

Sixty-fifth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2269

Introduced by

Senators Wanzek, G. Lee, Sorvaag

Representatives Sanford, Vigesaa, Zubke

1 A BILL for an Act to create and enact section 61-39-04.1 of the North Dakota Century Code,
2 relating to authorization of a state Red River valley water supply project; and to amend and
3 reenact sections 61-24-27, 61-24.7-05, 61-39-01, 61-39-02, 61-39-03, 61-39-04, 61-39-05,
4 61-39-11, and 61-39-16 of the North Dakota Century Code, relating to the powers of the Lake
5 Agassiz water authority and funding for the Red River valley water supply project.

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

7 **SECTION 1. AMENDMENT.** Section 61-24-27 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **61-24-27. Notes and bonds exempt from taxation.**

10 Notwithstanding any other provision of law, the state and all public officers, boards, and
11 agencies, and political subdivisions and agencies of the state, including the public finance
12 authority, all national banking associations, state banks, trust companies, savings banks and
13 institutions, savings and loan associations, credit unions, investment companies, insurance
14 companies, and other entities carrying on an investment business, and executors,
15 administrators, guardians, trustees, and other fiduciaries, may legally invest any sinking funds,
16 moneys, or other funds belonging to them or within their control in any bonds issued under this
17 chapter, and the bonds are authorized security for public deposits. Notes and bonds, including
18 refunding bonds, issued under this chapter and their interest and income are exempt from all
19 taxation by the state or by any political subdivision except inheritance, estate, and transfer
20 taxes.

21 **SECTION 2. AMENDMENT.** Section 61-24.7-05 of the North Dakota Century Code is
22 amended and reenacted as follows:

1 **61-24.7-05. State funding plan.**

- 2 1. The legislative assembly declares its intent to provide state funding for a share of the
3 ~~nonfederal or local~~ cost of constructing the Red River valley water supply project.
- 4 2. Any funds appropriated for the construction of the Red River valley water supply
5 project may be carried over to future bienniums.
- 6 3. State funding for the Red River valley water supply project may be appropriated at the
7 time and in the manner determined by the legislative assembly, either concurrently or
8 separately from any federal funding that becomes available and the local funding for
9 the Red River valley water supply project.

10 **SECTION 3. AMENDMENT.** Section 61-39-01 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **61-39-01. Findings and declaration of policy.**

13 The legislative assembly declares that many areas and localities in eastern and central
14 North Dakota do not enjoy adequate quantities of high-quality drinking water; that other areas
15 and localities in eastern and central North Dakota do not have sufficient quantities of water to
16 ensure a dependable, long-term supply; that greater economic security and the protection of
17 health and property benefits the land and water resources of this state; and that the promotion
18 of the prosperity and general welfare of all of the people of this state depend on the effective
19 development and utilization of the land and water resources of this state and necessitates and
20 requires the exercise of the sovereign powers of this state and concern a public purpose. To
21 accomplish this public purpose, it is declared necessary that a water authority to store and
22 distribute water to eastern and central North Dakota be established to provide for the supply
23 and distribution of water to the people of eastern and central North Dakota for purposes,
24 including domestic, rural water, municipal, livestock, ~~light~~ industrial, and other uses, with primary
25 emphasis on domestic, rural water, and municipal uses; and provide for the future economic
26 welfare and prosperity of the people of this state, and particularly the people of eastern and
27 central North Dakota, by the bulk purchase of water from the Garrison Diversion Conservancy
28 District delivered by the Red River valley water supply project for beneficial and public uses.
29 The Garrison Diversion Conservancy District may acquire, construct, improve, and own the Red
30 River valley water supply project and may enter water supply contracts with member cities and
31 water districts for the sale of water for consumption within or outside the district or the state.

1 including with Canada. Alternatively, the Lake Agassiz water authority may enter one or more
2 contracts to provide for the authority to acquire bulk water from the Garrison Diversion
3 Conservancy District and may enter water supply contracts with member cities and water
4 districts for the resale of this water for consumption within or outside the state.

