

Transmission Authority

This Act creates a state-owned authority to facilitate developing electric power lines and substations.

Submitted as:
North Dakota
Chapter 406 of 2005
Status: Enacted into law in 2005.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as “An Act To Provide For A State
2 Transmission Authority.”

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4 Section 2. [*State Transmission Authority.*] There is created a [state transmission
5 authority], which shall be governed by the state [industrial commission].

6
7 Section 3. [*Definitions.*] As used in this Act:

8 A. “Authority” means the [industrial commission] acting as the [state transmission
9 authority].

10 B. “Commission” means the [industrial commission] as defined under [insert citation].

11 C. “Notice of intent” means the notice to the [authority] indicating willingness to
12 construct transmission facilities contemplated by the [authority] or to provide services fulfilling
13 the need for such transmission facilities.

14 D. “Project area” means the geographic area in which construction of a transmission
15 facility contemplated by the [authority] is likely to occur.

16 E. “Transmission facilities” means electric transmission lines and substations, and related
17 structures, equipment, rights of way, and works of public improvement, located within and
18 outside this state, excluding electric generating facilities.

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20 Section 4. [*Purposes.*] The [state transmission authority] is created to diversify and
21 expand the state economy by facilitating development of transmission facilities to support the
22 production, transportation, and utilization of [insert state] electric energy.

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24 Section 5. [*Powers.*] The [authority] has all powers necessary to carry out the purposes of
25 this Act, including the power to:

26 A. make grants or loans and to provide other forms of financial assistance as necessary or
27 appropriate for the purposes of this Act;

28 B. make and execute contracts and all other instruments necessary or convenient for the
29 performance of its powers and functions under this Act;

30 C. borrow money and issue evidences of indebtedness as provided in this Act;

31 D. receive and accept aid, grants, or contributions of money or other things of value from
32 any source, including aid, grants, or contributions from any department, agency, or
33 instrumentality of the United States, subject to the conditions upon which the aid, grants, or
34 contributions are made and consistent with the provisions of this Act;

35 E. issue and sell evidences of indebtedness in an amount or amounts as the [authority]
36 may determine, but not to exceed [eight hundred million dollars], plus costs of issuance, credit
37 enhancement, and any reserve funds required by agreements with or for the benefit of holders of
38 the evidences of indebtedness for the purposes for which the [authority] is created under this Act,
39 provided that the amount of any refinancing shall not be counted toward such [eight hundred
40 million dollar] limitation to the extent it does not exceed the outstanding amount of the
41 obligations being refinanced;

42 F. refund and refinance its evidences of indebtedness;

43 G. make and execute interest rate exchange contracts;

44 H. enter lease-sale contracts;

45 I. pledge any and all revenues derived by the [authority] under this Act or from a
46 transmission facility, service, or activity funded under this Act to secure payment or redemption
47 of the evidences of indebtedness;

48 J. to the extent and for the period of time necessary for the accomplishment of the
49 purposes for which the [authority] was created, plan, finance, develop, acquire, own in whole or
50 in part, lease, rent, and dispose of transmission facilities;

51 K. enter contracts to construct, maintain, and operate transmission facilities;

52 L. consult with the [public service commission], regional organizations, and any other
53 relevant state or federal authority as necessary and establish reasonable fees, rates, tariffs, or
54 other charges for transmission facilities and all services rendered by the [authority];

55 M. lease, rent, and dispose of transmission facilities owned pursuant to this Act;

56 N. investigate, plan, prioritize, and propose corridors of the transmission of electricity;

57 O. participate in and join regional transmission organizations; and

58 P. do any and all things necessary or expedient for the purposes of the [authority]
59 provided in this Act.

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61 Section 6. [*Coordinating Planning Transmission Facilities and Notice.*]

62 A. The [authority] shall coordinate its plans for transmission facilities with regional
63 organizations having transmission planning responsibilities for the project area.

64 B. Before exercising its powers to construct transmission facilities granted to it in this
65 Act, the [authority] shall publish in a newspaper of general circulation in this state and in a
66 newspaper in the project area, a notice describing the need for transmission facilities
67 contemplated by the [authority]. Anyone willing to construct the transmission facilities or furnish
68 services to satisfy the needs described in the notice have a period of [one hundred eighty days]
69 from the date of last publication of the notice within which to deliver to the [authority] a notice
70 of intent. After receipt of a notice of intent, the [authority] may not exercise its powers to
71 construct transmission facilities unless the [authority] finds that exercising its [authority] would
72 be in the public interest. In making such a finding the [authority] shall consider factors including
73 economic impact to the state, economic feasibility, technical performance, reliability, past
74 performance and the likelihood of successful completion and ongoing operation.

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

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81 Section 7. [*Authority May Participate Upon Request.*] The [authority] may participate in
82 a transmission facility through financing, planning, joint ownership, or other arrangements at the
83 request of a person giving a notice of intent.

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Section 8. [*Evidences of Indebtedness.*]

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

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

1. revenues that may be received by the [authority] from transmission facilities, services, or activities funded under this Act with the proceeds of the [authority's] evidences of indebtedness, subject only to prior payment of the reasonable and necessary expenses of operating and maintaining such transmission facilities except depreciation.

