Sixty-third Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 8, 2013

SENATE BILL NO. 2233
(Senators Grindberg, Wardner, Heckaman)
(Representatives Carlson, Hofstad, Onstad)

AN ACT to provide a declaration of water policy and goals and objectives for water project development, the Mouse River enhanced flood control project, the lower Heart River Morton County enhanced flood control project, the southwest pipeline project, the Garrison diversion unit, and the Fargo-Moorhead flood control project; to create and enact a new subdivision to subsection 2 of section 28-32-01, a new subdivision to subsection 1 of section 54-10-14, a new section to chapter 61-02, and four new sections to chapter 61-40 of the North Dakota Century Code, relating to exempting certain activities of the industrial commission from the Administrative Agencies Practice Act, western area water supply authority industrial water sales audits, an infrastructure revolving loan fund, and franchise protection rights of the western area water supply authority; to amend and reenact sections 54-35-02.7, 61-24.7-01, 61-24.7-05, 61-40-01, 61-40-02, 61-40-03, 61-40-04, 61-40-05, and 61-40-09 of the North Dakota Century Code, relating to jurisdiction of the water-related topics overview committee, the Red River valley water supply project, the location of industrial water depots, and the western area water supply project; to repeal sections 61-24.7-02, 61-24.7-03, 61-24.7-04, and 61-40-06 of the North Dakota Century Code, relating to funding of the Red River valley water supply project and oversight of western area water supply authority projects; to provide a continuing appropriation; to provide a statement of legislative intent; and to provide for reports to the legislative management.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subdivision to subsection 2 of section 28-32-01 of the North Dakota Century Code is created and enacted as follows:

The industrial commission with respect to approving or setting water rates under chapter 61-40.

SECTION 2. A new subdivision to subsection 1 of section 54-10-14 of the North Dakota Century Code is created and enacted as follows:

Western area water supply authority industrial water sales on an annual basis.

SECTION 3. AMENDMENT. Section 54-35-02.7 of the North Dakota Century Code is amended and reenacted as follows:

54-35-02.7. ~~(Effective through November 30, 2013)~~ Water-related topics overview committee - Duties.

The legislative management, during each interim, shall appoint a water-related topics overview committee in the same manner as the legislative management appoints other interim committees. The committee must meet quarterly and is responsible for legislative overview of water-related topics and related matters, the Garrison diversion project, and for any necessary discussions with adjacent states on water-related topics. ~~During the 2011-12 interim, the committee shall review the state's irrigation laws and rules and evaluate the process of the prioritization of water projects.~~The committee shall work collaboratively with the state water commission to develop policies to further define the state role in major flood control projects and in the prioritization of water projects. During the 2013-14 interim, the committee shall review water supply routes and alternatives for the Red River valley water supply project. The committee consists of thirteen members and the legislative management shall designate

the chairman of the committee. The committee shall operate according to the statutes and procedure governing the operation of other legislative management interim committees.

~~**(Effective after November 30, 2013) Garrison diversion overview.** The legislative management is responsible for legislative overview of the Garrison diversion project and related matters and for any necessary discussions with adjacent states on water-related topics.~~

SECTION 4.

Declaration of policy.

The legislative assembly declares that major water development and water management goals must be set forth and implemented in order to protect the long-term interests, economic vitality, and future benefits of the state and its citizens; that such water development and water management goals are essential for the economic growth and quality of life across the entire state; that rights to the use and enjoyment of waters of the Missouri River flowing through this state cannot be restricted by the federal government; that it is necessary to develop and utilize waters of the Missouri River for municipal, domestic, rural, and industrial purposes in this state; that flood control works are necessary to protect the lives and property of the citizens of this state; that major flood control works in and around major cities and other cities are necessary to address the record and damaging floods that have occurred; that regional water supply and rural water projects must be completed in order to provide a long-term, dependable quality and adequate quantity water supply for municipal, domestic, rural, and industrial uses; that irrigation provides a significant opportunity to further the agricultural opportunities in the state; and that an infrastructure loan fund will enable these goals and policies to be achieved and implemented, and will provide significant economic and financial benefits to the people of this state.

SECTION 5.

Legislative intent - Reports to legislative assembly.

