

CHAPTER 61-39

LAKE AGASSIZ WATER AUTHORITY

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

The legislative assembly declares that many areas and localities in eastern and central North Dakota do not enjoy adequate quantities of high-quality drinking water; that other areas and localities in eastern and central North Dakota do not have sufficient quantities of water to ensure a dependable, long-term supply; that greater economic security and the protection of health and property benefits the land 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 store and distribute water to eastern and central North Dakota be established to provide for the supply and distribution of water to the people of eastern and central North Dakota for purposes, including domestic, rural water, municipal, livestock, industrial, and other uses, with primary emphasis on domestic, rural water, and municipal uses; and provide for the future economic welfare and prosperity of the people of this state, and particularly the people of eastern and central North Dakota, by the bulk purchase of water from the Garrison Diversion Conservancy District delivered by the Red River valley water supply project for beneficial and public uses. The Garrison Diversion Conservancy District may acquire, construct, improve, and own the Red River valley water supply project and may enter water supply contracts with member cities and water districts for the sale of water for consumption within or outside the district or the state, including with Canada. Alternatively, the Lake Agassiz water authority may enter one or more contracts to provide for the authority to acquire bulk water from the Garrison Diversion Conservancy District and may enter water supply contracts with member cities and water districts for the resale of this water for consumption within or outside the state.

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

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

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

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

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

1. The authority must be governed by a board of directors selected as follows:
 - a. One member from a city with a population greater than forty thousand located east of state highway 1 and north of state highway 200.
 - b. One member from a city with a population greater than forty thousand located east of state highway 1 and south of state highway 200.
 - c. One member from a city with a population of five thousand but not more than forty thousand located east of state highway 1.
 - d. One member from a city with a population of less than five thousand located east of state highway 1.
 - e. Two members from water districts located east of state highway 1 and north of state highway 200.
 - f. Two members from water districts located east of state highway 1 and south of state highway 200.
 - g. One member from water districts located east of state highway 1.
 - h. One member from a Minnesota city with a population of more than thirty thousand and which is located within five miles [8.05 kilometers] of this state.
 - i. One member from water districts located west of state highway 1.
 - j. One member from a city west of state highway 1.
2. North Dakota city members must be selected for two-year terms by election by cities during the annual meeting of the North Dakota league of cities in every odd-numbered year beginning in 2003. Cities that have paid dues in the calendar year the vote is taken, or signed a development agreement or other participation agreement with the authority before the date of the election, are eligible to vote. Water district members must be selected for two-year terms by election by water districts during the annual meeting of the North Dakota rural water systems association in every even-numbered year beginning in 2004. Water districts that have paid dues in the calendar year the vote is taken, or have signed a development agreement or other participation agreement with the authority before the date of the election, are eligible to vote. For elections of board members after July 1, 2017, a candidate for board member must have a development agreement, water supply contract, or project participation agreement with the authority or the Garrison Diversion Conservancy District. The initial Minnesota city is Moorhead, as it is an associate member of the authority. Moorhead will serve in this capacity until the league of Minnesota cities annual conference in 2006. During even-numbered years thereafter, Minnesota cities within five miles [8.05 kilometers] of the Red River or that use the Red River as a primary water supply may elect their representative. A member may designate an alternate to attend meetings and to act on the member's behalf. The board of directors may designate associate members who are nonvoting members of the board.

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

The board of directors may 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 and a dues structure for membership in the authority. The bylaws may include weighted voting for board members based on nomination capacity; the existence of a development agreement, water supply agreement, or project participation agreement; or other factors the board deems relevant. The board shall elect from its members a chairman and a vice chairman. The board shall also 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 three 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. The Garrison Diversion Conservancy District shall provide administrative, technical, and legal support for the authority.

61-39-04.1. State project authorized.