5 The legislative assembly acknowledges that North Dakota and Minnesota communities
6 jointly use the Red River as a water resource. It is in the best interest of eastern North Dakota
7 also to study and possibly provide for the water needs of those Minnesota communities through
8 a Red River valley water supply project, particularly if that project maintains the use of the Red
9 River for North Dakota communities.

10 In furtherance of this public purpose, the state water commission may provide for the
11 issuance of bonds in accordance with chapter 61-02 to finance the costs of any project to
12 deliver water to eastern and central North Dakota or utilize other financing as addressed in this
13 chapter. This chapter does not abrogate or limit the rights, powers, duties, and functions of the
14 state water commission or state engineer, but is supplementary to those rights, powers, duties,
15 and functions.

16 **SECTION 4. AMENDMENT.** Section 61-39-02 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **61-39-02. Lake Agassiz water authority created.**

19 The Lake Agassiz water authority consists of cities and, water districts, and other water
20 distribution systems located in that part of the state which is included within the boundaries of
21 Cavalier, Pembina, Walsh, Nelson, Grand Forks, Griggs, Steele, Traill, Barnes, Cass, Ransom,
22 Sargent, and Richland, and Stutsman Counties and that pay dues to the authority. Minnesota
23 cities may join the authority, provided a portion of the city is located within five miles [8.05
24 kilometers] of this state, or if the city uses the Red River for its primary water supply. Any other
25 county, city, water district, or Canadian governmental entity or water supply system may join the
26 authority upon application of its board and approval of the application by a majority of the
27 authority's board. The authority may require any new member to pay for a pro rata share of the
28 project costs previously incurred by the authority members. The authority also may require an
29 entity contracting for a water supply to pay an additional fee if the entity joins the project late.
30 The authority is a governmental agency, body politic and corporate with the authority to exercise
31 the power specified in this chapter, or which may be reasonably implied. Cities and, water

1 districts, and other water distribution systems may pay dues to the authority as determined by
2 the authority.

3 **SECTION 5. AMENDMENT.** Section 61-39-03 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **61-39-03. Lake Agassiz water authority - Board of directors.**

6 1. The authority must be governed by a board of directors selected as follows:

7 ~~1.~~ a. One member from a city with a population greater than forty thousand located
8 east of state highway 1 and north of state highway 200.

9 ~~2.~~ b. One member from a city with a population greater than forty thousand located
10 east of state highway 1 and south of state highway 200.

11 ~~3.~~ c. One member from a city with a population of five thousand but not more than
12 forty thousand located east of state highway 1.

13 ~~4.~~ d. One member from a city with a population of less than five thousand located east
14 of state highway 1.

15 ~~5.~~ e. Two members from water districts located east of state highway 1 and north of
16 state highway 200.

17 ~~6.~~ f. Two members from water districts located east of state highway 1 and south of
18 state highway 200.

19 ~~7.~~ g. One member from water districts located east of state highway 1.

20 ~~8.~~ h. One member from a Minnesota city with a population of more than thirty
21 thousand and which is located within five miles [8.05 kilometers] of this state.

22 i. One member from water districts located west of state highway 1.

23 j. One member from a city west of state highway 1.

