, pipeline facilities built under this chapter are subject to the provisions of title 49.
2. The authority shall consult with the public service commission with respect to the rates charged by the authority for use of its pipeline facilities and such rates must thereafter be considered just and reasonable in proceedings before the public service commission pursuant to section 49-05-06.
3. The authority shall conduct its activities in consultation with pipeline providers, the oil and gas research council, energy-related commodities interests, and other persons having relevant expertise.

**54-17.7-09. Bonds as legal investments.** The bonds of the authority are legal investments which may be used as collateral for public funds of the state, insurance companies, banks, savings and loan associations, credit unions, investment companies, trustees, and other fiduciaries which may properly and legally invest funds in their control or belonging to them in bonds of the authority. The state investment board may invest in bonds of the authority in an amount specified by the state investment board.

**54-17.7-10. Disposal of pipeline facilities.**

1. Before becoming an owner or partial owner of a pipeline facility or acquiring capacity in a pipeline system, the authority shall develop a plan identifying:
   a. The public purposes of the authority's ownership or capacity acquisition.
   b. Conditions that would make the authority's ownership no longer necessary for accomplishing those public purposes.
   c. A plan to divest the authority's ownership or capacity interest as soon as economically prudent once those conditions occur.
2. For pipeline facilities that are leased to another entity by the authority at the end of the lease, absent default by the lessee, the authority shall convey its interest in the pipeline facilities to the lessee.
3. For pipeline facilities that are owned by the authority without a lessee, the authority shall divest itself of ownership as soon as economically prudent in accordance with the divestiture plan developed pursuant to subsection 1.

**54-17.7-11. Pipeline authority administrative fund - Continuing appropriation.**

There is created a pipeline authority administrative fund.

1. Revenue to the fund must include:
   a. Moneys received from the state's oil and gas research council administrative budget.
   b. Moneys received from any federal agency for the purpose of this section.
   c. Moneys donated to the pipeline authority for the purposes of this section.
   d. Moneys received from the state's oil and gas impact fund.
   e. Such other moneys as may be deposited in the fund for use in carrying out the purposes of the authority.
2. This fund must be maintained as a special fund and all moneys transferred into the fund are appropriated on a continuing basis and must be used and disbursed solely for the purpose of defraying the administrative costs incurred by the pipeline authority.
3. Utilizing funds from the oil and gas research fund, the industrial commission shall contract for or hire staffing necessary to effectively administer the pipeline authority.

**54-17.7-12. Access to authority records.**

1. Materials and data submitted to, or made or received by, the authority, to the extent that the authority determines the materials or data consist of trade secrets or commercial, financial, or proprietary information of individuals or entities applying to or contracting with the authority or receiving authority services under this chapter are subject to section 44-04-18.4.
2. A person or entity must file a request with the authority to have material designated as confidential under subsection 1. The request must contain any information required by the authority, and must include at least:
   a. A general description of the nature of the information sought to be protected.
   b. An explanation of why the information derives independent economic value, actual or potential, from not being generally known to other persons.
   c. An explanation of why the information is not readily ascertainable by proper means by other persons.

d. A general description of any person or entity that may obtain economic value from disclosure or use of the information and how the person or entity may obtain this value.

e. A description of the efforts used to maintain the secrecy of the information.

f. The fact that a request has been made is exempt.

3. The information submitted pursuant to subsection 2 is confidential. The authority shall examine the request and determine whether the information is relevant to the matter at hand and is a trade secret under the definition in section 47-25.1-01 or 44-04-18.4. If the authority determines the information is either not relevant or not a trade secret, the authority shall notify the requester and the requester may ask for the return of the information and request within ten days of the notice. If no return is sought, the information and request are a public record.

**54-17.7-13. Reporting requirements.** The authority shall deliver a written report on its activities to the legislative council each biennium. The authority is not subject to the requirements of chapter 54-60.1, but to ensure public accountability, the authority shall provide an annual report to the industrial commission detailing activities and expenditures incurred during the preceding year.

**SECTION 3. AMENDMENT.** Subsection 5 of section 54-44.4-02 of the North Dakota Century Code is amended and reenacted as follows:

5. Procurements through a contract or other instrument executed by the industrial commission under ~~chapter~~ chapters 54-17.5, 54-17.6, and 54-17.7.

