

Sixtieth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1025

Introduced by

Legislative Council

(Agriculture and Natural Resources Committee)

1 A BILL for an Act to authorize the governor to negotiate reserved water rights of the United
2 States and federally recognized Indian tribes.

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

4 **SECTION 1. Negotiation for reserved water rights.**

- 5 1. The governor or the governor's designee may negotiate with any federally
6 recognized Indian tribe claiming a reserved water right in this state and
7 representatives of the federal government as trustee for the federally recognized
8 Indian tribe to define the scope and attributes of rights to water claimed by the
9 Indian tribe. The governor or the governor's designee may also negotiate with the
10 federal government to define the scope and attributes of non-Indian reserved water
11 rights claimed by the federal government.
- 12 2. During negotiations conducted under subsection 1, the governor or the governor's
13 designee, in the manner the governor or the governor's designee determines
14 appropriate, shall provide public notice of the negotiations and shall allow public
15 input.

16 **SECTION 2. Agreement - Notification - Exceptions - Adjudication - Ratification -**
17 **Final order.**

- 18 1. When the governor or the governor's designee and representatives of any federally
19 recognized Indian tribe claiming a federal reserved water right in this state and the
20 federal government as trustee for the federally recognized Indian tribe have
21 completed an agreement or when the governor or governor's designee and the
22 federal government with regard to non-Indian reserved water rights have
23 completed an agreement, the state engineer shall give written notice to the owners
24 of water rights permits, including the holders of conditional permits, who may be

1 affected by the agreement that they may file an exception to the agreement. The
2 notice must include the time and manner for filing an exception to the agreement
3 and the telephone number or address at which a copy of the agreement may be
4 requested. The notice must be served in a manner allowed for service under the
5 North Dakota Rules of Civil Procedure or by depositing the notice in the United
6 States mail or with a third-party commercial carrier, postage or shipping prepaid,
7 and directed to the owner's or holder's last reasonably ascertainable address.

8 2. If no exceptions are filed, the agreement must be signed by the governor on behalf
9 of the state of North Dakota and by authorized representatives of the Indian tribe
10 and the federal government as trustee for the Indian tribe or, with regard to a
11 non-Indian reserved water rights agreement, by the governor on behalf of the state
12 of North Dakota and by authorized representatives of the federal government.

13 3. If an exception is filed, the state engineer shall make a determination on the
14 exception. If the determination of the state engineer is not contested, the
15 agreement or amended agreement must be submitted to the negotiators for
16 signature.

17 4. If the determination of the state engineer is contested, the proceeding is deemed to
18 be an adjudicative proceeding under chapter 28-32 and the provisions of chapter
19 28-32 apply to proceedings to sustain or reject exceptions. The state engineer
20 shall appoint an administrative law judge or request the office of administrative
21 hearings to designate an administrative law judge to preside over the proceedings.

22 5. If the administrative law judge sustains the state engineer's determination, the
23 state engineer shall submit the agreement or the amended agreement to the
24 negotiators for signature.

25 6. If the administrative law judge does not sustain the state engineer's determination,
26 the administrative law judge shall remand the agreement to the governor or the
27 governor's designee for further negotiation if desired by the parties to the
28 agreement. Within one hundred eighty days after the administrative law judge
29 remands the agreement, the governor or the governor's designee shall file with the
30 administrative law judge an agreement without alteration, an amended agreement,
31 a motion to dismiss the proceedings without prejudice, or a motion for a

1 continuance. Unless a motion for continuance is granted, the agreement must be
2 submitted to the negotiators for signature.

3 7. Upon signature by all required parties, the agreement must be submitted to the
4 legislative assembly for approval by concurrent resolution.

5 8. Upon approval of the concurrent resolution by a majority vote of the members-elect
6 of each house of the legislative assembly, the state engineer shall incorporate the
7 agreement in a final order. The agreement is effective upon issuance of the final
8 order.