24 2. North Dakota city members must be selected for two-year terms by election by cities
25 ~~located east of state highway 1~~ during the annual meeting of the North Dakota league
26 of cities in every odd-numbered year beginning in 2003. Cities that have paid dues in
27 the calendar year the vote is taken, or signed a development agreement or other
28 participation agreement with the authority before the date of the election, are eligible to
29 vote. Water district members must be selected for two-year terms by election by water
30 districts ~~located east of state highway 1~~ during the annual meeting of the North Dakota
31 rural water systems association in every even-numbered year beginning in 2004. ~~The~~

1 initial selection of members must be at a meeting held by the board of directors of the
2 North Dakota league of cities and by the board of directors of the North Dakota rural
3 water systems association. The initial city members shall serve until the annual
4 meeting of the North Dakota league of cities in 2003 and the initial water district
5 members shall serve until the annual meeting of the North Dakota rural water systems
6 association in 2004. Water districts that have paid dues in the calendar year the vote
7 is taken, or have signed a development agreement or other participation agreement
8 with the authority before the date of the election, are eligible to vote. For elections of
9 board members after July 1, 2017, a candidate for board member must have a
10 development agreement, water supply contract, or project participation agreement with
11 the authority or the Garrison Diversion Conservancy District. The initial Minnesota city
12 is Moorhead, as it is an associate member of the authority. Moorhead will serve in this
13 capacity until the league of Minnesota cities annual conference in 2006. During
14 even-numbered years thereafter, Minnesota cities within five miles [8.05 kilometers] of
15 the Red River or that use the Red River as a primary water supply may elect their
16 representative. A member may designate an alternate to attend meetings and to act on
17 the member's behalf. The board of directors may designate associate members who
18 are nonvoting members of the board. ~~Notwithstanding the provisions of this section,~~
19 ~~within two years of the first delivery of water by the Red River valley water supply~~
20 ~~project, board members must be from a city or water district that has entered a water~~
21 ~~service contract with the Lake Agassiz water authority or the Garrison Diversion~~
22 ~~Conservancy District.~~

23 **SECTION 6. AMENDMENT.** Section 61-39-04 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **61-39-04. Board of directors - Officers - Meetings.**

26 The board of directors may adopt such rules and bylaws for the conduct of the business
27 affairs of the authority as it determines necessary, including the time and place of regular
28 meetings of the board and a dues structure for membership in the authority. The bylaws may
29 include weighted voting for board members based on nomination capacity, the existence of a
30 development agreement, water supply agreement, or project participation agreement, or other
31 factors the board deems relevant. The board shall elect from its members a chairman and a

1 vice chairman. The board shall also elect a secretary and a treasurer, which offices may be held
2 by the same individual, and either or both offices may be held by an individual who is not a
3 member of the board. Special meetings of the board may be called by the secretary on order of
4 the chairman or upon written request of a majority of the qualified members of the board. Notice
5 of a special meeting must be mailed to each member of the board at least ~~six~~three days before
6 the meeting, provided that a special meeting may be held at any time when all members of the
7 board are present or consent in writing. The Garrison Diversion Conservancy District shall
8 provide administrative, technical, and legal support for the authority.

9 **SECTION 7.** Section 61-39-04.1 of the North Dakota Century Code is created and enacted
10 as follows:

11 **61-39-04.1. State project authorized.**

12 The authority and the Garrison Diversion Conservancy District shall continue studying,
13 planning, developing, and constructing a nonfederal project to meet the water supply needs of
14 eastern and central North Dakota separate and apart from the federal Red River valley water
15 supply project. The state project may include similar features as the federal project and may rely
16 on and utilize studies, designs, and information developed as part of other water supply
17 projects.

18 **SECTION 8. AMENDMENT.** Section 61-39-05 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **61-39-05. Authority of the Lake Agassiz water authority.**

21 The board of directors of the Lake Agassiz water authority may:

- 22 1. Sue and be sued in the name of the authority.
- 23 2. Exercise the power of eminent domain in the manner provided by title 32 for the
24 purpose of acquiring and securing any rights, titles, interests, estates, or easements
25 necessary or proper to carry out the duties imposed by this chapter, and particularly to
26 acquire the necessary rights in land for the construction of pipelines, reservoirs,
27 connections, valves, pumping installations, or other facilities for the storage,
28 transportation, or utilization of water and all other appurtenant facilities used in
29 connection with the authority, or any part thereof.