**SECTION 4. AMENDMENT.** Subsection 2 of section 54-60.1-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Business incentive" means a state or political subdivision direct cash transfer, loan, or equity investment; contribution of property or infrastructure; reduction or deferral of any tax or any fee; guarantee of any payment under any loan, lease, or other obligation; or preferential use of government facilities given to a business. To be considered a business incentive, the total assistance in all forms must be valued at twenty-five thousand dollars or more. Unless specifically provided otherwise, the term does not include:

a. Assistance that is generally available to all businesses or to a general class of similar businesses, such as a line of business, size, or similar criteria.

b. Incentives resulting from Bank of North Dakota programs unless the incentive is a direct interest rate buydown, is made pursuant to the beginning entrepreneur loan guarantee program, or is an investment made pursuant to the North Dakota alternative and venture capital investments and early-stage capital funds program.

c. Public improvements to buildings or lands owned by the state or political subdivision which serve a public purpose and do not principally benefit a single business or defined group of businesses at the time the improvements are made.

d. Assistance provided for the sole purpose of renovating old or decaying building stock or bringing such building stock up to code and assistance provided for designated historic preservation districts, provided that the assistance does not exceed seventy-five percent of the total cost.

e. Assistance to provide job readiness and training services if the sole purpose of the assistance is to provide those services.

f. Assistance for housing.

g. Assistance for pollution control or abatement.

h. Assistance for energy conservation.

i. Tax reductions resulting from conformity with federal tax law.

j. Benefits derived from regulation.

k. Indirect benefits derived from assistance to educational institutions.

l. Except for a center of excellence award under chapter 15-69, assistance for a collaboration between a North Dakota institution of higher education and a business.

m. Redevelopment if the recipient's investment in the purchase of the site and in site preparation is seventy percent or more of the assessor's current year's estimated market value.

n. General changes in tax increment financing law and other general tax law changes of a principally technical nature.

o. Federal assistance provided through the state or a political subdivision until the assistance has been repaid to, and reinvested by, the state or political subdivision.

p. Federal or state assistance for the lignite research, development, and marketing program under chapter 54-17.5.

q. Federal or state assistance for the oil and gas research, development, and marketing program under chapter 54-17.6.

**SECTION 5.** A new section to chapter 57-06 of the North Dakota Century Code is created and enacted as follows:

**Pipeline authority exemption** Property, not including land, is exempt from taxation during construction and for the first ten full taxable years following initial operation if it consists of a pipeline owned by the authority and constructed after 2006, and necessary associated equipment for the transportation or storage of energy-related commodities if constructed under chapter 54-17.7. Pipeline facilities property described in subsection 6 of section 54-17.7-02 is subject to payments in lieu of property taxes during the time it is exempt from taxation. For the purpose of these payments, pipeline facilities property described in subsection 6 of section 54-17.7-02, whether or not it crosses multiple geographic taxing districts, must be valued annually by the state board of equalization and certified in the manner that other pipeline valuations are certified. The county auditor shall calculate taxes on the pipeline facilities property described in subsection 6 of section 54-17.7-02 in the same manner that taxes are calculated on other pipeline property. Not later than December twenty-sixth of each year, each county auditor shall submit a statement of the amount of taxes that would have been assessed against pipeline facilities property exempted under this section to the state treasurer for payment. The state treasurer shall make the required payment to each county not later than March first of the following year, and the county auditor shall distribute the payments to the political subdivisions in which the exempt pipeline facilities property is located.

**SECTION 6. AMENDMENT.** Section 57-51.1-07.3 of the North Dakota Century Code is amended and reenacted as follows:

**57-51.1-07.3. Oil and gas research fund - Deposits - Continuing appropriation.** There is established a special fund in the state treasury to be known as the oil and gas research fund. ~~In the 2003-05 biennium, the first fifty thousand dollars of revenue from the~~

~~state's share of the oil and gas production tax and oil extraction tax must be deposited into a special fund known as the oil and gas research fund. In the 2003-05 biennium, if actual revenues for the 2001-03 biennium from the state general fund share of the oil and gas production tax and oil extraction tax exceeded seventy-one million sixty-four thousand dollars, the excess up to five hundred thousand dollars must be deposited in a special fund known as the oil and gas research fund, as provided in this section. After the 2003-05 biennium, two~~ Two percent of the state's share of the oil and gas gross production tax and oil extraction tax revenues ~~that are deposited into the state general fund~~, up to ~~one~~ three million ~~three hundred thousand~~ dollars per biennium, must be deposited into the oil and gas research fund. The state treasurer shall transfer into the oil and gas research fund two percent of the state's share of the oil and gas production tax and the oil extraction tax revenues ~~that have been deposited into the general fund~~ for the previous three months. All money deposited in the oil and gas research fund ~~is~~ and interest on all such moneys are appropriated as a continuing appropriation to the council to be used for purposes stated in chapter 54-17.6.

**SECTION 7. EMERGENCY.** Sections 1 through 5 of this Act are declared to be an emergency measure.