

**FIRST ENGROSSMENT
with Senate Amendments
ENGROSSED HOUSE BILL NO. 1440**

Introduced by

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

Senators Andrist, Grabinger, Larsen

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

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

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

7 **Statement of intent.**

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

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

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

- 17 1. A city planning to expand water service through annexation shall establish a city water
18 service area plan. The city shall notify any other water service provider whose water
19 service area is affected by the city's water service area plan of the establishment of
20 the plan.
- 21 2. The city shall file the city water service area plan with the commission. Upon filing of
22 the plan with the commission, the city may proceed with water service to the annexed
23 area. A city water service area plan is perfected by a water service agreement among

1 the water service providers that are encompassed by or which abut the water service
2 boundary.

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

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

7 **State water commission funding.**

8 Before providing a grant or loan to a district or city for a water service project in any area
9 within the extraterritorial zoning jurisdiction of any affected city, the commission shall require
10 that district and city to have a water service agreement. The absence of a water service
11 agreement may not affect the funding by the commission of other projects for a district or city
12 which are not related to potable water service and are not located within the extraterritorial
13 zoning jurisdiction.

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

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

- 17 1. If a water service agreement between the district and the city is not executed within
18 sixty days after the city notifies the district that a city water service area plan has been
19 established, the matter must be submitted to a committee for mediation. The
20 committee must be comprised of a mediator retained jointly by the city and the district,
21 two members appointed by the governing body of the city, and two members
22 appointed by the district. The retained mediator shall arrange and preside over the
23 mediation proceedings.
- 24 2. If the mediation committee is unable to resolve the dispute to the satisfaction of the
25 parties involved, either party may petition the office of administrative hearings to
26 appoint an administrative law judge to determine the terms of the water service
27 agreement. Before a hearing may be held, at least two weeks' written notice must be
28 given to the parties involved in the dispute. At the hearing, the retained mediator who
29 presided over the mediation proceedings may provide information to the administrative
30 law judge on the dispute between the parties involved and any proposed resolutions or
31 recommendations made by a majority of the members appointed to the committee.

- 1 Any resident of or person owning property in a city or district involved in the dispute, or
2 a representative of such a resident or property owner, and any representative of a city
3 or district involved, may appear at the hearing and present evidence on any matter to
4 be determined by the administrative law judge. A decision by the administrative law
5 judge must consider the following factors related to water service in the annexed area
6 in making a decision under this subsection:
- 7 a. The recommendation of the mediation committee;
8 b. The firefighting flow capacity of the water system;
9 c. The anticipated growth patterns of the district and city involved in the dispute;
10 d. Special conditions or needs, including topographic or physical features
11 influencing service;
12 e. The system capacity and trunk main delivery structure of each provider;
13 f. The age, condition, and worth of the affected existing infrastructure;
14 g. Outstanding debt attributable to current users;
15 h. The impact on future revenues lost from existing infrastructure;
16 i. Whether development would have occurred without annexation; and
17 j. Any other factor determined to be relevant by the administrative law judge.