- 1 3. Accept funds, property, and services or other assistance, financial or otherwise, from
2 federal, state, and other public or private sources for the purpose of aiding and
3 promoting the construction, maintenance, and operation of the authority.
- 4 4. Cooperate and contract with the agencies or political subdivisions of the state of North
5 Dakota or other states, in research and investigation or other activities promoting the
6 establishment, construction, development, or operation of the authority.
- 7 5. Appoint and fix the compensation and reimbursement of expenses of such employees
8 as the board deems necessary to conduct the business and affairs of the authority and
9 to procure the services of engineers and other technical experts, and to retain
10 attorneys to assist, advise, and act for the authority in its proceedings.
- 11 6. Operate and manage the authority to distribute water to its members and others within
12 or outside the territorial boundaries of this state.
- 13 7. Sell or exchange any and all real property purchased or acquired by the authority. All
14 money received from any such sale or exchange must be deposited to the credit of the
15 authority and may be used to pay expenses of the authority.
- 16 8. Enter a contract or contracts to provide for a supply of bulk water from the Garrison
17 Diversion Conservancy District which contract or contracts may provide for payments
18 to fund some or all of the Garrison Diversion Conservancy District's costs of acquiring,
19 designing, constructing, or reconstructing one or more features of a Red River valley
20 water supply projectsproject, which ~~Red River valley water supply projectsproject~~ the
21 Garrison Diversion Conservancy District may acquire, design, construct, improve, and
22 own, as well as the Garrison Diversion Conservancy District's costs of operating and
23 maintaining one or more Red River valley water supply projects, whether the
24 acquisition, construction, or reconstruction of any Red River valley water supply
25 project actually is completed and whether water actually is delivered pursuant to the
26 contract or contracts, and which contract or contracts the Garrison Diversion
27 Conservancy District may execute without limitation on the term of years.
- 28 9. Enter a contract or contracts to provide for a bulk sale, lease, or other supply of water
29 for beneficial use to persons within or outside the authority, which contract or contracts
30 may provide for payments to fund some or all of the Garrison Diversion Conservancy
31 District's costs of acquiring, designing, constructing, or reconstructing one or more

- 1 features of a Red River valley water supply projectsproject, as well as the Garrison
2 Diversion Conservancy District's costs of operating and maintaining one or more
3 features of a Red River valley water supply projectsproject, whether the acquisition,
4 construction, or reconstruction of any Red River valley water supply project actually is
5 completed and whether water actually is delivered pursuant to the contract or
6 contracts, which contract or contracts cities and water districts that are members of the
7 Lake Agassiz water authority are authorized to execute without limitation on the term
8 of years.
- 9 10. Borrow money from any legal source, including persons listed under section 61-39-11,
10 the public finance agency through the state revolving fund or capital financing, and
11 from the drinking water state revolving fund, the resources trust fund, and other state
12 funding programs as provided in this chapter.
- 13 11. Issue and sell revenue bonds for its own benefit or for the benefit of the Garrison
14 Diversion Conservancy District, in an amount or amounts determined by the board,
15 including an amount or amounts for costs of issuance and financing, and any
16 necessary reserve funds, for the purpose of financing the cost of a project, purchasing
17 bulk water, or otherwise making capital payments required under a water purchase
18 contract.
- 19 12. Lend some or all proceeds of its revenue bonds to the Garrison Diversion
20 Conservancy District, to the state of North Dakota, or to a political subdivision or public
21 body within the state, to facilitate the Garrison Diversion Conservancy District's
22 acquisition, design, construction, reconstruction, or improvement of one or more
23 features of a Red River valley water supply projectsproject, or any feasibility study or
24 preliminary economic, engineering, or legal work relating to any Red River valley water
25 supply project.
- 26 13. Refund and refinance its bonds from time to time as often as it is advantageous and in
27 the interest of the authority.
- 28 14. Pledge any and all income, profits, and revenues received by the authority in
29 connection with the operation, lease, sale, or other disposition of all or any part of a
30 project to secure the payment of bonds issued and sold to finance the project or
31 otherwise.