2. amounts received by the [authority] under loans authorized under this Act.

3. revenues received by the [authority] under this Act from any source other than general tax revenues.

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

D. The [authority] may establish and maintain a reserve fund for evidences of indebtedness issued under this Act.

E. There must be deposited in the reserve fund:

1. all moneys appropriated by the [legislative assembly] to the [authority] for the purpose of the reserve fund.

2. all proceeds of evidences of indebtedness issued under this Act required to be deposited in the reserve fund by the terms of any contract between the [authority] and the holders of its evidences of indebtedness or any resolution of the [authority].

3. any lawfully available moneys of the [authority] which it may determine to deposit in the reserve fund.

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

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

G. Any pledge of revenue made by the [industrial commission] as security for the [authority's] evidences of indebtedness is valid and binding from time to time when the pledge is made. The revenues or other moneys so pledged and thereafter received by the [authority] are immediately subject to the lien of any such pledge without any physical delivery thereof or further act, and the lien of any such pledge is valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the [authority], regardless of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be filed or recorded, except in the records of the [authority].

133 H. The [authority] is authorized and empowered to obtain from any entity of the state,
134 any department or agency of the United States of America, or any nongovernmental insurer any
135 insurance, guaranty, or liquidity facility, or from a financial institution a letter of credit to the
136 extent such insurance, guaranty, liquidity facility, or letter of credit now or hereafter available, as
137 to, or for, the payment or repayment of, interest or principal, or both, or any part thereof, on any
138 evidences of indebtedness issued by the authority pursuant to this Act, and to enter into any
139 agreement or contract with respect to any such insurance, guaranty, letter of credit, or liquidity
140 facility, and pay any required fee, unless the same would impair or interfere with the ability of
141 the authority to fulfill the terms of any agreement made with the holders of its evidences of
142 indebtedness.

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

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

- 152 1. pay the expenses of operating and maintaining the transmission facilities;
- 153 2. provide a debt service fund sufficient to assure the prompt payment of principal
154 and interest on the evidences of indebtedness at maturity; and
- 155 3. provide a reasonable fund for contingencies as may be required by the
156 resolution authorizing the evidences of indebtedness.

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158 Section 9. [*Public Service Commission Jurisdiction and Consultation.*]

159 A. The [authority] and the transmission facilities built under this Act, until sold or
160 disposed of by the [authority], are exempt from the provisions of [insert citation]. Upon sale or
161 disposal by the [authority], transmission facilities built under this Act are subject to the
162 provisions of [insert citation].

163 B. The [authority] shall consult with the [public service commission] with respect to the
164 rates charged by the [authority] for use of its transmission facilities and such rates must
165 thereafter be considered just and reasonable in proceedings before the [public service
166 commission] pursuant to [insert citation].

167 C. The [authority] shall conduct its activities in consultation with transmission providers,
168 wind interests, the [Lignite Research Council], and other people having relevant expertise.

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170 Section 10. [*Bonds as Legal Investments.*] The bonds of the [authority] are legal
171 investments which may be used as collateral for public funds of the state, insurance companies,
172 banks, savings and loan associations, investment companies, trustees, and other fiduciaries which
173 may properly and legally invest funds in their control or belonging to them in bonds of the
174 [authority]. The [state investment board] may invest in bonds of the [authority] in an amount
175 specified by the [state investment board].

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177 Section 11. [*Disposal of Transmission Facilities.*]

178 A. Before becoming an owner or partial owner of a transmission facility, the [authority]
179 shall develop a plan identifying:

- 180 1. the public purposes of the [authority's] ownership;

181 2. conditions that would make the [authority's] ownership no longer necessary for
182 accomplishing those public purposes; and

183 3. a plan to divest the [authority's] ownership interest as soon as economically
184 prudent once those conditions occur.

185 B. For transmission facilities that are leased to another entity by the [authority], at the end
186 of the lease, absent default by the lessee, the [authority] shall convey its interest in the
187 transmission facilities to the lessee.

188 C. For transmission facilities that are owned by the [authority] without a lessee, the
189 [authority] shall divest itself of ownership as soon as economically prudent in accordance with
190 the divestiture plan developed pursuant to subsection A.

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192 Section 12. [*Exemption from Property Taxes.*] Transmission facilities built under sections
193 1 through 11 of this Act are exempt from property taxes for a period determined by the
194 [authority] not to exceed the first [five taxable years] of operation; after this initial period,
195 transmission lines of [two hundred thirty kilovolts] or larger and the transmission lines'
196 associated transmission substations remain exempt from property taxes but are subject to a per
197 mile tax at the full per mile rate and subject to the same manner of imposition and allocation as
198 the per mile tax imposed by [insert citation] without application of the discounts provided in that
199 subsection.

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201 Section 13. [*Biennial Report to Legislative Council.*] The [authority] shall deliver a
202 written report on its activities to the [legislative council] each [biennium].

203

204 Section 14. [*Severability.*] [Insert severability clause.]

205

206 Section 15. [*Repealer.*] [Insert repealer clause.]

207

208 Section 16. [*Effective Date.*] [Insert effective date.]