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

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

The board of directors of the Lake Agassiz water 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 for the purpose of acquiring and securing any rights, titles, interests, estates, or easements 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 pipelines, reservoirs, connections, valves, pumping installations, or other facilities for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority, or any part thereof.
3. Accept funds, property, and services 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.
4. Cooperate and contract with the agencies or political subdivisions of the state of North Dakota 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 such employees as the board deems 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 its members and others within or outside the territorial boundaries of this state.
7. Sell or exchange any and all real property purchased or acquired by the authority. All money received from any such sale or exchange must be deposited to the credit of the authority and may be used to pay expenses of the authority.
8. Enter contracts to provide for a supply of bulk water from the Garrison Diversion Conservancy District which may provide for payments to fund some or all of the Garrison Diversion Conservancy District's costs of acquiring, designing, constructing, or reconstructing one or more features of a Red River valley water supply project that the Garrison Diversion Conservancy District may acquire, design, construct, improve, and own, as well as the Garrison Diversion Conservancy District's costs of operating and maintaining one or more Red River valley water supply projects, whether the acquisition, construction, or reconstruction of any Red River valley water supply project actually is completed and whether water actually is delivered pursuant to the contracts. Contracts executed under this subsection may be executed without limitation on the term of years and, if executed in relation to the initial construction of the system, need not be submitted to the voters for approval.
9. Enter a contract or contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority, which contract or contracts may provide for payments to fund some or all of the Garrison Diversion Conservancy District's costs of acquiring, designing, constructing, or reconstructing one or more features of a Red River valley water supply project, as well as the Garrison Diversion Conservancy District's costs of operating and maintaining one or more features of a Red River valley water supply project, whether the acquisition, construction, or reconstruction of any Red River valley water supply project actually is completed and whether water actually is delivered pursuant to the contract or contracts, which contract or contracts cities and water districts that are members of the Lake Agassiz water authority are authorized to execute without limitation on the term of years.

10. Borrow money from any legal source, including persons listed under section 61-39-11, the public finance agency through the state revolving fund or capital financing, the drinking water state revolving fund, the resources trust fund, and other state funding programs as provided in this chapter.
11. Issue and sell revenue bonds for its own benefit or for the benefit of the Garrison Diversion Conservancy District, in an amount or amounts determined by the board, including an amount or amounts for costs of issuance and financing, and any necessary reserve funds, for the purpose of financing the cost of a project, purchasing bulk water, or otherwise making capital payments required under a water purchase contract.
12. Lend some or all proceeds of its revenue bonds to the Garrison Diversion Conservancy District, to the state of North Dakota, or to a political subdivision or public body within the state, to facilitate the Garrison Diversion Conservancy District's acquisition, design, construction, reconstruction, or improvement of one or more features of a Red River valley water supply project, or any feasibility study or preliminary economic, engineering, or legal work relating to any Red River valley water supply project.
13. Refund and refinance its bonds from time to time as often as it is advantageous and in the interest of the authority.
14. Pledge any and all income, profits, and revenues received by the authority in connection with the operation, lease, sale, or other disposition of all or any part of a project to secure the payment of bonds issued and sold to finance the project or otherwise.
15. Prescribe, revise, and collect rates, fees, tolls, or charges for the services, facilities, or commodities furnished by the authority, and in anticipation of the collection of the revenues of the authority, issue revenue bonds to finance all or part of the costs of the acquisition, construction, reconstruction, improvement, betterment, or extension of a project.
16. Pledge revenues of the authority to the punctual payment of principal and interest on bonds or water purchase contract obligations. A pledge under this subsection applies to the revenues of improvements, betterments, or extensions of the authority which may be constructed or acquired after the issuance of bonds, the revenues of existing systems, plants, works, instrumentalities, and properties of any part of the authority improved, bettered, or extended, and the revenues received from payments made under water sale contracts between the authority and persons that contract to purchase water from the authority.
17. 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 bonds, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any such contract or instrument.
18. Accept from any authorized private entity or state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and to enter agreements with the entity or agency respecting the loans or grants.
19. Contract debts and borrow money, pledge property of the authority for repayment of indebtedness other than bonded indebtedness, and provide for payment of debts and expenses of the authority.
20. Operate and manage the authority to distribute water to western Minnesota cities that are members of the authority and to any Canadian governmental entity or water system.
21. Require various capital construction contribution rates, and charge different water rates for bulk water purchases based on a tiered system that recognizes higher contributions and water rates for entities that need the project in a drought. Other tiers with less immediate water needs or industrial needs may be assessed costs and charges water rates in relation to the cost of incrementally increasing the size of the project to accommodate those needs or on other bases the authority determines. The authority may charge higher construction costs or water rates to out-of-state entities

based on the level of state funding supporting the project. Costs and charges also may vary according to the infrastructure assigned to each entity. Property of the authority may not be liable to be forfeited or taken in payment of any bonds issued under this chapter, and debt on the general credit of the authority may not be incurred in any manner for payment of bonds under this chapter.

61-39-06. Resolution authorizing the issuance of revenue bonds.

The issuance of revenue bonds or refunding bonds must be authorized by a resolution of the board adopted after appropriate notice by the affirmative vote of a majority of the board. Unless otherwise provided in the resolution, the resolution under this section takes effect immediately and need not be laid over, published, or posted.

Each resolution providing for the issuance of bonds provided for in this chapter must set forth the purpose or purposes for which the bonds are to be issued, the provisions for payment of the bonds, and the revenues or other funds pledged to secure the payment of the bonds.

61-39-07. Provisions governing bonds.