The legislative assembly declares and establishes the following goals and objectives:

1. That it is necessary for the long-term welfare and economic well-being of the Souris River basin, and the entire state and its citizens, that the planning, design, and construction of the Mouse River enhanced flood control project be completed and implemented.

2. That the Red River valley water supply project is critical to provide a dependable water supply for current and future generations in eastern North Dakota and is essential to provide for the long-term welfare, economic well-being, and quality of life for the entire state.

3. That it is necessary for the long-term welfare and economic well-being of the Red River basin, and the entire state and its citizens, that the planning, design, and construction of the Fargo-Moorhead flood control project be completed and implemented.

4. That regional water supply and rural water systems are necessary to provide a dependable and adequate quantity and quality water supply for municipal, domestic, rural, and industrial uses.

5. That the state water commission and the southwest water authority shall begin the process of reviewing capital repayment and revenues being returned to the resources trust fund; payments necessary to meet obligations of existing bonds and other loans; mill levies; ownership of land and associated facilities; existing construction documents; liabilities; contracts with cities, bulk users, companies, and other users; and other items, and shall report to the legislative assembly those steps necessary for the transfer of ownership and responsibility of the southwest pipeline project from the state water commission to the southwest water authority.

6. That the state water commission and the Garrison Diversion Conservancy District shall enter discussions with the bureau of reclamation concerning Garrison diversion unit facilities.

7. That projects receiving state funds for construction and implementation not assert, claim, or seek to prevent other opportunities, either public or private, to utilize waters of the Missouri River for industrial uses in this state.

8. That local water management and flood control projects are necessary for the economic well-being and quality of life of citizens in those local areas.

9. That irrigation development offers significant opportunities for agriculture in this state.

10. That an infrastructure loan fund for water development and management will provide significant financial benefits to projects and the citizens of this state, and will provide new capabilities to implement necessary water infrastructure projects across the state.

SECTION 6.

Mouse River enhanced flood control project.

1. The legislative assembly declares its intent to provide state funding for a share of the nonfederal or local cost of constructing the Mouse River enhanced flood control project.

2. Any funds appropriated for the construction of the Mouse River enhanced flood control project may be carried over to future bienniums.

3. State funding for the Mouse River enhanced flood control project may be appropriated at the time and in the manner determined by the legislative assembly, either concurrently or separately from federal and local funding for the Mouse River enhanced flood control project.

SECTION 7.

Lower Heart River, Morton County, enhanced flood control project.

The legislative assembly declares its intent to provide state funding for a share of the nonfederal or local cost for construction of the lower Heart River, Morton County, flood control project.

SECTION 8.

Southwest pipeline project - Report to legislative assembly.

The state water commission and the southwest water authority shall begin the process of reviewing capital repayment and revenues being returned to the resources trust fund; payments necessary to meet obligations of existing bonds and other loans; ownership of land and associated facilities; existing construction documents; liabilities; contracts with cities, bulk users, companies, and other users; and other items, and shall report to the legislative assembly those steps necessary for the transfer of ownership and responsibility of the southwest pipeline project from the state water commission to the southwest water authority.

SECTION 9.

Garrison diversion unit.

The Garrison diversion unit has extensive federal facilities that have been constructed. It is the intent of the legislative assembly that the state water commission and Garrison Diversion Conservancy District begin discussions with the bureau of reclamation concerning the Garrison diversion unit facilities.

SECTION 10.

Fargo-Moorhead flood control project.

1. The sixty-third legislative assembly declares its intent to provide state funding not to exceed four hundred fifty million dollars for one-half of the nonfederal or local cost of constructing a federally authorized Fargo-Moorhead flood control project.

2. Notwithstanding any other law, any funds appropriated for the construction of the Fargo-Moorhead flood control project may be carried over to future bienniums.

3. State funding for the Fargo-Moorhead flood control project may be appropriated at the time and in the manner determined by the legislative assembly, either concurrently or separately from federal and local funding for the Fargo-Moorhead flood control project.

SECTION 11. A new section to chapter 61-02 of the North Dakota Century Code is created and enacted as follows:

Infrastructure revolving loan fund - Continuing appropriation - Rules.