- 1 15. Prescribe, revise, and collect rates, fees, tolls, or charges for the services, facilities, or
2 commodities furnished by the authority, and in anticipation of the collection of the
3 revenues of the authority, issue revenue bonds to finance all or part of the costs of the
4 acquisition, construction, reconstruction, improvement, betterment, or extension of a
5 project.
- 6 16. Pledge revenues of the authority to the punctual payment of principal and interest on
7 bonds or water purchase contract obligations. A pledge under this subsection applies
8 to the revenues of improvements, betterments, or extensions of the authority which
9 may be constructed or acquired after the issuance of bonds, the revenues of existing
10 systems, plants, works, instrumentalities, and properties of any part of the authority
11 improved, bettered, or extended, and the revenues received from payments made
12 under water sale contracts between the authority and persons that contract to
13 purchase water from the authority.
- 14 17. Make all contracts, execute all instruments, and do all things necessary or convenient
15 in the exercise of its powers or in the performance of its covenants or duties or in order
16 to secure the payment of its bonds, but an encumbrance, mortgage, or other pledge of
17 property of the authority may not be created by any such contract or instrument.
- 18 18. Accept from any authorized private entity or state or federal agency loans or grants for
19 the planning, construction, acquisition, lease, or other provision of a project, and to
20 enter ~~into~~ agreements with the entity or agency respecting the loans or grants.
- 21 19. Contract debts and borrow money, pledge property of the authority for repayment of
22 indebtedness other than bonded indebtedness, and provide for payment of debts and
23 expenses of the authority.
- 24 20. Operate and manage the authority to distribute water to western Minnesota cities that
25 are members of the authority and to any Canadian governmental entity or water
26 system.
- 27 21. Require various capital construction contribution rates, and charge different water
28 rates for bulk water purchases based on a tiered system that recognizes higher
29 contributions and water rates for entities that need the project in a drought. Other tiers
30 with less immediate water needs or industrial needs may be assessed costs and
31 charges water rates in relation to the cost of incrementally increasing the size of the

1 project to accommodate those needs or on other bases the authority determines. The
2 authority may charge higher construction costs or water rates to out-of-state entities
3 based on the level of state funding supporting the project. Costs and charges also may
4 vary according to the infrastructure assigned to each entity.

5 Property of the authority may not be liable to be forfeited or taken in payment of any bonds
6 issued under this chapter, and debt on the general credit of the authority may not be incurred in
7 any manner for payment of bonds under this chapter.

8 **SECTION 9. AMENDMENT.** Section 61-39-11 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **61-39-11. Notes and bonds exempt from taxation.**

11 Notwithstanding any restriction contained in any other law, the state and all public officers,
12 boards, and agencies, and political subdivisions and agencies thereof, including the public
13 finance authority, all national banking associations, state banks, trust companies, savings banks
14 and institutions, savings and loan associations, investment companies, and other persons
15 carrying on a banking business, and executors, administrators, guardians, trustees, and other
16 fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or
17 within their control in any bonds issued by the authority pursuant to this chapter, and the bonds
18 are authorized security for public deposits. Notes and bonds, including refunding bonds, issued
19 under this chapter and their income are exempt from all taxation by the state or by any political
20 subdivision except inheritance, estate, and transfer taxes.

21 **SECTION 10. AMENDMENT.** Section 61-39-16 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **61-39-16. Project - Definition.**

24 As used in this chapter, unless the context otherwise requires, the term "project" means
25 either a system, plant, works, instrumentality, or property used to provide water supply in
26 connection with the state or federal Red River valley water supply project, or a contract for the
27 purchase of water, including a contract for the bulk purchase of water from the Garrison
28 Diversion Conservancy District delivered by means of a state or federal Red River valley water
29 supply project.