

Introduced by

1 A BILL for an Act to establish a reserved water rights compact commission to negotiate
2 reserved water rights of the United States and federally recognized Indian tribes.

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

4 **SECTION 1. Reserved water rights compact commission - Establishment -**
5 **Composition - Compensation - Staff services.**

- 6 1. There is created a reserved water rights compact commission. In negotiations, the
7 commission is acting on behalf of the governor. The commission consists of:
8 a. Two members of the house of representatives, one of whom must be selected
9 by the leader representing the majority faction of the house of representatives
10 and one of whom must be selected by the leader representing the minority
11 faction of the house of representatives.
12 b. Two members of the senate, one of whom must be selected by the leader
13 representing the majority faction of the senate and one of whom must be
14 selected by the leader representing the minority faction of the senate.
15 c. Four members designated by the governor.
16 d. One member designated by the attorney general.
17 2. The members of the commission who are members of the legislative assembly are
18 entitled to compensation from the legislative council for attendance at commission
19 meetings at the rate provided for members of the legislative assembly for
20 attendance at interim committee meetings and are entitled to reimbursement for
21 expenses incurred in attending the meetings in the amounts provided by law for
22 other state officers. If not otherwise employed by the state of North Dakota,
23 nonlegislative members of the commission are entitled to receive as per diem
24 compensation one hundred dollars for each day devoted to attending meetings and

1 performing other duties relating to the official business of the commission and are
2 entitled to receive reimbursement for travel, lodging, and meals at the rate provided
3 for state employees.

4 3. The state water commission shall provide administrative, staff, and technical and
5 engineering services to the commission.

6 4. The attorney general shall provide legal services to the commission.

7 5. The governor shall designate a chairman from the members of the commission.

8 **SECTION 2. Negotiation for reserved water rights.**

9 1. The commission may negotiate with any federally recognized Indian tribe claiming
10 a reserved water right in North Dakota and representatives of the federal
11 government as trustee for the federally recognized Indian tribe to define the scope
12 and attributes of rights to water claimed by the Indian tribe. The commission may
13 also negotiate with the federal government to define the scope and attributes of
14 non-Indian reserved water rights claimed by the federal government.

15 2. During negotiations conducted under subsection 1, the commission, in the manner
16 the commission determines appropriate, shall provide public notice of the
17 negotiations and shall allow public comment.

18 3. The commission shall report periodically to the legislative council on negotiations
19 for reserved water rights being conducted by the commission.

20 **SECTION 3. Agreement.**

21 1. When the commission and representatives of any federally recognized Indian tribe
22 claiming a federal reserved water right in North Dakota and the federal government
23 as trustee for the federally recognized Indian tribe have completed an agreement,
24 the agreement, upon approval of the legislative assembly, must be signed by the
25 governor on behalf of the state of North Dakota and by authorized representatives
26 of the Indian tribe and the federal government as trustee for the Indian tribe.

27 2. When the commission and the federal government with regard to non-Indian
28 reserved water rights have completed an agreement, the agreement, upon
29 approval of the legislative assembly, must be signed by the governor on behalf of
30 the state of North Dakota and by authorized representatives of the federal
31 government.

- 1 3. The agreement must have the approval of the legislative assembly by concurrent
2 resolution approved by a majority vote of the members-elect of each house of the
3 legislative assembly.

4 **SECTION 4. Notice to persons affected by agreement.** After the governor signs the
5 agreement, the commission shall give written notice to the owners of water right permits,
6 including the holders of conditional permits, who may be affected by the agreement, that the
7 agreement has been signed, the time and manner for filing an exception to the agreement, and
8 the telephone number or address at which a copy of the agreement may be requested. The
9 notice must be served in the manner allowed for service under the North Dakota Rules of Civil
10 Procedure or by depositing the notice in the United States mail or with a third-party commercial
11 carrier, postage or shipping prepaid, and directed to the owner's or holder's last reasonably
12 ascertainable address.

13 **SECTION 5. Effective date of agreement - Remand.**

- 14 1. An agreement negotiated under section 1 of this Act is not effective until
15 incorporated in a final order of the state engineer after the state engineer has
16 provided an opportunity for the owners of water rights, including the holders of
17 conditional permits that may be affected by the agreement, to file an exception to
18 the agreement.
- 19 2. Once an exception is filed with the state engineer, the proceeding is deemed to be
20 an adjudicative proceeding under chapter 28-32 and the provisions of chapter
21 28-32 apply to proceedings to sustain or reject exceptions. The state engineer
22 shall appoint an administrative law judge or request the office of administrative
23 hearings to designate an administrative law judge to preside over the proceedings.
- 24 3. If the administrative law judge does not sustain an exception, the state engineer
25 shall issue a final order incorporating the agreement as submitted without
26 alteration.
- 27 4. If the administrative law judge sustains an exception to the agreement, the
28 administrative law judge shall remand the agreement to the commission for further
29 negotiation according to sections 1 through 6 of this Act, if desired by the parties to
30 the agreement.

- 1 **SECTION 6. Procedures after remand of agreement.** Within one hundred eighty
2 days after the administrative law judge remands the agreement under section 5 of this Act, the
3 commission shall file with the administrative law judge:
- 4 1. An amended agreement that complies with section 3 of this Act and which is
5 subject to the procedures specified by sections 4 and 5 of this Act;
6 2. A motion to dismiss the proceedings without prejudice; or
7 3. A motion for a continuance.