1. An infrastructure revolving loan fund is established on January 1, 2015, within the resources trust fund to provide loans for water supply, flood protection, or other water development and water management projects. Ten percent of oil extraction moneys deposited in the resources trust fund are made available on a continuing basis for making loans in accordance with this section. Accounts may be established in the resources trust fund as necessary for its management and administration.

2. The commission shall consider the following information when evaluating projects:

   a. A description of the nature and purposes of the proposed infrastructure project, including an explanation of the need for the project, the reasons why it is in the public interest, and the overall economic impact of the project.

   b. The estimated cost of the project and the amount of the loan sought and other proposed sources of funding.

   c. The extent to which completion of the project will provide a benefit to the state or regions within the state.

3. The commission shall approve projects and loans from the infrastructure loan fund, and the Bank of North Dakota shall manage and administer loans from the infrastructure loan fund and individual accounts in the fund. The commission may adopt policies for the review and approval of loans under this section. Loans made under this section must be made at an interest rate of one and one-half percent.

4. Annually the Bank of North Dakota may deduct a service fee of one-half of one percent for administering the infrastructure loan fund.

5. Projects not eligible for the state revolving fund will be given priority for these funds.

SECTION 12. AMENDMENT. Section 61-24.7-01 of the North Dakota Century Code is amended and reenacted as follows:

61-24.7-01. Legislative findings and intent - Authority to issue bonds.

~~1.~~ The legislative assembly finds that the provision of water of sufficient quantity and quality to supply homes, businesses, industries, wildlife, and recreation in the Red River valley within this state is necessary for the protection of health, property, and enterprises and for the promotion of prosperity and the general welfare of the people of the Red River valley and that construction of the Red River valley

water supply project involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. Therefore, it is declared necessary and in the public interest that the state by and through the state water commission provide a ~~one-third~~ share of the cost of constructing the Red River valley water supply project.

~~2. In furtherance of the public purpose set forth in subsection 1, the state water commission may issue bonds under chapter 61-02 and the proceeds are appropriated for construction of the Red River valley water supply project authorized and funded in part by the federal government and designed to provide reliable sources of water of sufficient quantity and quality to supply homes, businesses, industries, wildlife, and recreation in the Red River valley within this state.~~

~~3. This chapter does not affect the state water commission's authority to otherwise issue bonds pursuant to chapter 61-02 or section 61-24.3-01.~~

SECTION 13. AMENDMENT. Section 61-24.7-05 of the North Dakota Century Code is amended and reenacted as follows:

61-24.7-05. State funding plan.

1. The legislative assembly declares its intent to provide state funding for ~~one-third~~a share of the ~~total~~nonfederal or local cost of constructing the Red River valley water supply project.

2. Any ~~general~~ funds appropriated for the construction of the Red River valley water supply project may be carried over to future bienniums.

3. State funding for the Red River valley water supply project may be appropriated at the time and in the manner determined by the legislative assembly, either concurrently or separately from federal and local funding for the Red River valley water supply project.

SECTION 14. AMENDMENT. Section 61-40-01 of the North Dakota Century Code is amended and reenacted as follows:

61-40-01. Legislative declarations - Authority of western area water supply authority.

The legislative assembly declares that many areas and localities in western North Dakota do not enjoy adequate quantities of high-quality drinking water; that other areas and localities in western North Dakota do not have sufficient quantities of water to ensure a dependable, long-term domestic or industrial water supply; that greater economic security and the protection of health and property benefits the land, natural resources, and water resources of this state; and that the promotion of the prosperity and general welfare of all of the people of this state depend on the effective development and utilization of the land and water resources of this state and necessitates and requires the exercise of the sovereign powers of this state and concern a public purpose. To accomplish this public purpose, it is declared necessary that a water authority to treat, store, and distribute water to western North Dakota be established to provide for the supply and distribution of water to the people of western North Dakota for purposes, including domestic, rural water, municipal, livestock, industrial, oil and gas development, and other uses, and provide for the future economic welfare and prosperity of the people of this state, and particularly the people of western North Dakota, by the creation and development of a western area water supply project for beneficial and public uses. The western area water supply authority may acquire, construct, improve, develop, and own water supply infrastructure and may enter water supply contracts with member cities, water districts, and private users, such as oil and gas producers, for the sale of water for use within or outside the authority boundaries or the state. The western area water supply authority shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers. The independent water providers shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers.