The resolution authorizing the issuance of revenue bonds or refunding bonds under this chapter or resolutions adopted after the adoption of the original resolution must prescribe:

1. The rate or rates of interest, or if an interest rate is variable, the method for calculating the interest rate.
2. Whether the bonds will be in one or more series.
3. The date or dates the bonds will bear.
4. The time or times the bonds will mature.
5. The medium in which the bonds will be payable.
6. The place or places where the bonds will be payable.
7. The terms of redemption, if any, to which the bonds will be subject.
8. The manner in which the bonds will be executed.
9. The terms, covenants, and conditions that the bonds will contain.
10. The form in which the bonds will be issued, either coupon or registered.

61-39-08. Sale of bonds - When private sale authorized - Public sale and notice.

Revenue bonds or refunding bonds may be sold at public or private sale on such terms as the board deems appropriate.

61-39-09. Notes issued pending preparation of bonds - Negotiability.

Pending the issuance of bonds, bond anticipation notes may be issued and sold in the form and with the provisions determined by the board.

61-39-10. Validity of notes and bonds.

Bond anticipation notes, revenue bonds, or refunding bonds bearing the manual or facsimile signatures of the appropriate officers who are in office on the date of signing are valid and binding obligations notwithstanding that before the delivery and payment any or all of the persons whose signatures appear on the notes or bonds have ceased to be officers of the issuing authority. The resolution authorizing the notes or bonds may provide that the notes or bonds must contain a recital that they are issued under this chapter and the recital is conclusive evidence of their validity and of the regularity of their issuance.

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

Notwithstanding any restriction contained in any other law, the state and all public officers, boards, and agencies, and political subdivisions and agencies thereof, including the public finance authority; all national banking associations; state banks; trust companies; savings banks and institutions; savings and loan associations; investment companies; and other persons carrying on a banking business; and executors, administrators, guardians, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds issued by the authority pursuant to this chapter, and the bonds

are authorized security for public deposits. Notes and bonds, including refunding bonds, issued under this chapter and their income are exempt from all taxation by the state or by any political subdivision except inheritance, estate, and transfer taxes.

61-39-12. Covenants and provisions that may be inserted in resolution authorizing bonds.

Any resolution authorizing the issuance of bonds under this chapter may contain covenants and provisions concerning:

1. The rates, fees, tolls, or charges to be charged for the services, facilities, and commodities of a project.
2. The use and disposition of all or a portion of the authority's income, profits, and revenues.
3. The creation, maintenance, regulation, use, and disposition of reserves or sinking funds.
4. The purpose to which the proceeds of the sale of bonds may be applied and the use and disposition of the proceeds.
5. The events of default and the rights and liabilities arising upon default and the terms and conditions upon which the holders of bonds issued under this chapter may bring civil action on the bonds.
6. The creation, priority, and enforcement of liens against the authority's income, profits, or revenues.
7. The issuance of other or additional bonds or instruments payable from or constituting a charge against the authority's income, profits, or revenues.
8. The creation and use of synthetic interest rate contracts, interest rate caps, floors, and collars, and other techniques to lower the authority's borrowing rate or reduce its exposure to interest rate risk, or both.
9. The keeping, inspection, and audit of books of account.
10. The terms and conditions upon which any or all of the bonds become or may be declared due before maturity and the terms and conditions upon which the declaration and its consequences may be waived.
11. The rights, liabilities, powers, and duties arising upon the breach by the authority of any covenants, conditions, or obligations.
12. The vesting in a trustee of the right to enforce any covenants made to secure, to pay, or in relation to the bonds, the powers and duties of such trustee, and the limitations of liabilities thereof.
13. The terms and conditions upon which the holders of the bonds, or the holders of any proportion or percentage of them, may enforce any covenants made or any duties imposed under this chapter.
14. A procedure by which the terms of any resolution authorizing bonds or of any other contract with bondholders, including an indenture of trust or similar instrument, may be amended or abrogated, and the amount of bonds that holders of which must consent to the resolution or contract, and the manner in which such consent may be given.
15. The subordination of the security of any bonds issued under this chapter and the payment of principal and interest on those bonds, to the extent deemed feasible and desirable by the governing body, to other bonds or obligations of the authority issued to finance or refinance a project or that may be outstanding when the bonds thus subordinated are issued and delivered.
16. Provisions with respect to the authority entering an agreement with a private bond insurer, bank, or other liquidity or credit enhancer for bond insurance, a guarantee, a letter of credit, or any other credit or liquidity enhancement that the authority may find to be advantageous or necessary to insure, guaranty, or enhance the payment of the principal of or interest on or liquidity for some or all of the bonds. The cost of any such enhancement or liquidity may be paid from bond proceeds or from other funds of the authority available for this purpose.