SECTION 15. AMENDMENT. Section 61-40-02 of the North Dakota Century Code is amended and reenacted as follows:

61-40-02. Western area water supply authority.

The western area water supply authority consists of participating political subdivisions located within McKenzie, Williams, Burke, Divide, and Mountrail Counties which enter a water supply contract with the authority. Other cities and water systems, within or outside the authority counties' boundaries, including cities or water systems in Montana, may contract with the authority for a bulk water supply. The authority is a political subdivision of the state, a governmental agency, body politic and corporate, with the authority to exercise the powers specified in this chapter, or which may be reasonably implied. Participating member entities may be required to pay dues or water sale income to the authority, as determined by the bylaws and future resolutions of the authority. Participating member entities may not withdraw from the authority or fail or refuse to pay any water sale income to the authority ~~if the twenty-five million dollar zero interest loan from the state water commission has not been repaid~~until the state-guaranteed loans have been repaid. The provisions of subsections 1 through 5 of section 61-35-02.1 apply if the authority's board of directors unanimously votes to convert to a water district.

SECTION 16. AMENDMENT. Section 61-40-03 of the North Dakota Century Code is amended and reenacted as follows:

61-40-03. Western area water supply authority - Board of directors.

1. The initial board of directors of the western area water supply authority consists of two representatives from each of the following entities: Williams rural water district, McKenzie County water resource district, the city of Williston, BDW water system association, and R&T water supply association. The governing body of each member entity shall select two representatives to the authority board who are water users of the member entity. If a vacancy arises for a member entity, the governing body of the member entity shall select a new representative to act on its behalf on the authority board. ~~In addition, the state engineer or designee is a voting member on the authority's board of directors.~~ Directors have a term of one year and may be reappointed.

2. Additional political subdivisions or water systems may be given membership on the board upon two-thirds majority vote of the existing board. To be eligible for membership on the board, the member entity must first contract with the authority for financial participation in the project.

3. A member entity may designate an alternate representative to attend meetings and to act on the member's behalf. The board may designate associate members who are nonvoting members of the board. Notwithstanding this section, ~~except for the state engineer or designee,~~ initial board members must be removed if they have not entered a contract with the authority, before August 1, 2013, for financial participation in the project.

SECTION 17. AMENDMENT. Section 61-40-04 of the North Dakota Century Code is amended and reenacted as follows:

61-40-04. Board of directors - Officers - Meetings.

1. The board of directors shall adopt such rules and bylaws for the conduct of the business affairs of the authority as it determines necessary, including the time and place of regular meetings of the board, financial participation structure for membership in the authority, and membership appointment and changes. Bylaws need to be approved by member entity boards.

2. The board shall elect from its members a chairman and a vice chairman. The board shall elect a secretary and a treasurer, which offices may be held by the same individual, and either or both offices may be held by an individual who is not a member of the board. Special meetings of the board may be called by the secretary on order of the chairman or upon written request of a majority of the qualified members of the board. Notice of a special meeting must be mailed to each member of the board at least six days before the meeting, provided that a

special meeting may be held at any time when all members of the board are present or consent in writing.

3. Board members are entitled to receive as compensation an amount determined by the board not to exceed the amount per day provided members of the legislative management under section 54-35-10 and must be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09.

~~4. The initial board bylaws must direct board voting protocol. A weighted voting structure for board members is acceptable if the voting is based upon the volume of water purchased, the financial contributions of the stakeholder entities, or any other formula agreed by a majority of the board.~~

~~5. Before the bylaws become effective, the bylaws must be reviewed and approved by the attorney general.~~

SECTION 18. AMENDMENT. Section 61-40-05 of the North Dakota Century Code is amended and reenacted as follows:

61-40-05. Authority of the western area water supply authority.

In addition to authority declared under section 61-40-01, the board of directors of the western area water supply authority may:

1. Sue and be sued in the name of the authority.

2. Exercise the power of eminent domain in the manner provided by title 32 or as described in this chapter for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of an entire part of any pipeline, reservoir, connection, valve, pumping installation, or other facility for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority. However, if the interest sought to be acquired is a right of way for any project authorized in this chapter, the authority, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county in which the right of way is located, may take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.

3. Accept funds, property, services, pledges of security, or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority. The authority may cooperate and contract with the state or federal government, or any department or agency of state or federal government, or any city, water district, or water system within the authority, in furnishing assurances and meeting local cooperation requirements of any project involving treatment, control, conservation, distribution, and use of water.

4. Cooperate and contract with the agencies or political subdivisions of this state or other states, in research and investigation or other activities promoting the establishment, construction, development, or operation of the authority.

5. Appoint and fix the compensation and reimbursement of expenses of employees as the board determines necessary to conduct the business and affairs of the authority and to procure the

services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.

6. Operate and manage the authority to distribute water to authority members and others within or outside the territorial boundaries of the authority and this state.

7. Hold, own, sell, or exchange any and all property purchased or acquired by the authority. All money received from any sale or exchange of property must be deposited to the credit of the authority and may be used to pay expenses of the authority.

8. Enter contracts to obtain a supply of bulk water through the purchase of infrastructure, bulk water sale or lease, which contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water supply or infrastructure.

9. Acquire, construct, improve, and own water supply infrastructure, office and maintenance space in phases, in any location, and at any time.

10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority. The contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water system projects, as well as the authority's costs of operating and maintaining one or more projects, whether the acquisition, construction, or reconstruction of any water supply project actually is completed and whether water actually is delivered pursuant to the contracts. The contracts the cities, water districts, and other entities that are members of the western area water supply authority are authorized to execute are without limitation on the term of years.

11. Borrow money as provided in this chapter.

12. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its obligations, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any contract or instrument.

13. Accept from any authorized state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and enter agreements with the agency respecting the loans or grants. <u>Other than state-guaranteed loans, additional debt that may form the basis of a claim for territorial or franchise protection for industrial water sales for oil and gas exploration and production may be acquired by the authority or member entities only upon approval by the industrial commission and the emergency commission.</u>

14. Contract debts and borrow money, pledge property of the authority for repayment of indebtedness, and provide for payment of debts and expenses of the authority.

15. Operate and manage the authority to distribute water to any out-of-state cities or water systems that contract with the authority.

16. Accept, apply for, and hold water allocation permits.

17. Adopt rules concerning the planning, management, operation, maintenance, sale, and ratesetting regarding water sold by the authority. The authority may adopt a rate structure with elevated rates set for project industrial water <u>depot and lateral</u> supplies in recognition that a large component of the project expense is being incurred to meet the demands of industrial users. <u>The industrial water depot and lateral rate structure must be approved in accordance with section 20 of this Act.</u>

18. Develop water supply systems; store and transport water; and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes; milling,

manufacturing, mining, industrial, metallurgical, and any and all other beneficial uses; and fix the terms and rates therefore. The authority may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all treatment plants, works, facilities, improvements, and property necessary the same without any required public vote before taking action.

19. Contract to purchase or improve water supply infrastructure or to obtain bulk water supplies without requiring any vote of the public on the projects or contracts. In relation to the initial construction of the system and for the purposes of entering a contract with the authority, municipalities are exempt from the public voting requirements or water contract duration limitations otherwise imposed by section 40-33-16.

20. Accept assignment by member entities of contracts that obligate member entities to provide a water supply, contracts that relate to construction of water system infrastructure, or other member entity contracts that relate to authorities transferred to the authority under this chapter.

SECTION 19. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

Industrial water depot and lateral sales.

1. An accounting of industrial water depot and lateral sales collected and distributed by the authority must be reported to the industrial commission on a monthly basis. Participating member entities shall transfer industrial water depot and lateral sales to the authority within thirty days of receipt of the revenues. The boards of the authority and participating member entities must be notified of the sweep of revenues; however, board approval is not required. Upon the receipt of industrial water depot and lateral revenues by the authority, the authority shall apply immediately all revenues each month in the following order:

   a. One hundred fifty thousand dollars per biennium to the industrial commission for one additional full-time equivalent position to implement this Act.

   b. Reimburse the authority for industrial water depot capital improvements and the cost for delivery of potable or nonpotable water sold at industrial water depots and lateral lines, at a cost no greater than the participating member, or submember, if applicable, entity rate at the location of the depot or lateral line.

   c. Regular payments on the participating member entity debt as described in the agreements with the authority as of March 31, 2013, and baseline 2010 industrial water sales included in and subject to the terms of the authority and participating member agreements as of March 31, 2013. Baseline 2010 industrial water sales for the city of Tioga in the year 2013 are limited to the lesser of legally permitted industrial water sales or the amount in the member agreement.

   d. Required monthly payments on state-guaranteed loans. The required transfer must occur no later than the twentieth day of the following month.

   e. Additional principal payment on state-guaranteed loans.

   f. Payment to the resources trust fund.