This section does not authorize the authority to do anything in any manner or for any purpose which would result in the creation or incurring of a debt or indebtedness of the state or the

issuance of any instrument which would constitute a debt or indebtedness of the state within the meaning of any provision, limitation, or restriction of the Constitution of North Dakota relating to the creation or incurring of a debt or indebtedness of the state or the issuance of an instrument constituting a debt or indebtedness of the state.

61-39-13. Liability of authority for notes and bonds - Taxing power prohibited.

Bond anticipation notes, revenue bonds, and refunding bonds issued under this chapter may not be payable from or charged upon any funds other than the revenue pledged to their payment and the authority's notes and bonds may not be subject to any pecuniary liability. The holder of any such notes or bonds may not enforce payment of the notes or bonds against any property of the authority. Notes and bonds issued under this chapter do not constitute a charge, lien, or encumbrance upon any property of the authority, other than the revenues pledged to their payments. Each note and each bond issued under this chapter must recite in substance that the note or bond and interest on the note or bond is payable solely from the revenue pledged to the payment and that the note or bond does not constitute a debt of the state within the meaning of any constitutional or statutory limitation.

61-39-14. Duties of authority and officers relative to the issuance of bonds.

To adequately secure the payment of bonds and interest on the bonds, the authority and its officers, agents, and employees shall:

1. Pay or cause to be paid punctually the principal and interest of every bond on the dates, at the places, in the manner, and out of the funds provided in the refunding bond and in accordance with the resolution authorizing its issuance.
2. Make certain any project financed by the authority is operated in an efficient and economical manner, enforce all water purchase and water sales contracts, and establish, levy, maintain, and collect related necessary or proper fees, tolls, rentals, rates, and other charges. Such fees, tolls, rentals, rates, and other charges must be sufficient, after making due and reasonable allowances for contingencies and for a margin of error in the estimates, at least:
 - a. To pay all current expenses of operation and maintenance of any project;
 - b. To make all payments required under any water purchase contract the authority may execute;
 - c. To pay the interest and principal on the authority's notes and bonds as they become due;
 - d. To comply with the terms of the resolution authorizing the issuance of the bonds or any other contract or agreement with the holders of the refunding bonds; and
 - e. To meet any other obligations of the authority that are charges, liens, or encumbrances upon the revenues of the authority.
3. Operate, maintain, preserve, and keep every part of any tangible project financed and owned or operated by the authority in good repair, working order, and condition.
4. Enforce the provisions of all water purchase and sale contracts that produce revenues pledged to payment of bonds.
5. Preserve and protect the security of the bonds and the rights of the bondholders and warrant and defend such rights against all claims and demands.
6. Pay and discharge all lawful claims for labor, materials, and supplies which, if unpaid, might become by law a lien or charge upon the revenues, or any part of the revenues, superior to the lien of the bonds or which might impair the security of the bonds.
7. Hold in trust the revenues pledged to the payment of the bonds for the benefit of the holders of the bonds and apply the revenues only as provided by the resolution authorizing the issuance of the bonds or, if the resolution is modified, as provided in the modified resolution.
8. Keep proper separate books of record and accounts of the project in which complete and correct entries must be made of all transactions relating to any part of the project. All books and papers of the authority are subject to inspection by the holders of ten percent or more of the outstanding bonds or of their representatives authorized in writing.

The duties contained in this section may not require any expenditure by the authority of any funds other than revenue received from a project or water sale contract. The performance of the duties enumerated in this section is of the essence of the contract of the authority with the bondholders.

61-39-15. Remedies of bondholders in general.

Subject to any contractual limitations binding upon the holders of any issue of bonds, or a trustee for the holders, including the restriction of the exercise of any remedy to a specified proportion or percentage of the holders, any holder of bonds or trustee, for the equal benefit and protection of all bondholders similarly situated, may:

1. By mandamus or other civil action, enforce the holder's rights against the authority and its board and any of its officers, agents, or employees and may require the authority or the board or any officers, agents, or employees of the authority or board to perform their duties and obligations under this chapter and their covenants and agreements with bondholders.
2. By civil action, require the authority and the board to account as if they were the trustees of an express trust.
3. By civil action, enjoin any acts or things that may be unlawful or in violation of the rights of the bondholders.
4. Bring suit upon the bond.

A right or remedy conferred by this chapter upon any bondholder, or upon any trustee for a bondholder, is not intended to be exclusive of any other right or remedy, but each such right or remedy is cumulative and in addition to every other right or remedy and may be exercised without exhausting and without regard to any other remedy conferred by this chapter or by any other law of this state.

61-39-16. Project - Definition.

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