2. If the state-guaranteed loans have not been repaid, without the written consent of the industrial commission the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of the property used in a water system of the authority if the property is used to provide revenue. Any requirements on the state-guaranteed loans for establishment of reserve funds for operation and maintenance or debt service are waived.

3. The state water commission shall approve the planning, location, and water supply contracts of any authority depots, laterals, taps, turnouts, and risers for industrial sales for oil and gas exploration and production after the effective date of this Act.

SECTION 20. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

Water rates.

The authority shall develop an industrial water depot and lateral retail rate and present the rate to the industrial commission for approval. Any industrial water depot and lateral rate adjustment must have approval of the industrial commission before going into effect. The authority shall develop domestic water rates that must include all costs for operation, maintenance, and operating and capital reserves, and debt repayment of all infrastructure managed or constructed by the authority, with the exception of the costs identified in section 19 of this Act which are paid for by industrial water depot and lateral sales.

SECTION 21. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

Construction funding.

The authority shall follow the state water commission requirements for funding through the resources trust fund or Bank of North Dakota state-guaranteed loans and shall present the overall plan and project components to the state water commission for funding approval. Priority on project funding first is reserved for state-guaranteed loan payments if not met by industrial water depot and lateral sales, second is for full repayment of existing federal debt if 7 U.S.C. 1926(b) protection for oil and gas exploration and production industrial water sales is asserted, and third for expanding domestic water supply to areas currently not served. In accepting construction funding, the authority and participating member entities agree to not hinder or prevent depot and lateral industrial water sales for oil and gas exploration and production.

SECTION 22. AMENDMENT. Section 61-40-09 of the North Dakota Century Code is amended and reenacted as follows:

61-40-09. Default.

~~If the authority is in default in the payment of the principal of or interest on any of the obligations of the authority under this chapter and if the budget section determines that the authority is unable to reimburse the state in the time period required by the budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority and the liabilities of the authority. In addition, the state assumes the powers of the authority.~~The industrial commission may review the ability of water depot and lateral sales to meet expenses in subdivisions a through d of subsection 1 of section 19 of this Act, and if the industrial commission is uncertain of that ability, the industrial commission shall provide written notification to the state water commission and direct the Bank of North Dakota to consider revision of the terms of the loan repayments. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due. ~~Upon written notice, the members of the governing board of the authority are immediately removed, and the state water commission is the governing board from the date of notice. If the state water commission determines that governance, possession, and ownership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the state water commission may develop a plan to return governance, possession, and ownership to the authority, subject to approval of the plan by the budget section.~~

SECTION 23. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

Franchise protection.

Notwithstanding any other provision of law, neither the authority nor its participating member entities may be required to waive the right to assert franchise protection under state or federal law with regard to water used for purposes other than industrial sales for oil and gas exploration and production.

SECTION 24. REPEAL. Sections 61-24.7-02, 61-24.7-03, 61-24.7-04, and 61-40-06 of the North Dakota Century Code are repealed.

SECTION 25. LEGISLATIVE INTENT. It is the intent of the sixty-third legislative assembly that after all loans to the state of North Dakota and contractual responsibilities to participating members are fulfilled, that any revenues generated by industrial water-related sales for oil and gas exploration and production be prioritized for use for infrastructure development in oil and gas-impacted areas of the state.

SECTION 26. REPORTS TO THE LEGISLATIVE MANAGEMENT. The independent water providers and the western area water supply authority shall report to the water-related topics overview committee on a regular basis and collaborate with the committee and the state water commission to monitor water usage, rates, and market share. The water-related topics overview committee shall report to the legislative management with recommendations to assure the state's ability to maintain its payment schedule. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly.