

HOUSE BILL NO. 1318

Introduced by

Representatives Pollert, Hofstad, Onstad

Senators Klein, Lyson, Wanzek

1 A BILL for an Act to create and enact chapter 61-24.8 of the North Dakota Century Code,
2 relating to creation of special assessment districts for water supply or irrigation districts by the
3 Garrison Diversion Conservancy District.

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

5 **SECTION 1.** Chapter 61-24.8 of the North Dakota Century Code is created and enacted as
6 follows:

7 **61-24.8-01. Definitions.**

8 As used in this chapter:

- 9 1. "Auditor" means the county auditor.
- 10 2. "Board" means the board of directors of the Garrison Diversion Conservancy District.
- 11 3. "Bond" means any revenue bond, refunding bond, improvement bond, or other
12 evidence of indebtedness of the district issued under this chapter.
- 13 4. "Director" means a member of the board of directors.
- 14 5. "District" means the Garrison Diversion Conservancy District.
- 15 6. "Federal agency" includes the United States, the president of the United States, or any
16 agency, instrumentality, or corporation of the United States which has been or may be
17 designated or created by or pursuant to any act or acts or joint resolutions of the
18 Congress of the United States or which may be owned or controlled, directly or
19 indirectly, by the United States.
- 20 7. "Holder of bonds" or "bondholder", or any similar term, means any person who is the
21 registered owner of any outstanding revenue bond, improvement bond, or refunding
22 bond.
- 23 8. "Law" means any statute of this state.

- 1 9. "Project" means any work, undertaking, enterprise, or any combination of two or more
2 projects, which the district is authorized to construct. The term includes all
3 improvements, betterments, extensions, and replacements of work, undertaking, or
4 enterprises, and all appurtenances, facilities, easements, lands, rights in land, water
5 rights, contract rights, approaches, dams, reservoirs, generating stations, trunk
6 connections, other water mains, filtration works, pumping stations, equipment,
7 franchises, and structures in connection with or incidental to any work, undertaking, or
8 enterprise the district is authorized to construct.
- 9 10. "Refinancing" means funding, refunding, paying, or discharging by means of refunding
10 bonds or the proceeds from the sale of refunding bonds, all or any part of any notes,
11 bonds, or other obligations issued to finance or to aid in financing the acquisition,
12 construction, or improvement of a project.
- 13 11. "Refunding bonds" means notes, bonds, certificates, or other obligations of the district
14 issued under this chapter, the proceeds of which are to be used to pay the principal of
15 or interest on any outstanding bonds or other obligations.
- 16 12. "Revenues" means all fees, tolls, rates, rentals, and charges levied and collected by
17 the district in connection with, and all other income and receipts of whatever kind or
18 character derived by the district from, the operation of any project.
- 19 13. "State engineer" has the same meaning as provided in chapter 61-03.
- 20 14. "Warrant" means an order drawn by the proper official of the district on its treasury, the
21 warrant to be so drawn that when signed by the district treasurer in an appropriate
22 place it becomes a check on the depository of the district, and a warrant upon the
23 treasury may not be delivered or mailed to the payee or the payee's agent or
24 representative until the warrant has been signed by the district treasurer and entered
25 on the district's books as a check drawn on a bank depository.

26 **61-24.8-02. Financing project through improvement bonds or special assessments -**
27 **Apportionment of benefits.**

28 The board may acquire needed interest in property and provide for the cost of construction,
29 alteration, repair, operation, and maintenance of a project with funds raised by special
30 assessments. The board may issue improvement bonds in anticipation of the levy and collection
31 of special assessments. If the board decides to acquire property or interests in property to

1 construct, operate, alter, repair, or maintain a project with funds raised in whole or in part
2 through special assessments, the assessments must be apportioned to and spread in
3 proportion to benefits accruing to lands or premises benefited by the project. The board shall
4 assess the proportion of the cost of the project, or the part of the cost to be financed with funds
5 raised through levy and collection of special assessments which any lot, piece, or parcel of land
6 bears in proportion to the benefits accruing to the property and any political subdivision that is
7 benefited.

8 **61-24.8-03. Resolution authorizing project and the issuance of revenue bonds.**

9 The acquisition, construction, reconstruction, improvement, betterment, or extension of any
10 project and the issuance of bonds in anticipation of the collection of special assessments or of
11 the revenues of such project to provide funds to pay the associated costs may be authorized by
12 a resolution of the board adopted after appropriate notice by the affirmative vote of a majority of
13 the board. Unless otherwise provided in the resolution, the resolution under this section takes
14 effect immediately and need not be laid over, published, or posted.

15 **61-24.8-04. Construction.**

16 Powers under this chapter are in addition and supplemental to and not in substitution for,
17 and the limitations imposed by this chapter do not affect the powers conferred by, any other law.
18 Bonds may be issued under this chapter without regard to any other laws of this state, except
19 as provided in section 61-24-29. The project may be acquired, purchased, constructed,
20 reconstructed, improved, bettered, and extended, and bonds may be issued under this chapter
21 for those purposes, notwithstanding that any other law may provide for the acquisition,
22 purchase, construction, reconstruction, improvement, betterment, and extension of a like project
23 or for the issuance of bonds for like purposes, and without regard to the requirements,
24 restrictions, debt, or other limitations or other provisions contained in any other law, including
25 any requirement for any restriction or limitation on the incurring of indebtedness or the issuance
26 of bonds. If this chapter is inconsistent with any other law of this state, the provisions of this
27 chapter are controlling with reference to the issuance of bonds.

28 **61-24.8-05. Power of district to defray expense of improvements by special**
29 **assessments.**

30 Upon complying with this chapter, the district may defray the expense of any or all of the
31 improvements by special assessments, including the construction of all or part of a water supply

1 system or an irrigation system, or both, or any improvement, extension, or replacement of such
2 systems, including the construction and erection of wells, intakes, pumping stations, settling
3 basins, filtration plants, standpipes, water towers, canals, ditches, aqueducts, reservoirs, water
4 mains, and outlets, and all other appurtenances, contrivances, and structures used or useful for
5 a complete water supply system. In planning an improvement project, the board may include in
6 the plans any and all items of work and materials, which in its judgment are necessary or
7 reasonably incidental to the completion of an improvement project of that type.

8 **61-24.8-06. Condemnation of land and rights of way for special improvements -**
9 **Taking of possession - Trial - Appeal - Vacation of judgment.**

10 When property required to make any improvement authorized by this chapter is to be taken
11 by condemnation proceedings, the court, upon request by resolution of the board of the district
12 making the improvement, shall call a special term of court for the trial of the proceedings and
13 may summon a jury for the trial. The proceedings must be instituted and prosecuted in
14 accordance with chapter 32-15, except that when the interest sought to be acquired is a right of
15 way for the laying of any main, pipe, ditch, canal, aqueduct, or flume for conducting water,
16 whether within or without the district, the district may make an offer to purchase the right of way
17 and may deposit the amount of the offer with the clerk of the district court of the county in which
18 the right of way is located, and may then take possession of the right of way. The offer must be
19 made by resolution of the board of the district, and a copy of the resolution must be attached to
20 the complaint filed with the clerk of court in accordance with section 32-15-18. The clerk shall
21 immediately notify the owners of the land on which the right of way is located of the deposit by
22 causing a notice to be appended to the summons when served and published in the
23 proceedings as provided in the North Dakota Rules of Civil Procedure stating the amount
24 deposited or agreed in the resolution to be deposited. The owner may then appeal to the court
25 by filing an answer to the complaint in the manner provided in the North Dakota Rules of Civil
26 Procedure and may have a jury trial, unless a jury is waived, to determine the damages.
27 However, upon due proof of the service of the notice and summons and upon deposit of the
28 aggregate sum agreed in the resolution, the court without further notice may make and enter an
29 order as authorized by section 16 of article I of the Constitution of North Dakota. If under laws of
30 the United States proceedings for the acquisition of any right of way are required to be instituted
31 in or removed to a federal court, the proceedings may be taken in that court in the same

1 manner and with the same effect as provided in this section and the clerk of the district court of
2 the county in which the right of way is located shall perform any and all of the duties set forth in
3 this section if the clerk is directed to do so by the federal court. The proceedings must be
4 determined as speedily as practicable. An appeal from a judgment in the condemnation
5 proceedings must be taken within sixty days after the entry of the judgment and appeal must be
6 given preference by the supreme court over all other civil cases except election contests. No
7 final judgment in the condemnation proceedings awarding damages to property used by the
8 district for irrigation or other purposes may be vacated or set aside if the district pays to the
9 defendant, or into court for the defendant, the amount awarded in cash. The district may levy
10 special assessments within the district to pay all or part of the judgment. To provide funds for
11 the payment of the judgment or for the deposit of the amount offered for purchase of a right of
12 way, the district may issue bonds on the fund of the improvement district as provided in
13 section 61-24.8-09 in anticipation of the levy and collection of special assessments or revenues
14 to be appropriated to the fund in accordance with this chapter. The bonds may be issued upon
15 or after the commencement of the condemnation proceedings. Upon the failure of the district to
16 make payment in accordance with this section, the judgment in the condemnation proceedings
17 may be vacated.

18 **61-24.8-07. Improvement districts to be created.**

19 For an improvement project under section 61-24.8-05 and defraying the cost of the project
20 by special assessments, the district may create water districts and irrigation districts, and may
21 extend any such district when necessary. The appropriate special improvement district must be
22 created by resolution. The district must be designated by a name appropriate to the type of
23 improvement for which it is created and by a number distinguishing it from other improvement
24 districts. Nothing in this chapter prevents the district from making and financing any
25 improvement under any alternate procedure in this title. For examinations or surveys, the board
26 or its employees, after written notice to each landowner, may enter upon any land on which the
27 proposed project is located or any other lands necessary to gain access.

28 **61-24.8-08. Size and form of improvement districts - Regulations governing.**

29 Any improvement district created by the district may embrace two or more separate
30 property areas. Each improvement district must be of such size and form as to include all
31 properties, which in the judgment of the board, after consultation with the engineer planning the

1 improvement, will be benefited by the construction of the improvement project which is
2 proposed to be made in or for the district, or by any portion of the project. A single district may
3 be created for an improvement of the type specified in section 61-24.8-07, notwithstanding any
4 lack of uniformity among the types, items, or quantities of work and materials to be used at
5 particular locations throughout the improvement district. The jurisdiction of the district to make,
6 finance, and assess the cost of any improvement project may not be impaired by any lack of
7 commonness, unity, or singleness of the location, purpose, or character of the improvement, or
8 by the fact that any one or more of the properties included in the improvement district is
9 subsequently determined not to be benefited by the improvement, or by a particular portion of
10 the improvement project, and is not assessed for that purpose. The board may omit from a
11 water or irrigation district property within the district limits which are benefited by the
12 improvement but do not abut upon a water or irrigation main, without prejudice to the right and
13 power of the district subsequently to assess such property to the extent and the manner
14 permitted by law. The board may by resolution enlarge an improvement district in which an
15 improvement is proposed or under construction upon receipt of a petition signed by the owners
16 of three-fourths of the area to be added to the district.

17 **61-24.8-09. Engineer's report required - Contents.**

18 After a special improvement district has been created, the board, if the board determines it
19 necessary to make any of the improvement set out in section 61-24.8-05 in the manner
20 provided in this chapter, shall direct the engineer for the district, or some other competent
21 engineer, to prepare a report as to the general nature, purpose, and feasibility of the proposed
22 improvement. The engineer shall prepare profiles, plans, and specifications of the proposed
23 project and estimates of the total cost. The estimate of costs prepared by the engineer must
24 include acquisition of right of way and other costs specified in section 61-24.8-19 and must be
25 in sufficient detail to allow the board to determine the probable share of the total costs that will
26 be assessed against each of the affected landowners in the proposed assessment district.

27 **61-24.8-10. Approval of plans, specifications, and estimates.**

28 After receiving the engineer's report required by section 61-24.8-09, the board may direct
29 the engineer to prepare detailed plans and specifications for construction of the improvement.
30 The plans and specifications must be approved by a resolution of the board.

1 **61-24.8-11. District engineer to retain copy of plans, specifications, and estimates -**
2 **Sale of copies.**

3 The engineer acting for the district shall retain a copy of the plans, specifications, and
4 estimates that have been prepared for any improvement. The engineer shall furnish copies at
5 the request of any person at a reasonable cost.

6 **61-24.8-12. Plans, specifications, and estimates filed in office of district.**

7 The plans, specifications, and estimates prepared as directed under section 61-24.8-10 are
8 the property of the district, must be filed in the district office, and must remain on file subject to
9 inspection by any interested person.

10 **61-24.8-13. Hearing - Notice - Contents.**

11 Upon the filing of the engineer's report provided for in section 61-24.8-09, and after
12 satisfying the requirements of section 61-24.8-10, the district board shall fix a date and place for
13 public hearing on the proposed project. The place of hearing must be in the vicinity of the
14 proposed project and must be convenient and accessible for the majority of the landowners
15 subject to assessment for the project or whose property is subject to condemnation for the
16 proposed project. The board may appoint a hearing officer or a committee of the board to
17 conduct the hearing. The board shall cause a complete list of the benefits and assessments to
18 be made, setting forth each political subdivision assessed in its corporate capacity as well as
19 each lot, piece, or parcel of land assessed, the amount each is benefited by the improvement,
20 and the amount assessed against each. At least ten days before the hearing, the board shall file
21 with the county auditor of each county in which the project is or will be located the list showing
22 the percentage assessment and approximate assessment in dollars against each parcel of land
23 benefited by the proposed project. Notices of the hearing must contain the time and place
24 where the board will conduct the hearing. The notice of hearing must specify when and where
25 votes concerning the proposed project may be filed and contain an assessment list showing the
26 percentage assessment and approximate assessment in dollars against each parcel of land
27 benefited by the proposed project. The board shall cause the notice of hearing to be published
28 once a week for two consecutive weeks in newspapers of general circulation in the area in
29 which the affected landowners reside and in the official county newspaper of each county in
30 which the benefited lands are located. The date set for the hearing may not be fewer than
31 fourteen days after the publication of the notice. A record of the hearing must be made by the

1 board, including a list of affected landowners present in person or by agent, and the record must
2 be preserved in the minutes of the meeting. Affected landowners and the governing body of any
3 county, township, or city to be assessed must be informed at the hearing of the probable total
4 cost of the project and their individual share of the cost and the portion of their property, if any,
5 to be condemned for the project.

6 **61-24.8-14. Voting on proposed projects.**

7 At the hearing, the affected landowners and any county, township, or city to be assessed
8 must be informed when and where votes concerning the proposed project may be filed. Affected
9 landowners and the governing body of any county, township, or city to be assessed have thirty
10 days after the date of the hearing to file their votes with the secretary of the district. Once the
11 deadline for filing votes has been reached, no more votes may be filed and no person may
12 withdraw a vote. Any withdrawal of a vote concerning the proposed project before that time
13 must be in writing. When the votes have been filed and the deadline for filing votes has passed,
14 the board shall immediately determine whether the project is approved. If the board finds that
15 fifty percent or more of the total votes filed are against the proposed project, then the vote
16 constitutes a bar against proceeding further with the project. If the board finds that the number
17 of votes filed against the proposed project is less than fifty percent of the votes filed, the board
18 shall issue an order establishing the proposed project and may proceed, after complying with
19 the requirements of sections 61-24.8-17 and 61-24.8-18, to contract or provide for the
20 construction or maintenance of the project in substantially the manner and according to the
21 forms and procedure provided in sections 61-24.8-43 through 61-24.8-58. The board may enter
22 any agreement with any federal or state agency under the terms of which the contract for the
23 project is to be let by the federal agency, the state agency, or a combination thereof. In projects
24 where there is an agreement that a party other than the board will let the contract, the board
25 may dispense with all of the requirements of sections 61-24.8-43 through 61-24.8-58. Upon
26 making an order establishing or denying establishment of a project, the board shall publish
27 notice of the order in a newspaper of general circulation in the area in which the affected
28 landowners reside and in the official county newspaper of each county in which the benefited
29 lands are located. Any right of appeal begins to run on the date of publication of the notice.

1 **61-24.8-15. Voting right or powers of landowners.**

2 In order that there may be a fair relationship between the amount of liability for
3 assessments and the power of objecting to the establishment of a proposed project, the voting
4 rights of affected landowners on the question of establishing the project are as provided in this
5 section. The landowner of land affected by the project has one vote for each dollar of
6 assessment to which the land is subject or one vote for each dollar of the assessed valuation of
7 land condemned for the project, as determined in accordance with title 57. The governing body
8 of any political subdivision to be assessed has one vote for each dollar of assessment against
9 such political subdivision. There may be only one vote for each dollar of assessment, regardless
10 of the number of owners of a tract of land. If more than one owner of a tract of land exists, the
11 votes must be prorated among them in accordance with each owner's property interest. A
12 written power of attorney authorizes an agent to protest a project on behalf of any affected
13 landowner or landowners.

14 **61-24.8-16. Assessment of cost of project.**

15 When the district board proposes to make any special assessment under this chapter, the
16 board or its agent, before the hearing required under section 61-24.8-13, shall inspect any and
17 all lots and parcels of land that may be subject to assessment and shall determine from the
18 inspection the particular lots and parcels of lands which, in the opinion of the board, will be
19 especially benefited by the construction of the work for which the assessment is made and shall
20 assess the proportion of the total cost of acquiring right of way and constructing and maintaining
21 such improvement in accordance with benefits received but not exceeding such benefits
22 against:

23 1. Any political subdivision, in its corporate capacity, which may be directly or indirectly
24 benefited by the improvement; and

25 2. Any lot, piece, or parcel of land that is directly benefited by the improvement.

26 In determining benefits, the board shall consider, among other factors, property values, degree
27 of improvement of properties, and productivity. Property belonging to the United States is
28 exempt from assessment unless the United States has provided for the payment of any
29 assessment that may be levied against its property for benefits received. Benefited property
30 belonging to the state or political subdivision is not exempt from assessment and the state and
31 political subdivisions that own assessed property shall provide for the payment of such

1 assessments, including installments and interest, by the levy of taxes according to law. Any
2 political subdivision assessed in its corporate capacity for benefits received shall provide for the
3 payment of those assessments, installments, and interest from its general fund or by levy of a
4 general property tax against all the taxable property in the political subdivision in accordance
5 with law. No tax limitation provided by any statute of this state applies to tax levies made by any
6 political subdivision for paying any special assessments made under this chapter. There must
7 be attached to the list of assessments a certificate signed by the chairman and certified by the
8 secretary that it is a true and correct assessment of the benefit described to the best of their
9 judgment and stating the several items of expense included in the assessment.

10 **61-24.8-17. Assessment list to be published - Notice of hearing - Alteration of**
11 **assessments - Confirmation of assessment list - Filing.**

12 After entering an order establishing the project, the district board shall cause the
13 assessment list to be published once each week for two successive weeks in the newspapers
14 of general circulation in the district and in the official county newspaper of each county in which
15 the benefited lands are located. The publication must include a notice of the time and place the
16 board will meet to hear objections to any assessment by any interested party or an agent or
17 attorney for that party. The date set for the hearing must be not less than fourteen days after the
18 first publication of the notice. At the hearing, the board may make such alterations in the
19 assessments as in its opinion may be just and necessary to correct any error in the assessment
20 but must make the aggregate of all assessments equal to the total amount required to pay the
21 entire cost of the work for which the assessments are made or the part of the cost to be paid by
22 special assessment. An assessment may not exceed the benefit as determined by the board to
23 the parcel of land or political subdivision assessed. The board then shall confirm the
24 assessment list and the secretary shall attach to the list a certificate that it is correct as
25 confirmed by the board. The secretary shall file the list in the office of the district secretary.

26 **61-24.8-18. Appeal to state engineer.**

27 Within ten days after the hearing under section 61-24.8-17, affected landowners and any
28 political subdivision subject to assessment, having not less than twenty-five percent of the
29 possible votes as determined under section 61-24.8-15, who believe that the assessment has
30 not been fairly or equitably made, or that the project is not properly located or designed, may
31 petition the state engineer to review the assessments and examine the location and design of

1 the proposed project. Upon receipt of a petition, the state engineer shall examine the lands
2 assessed and the location and design of the proposed project. If it appears to the state engineer
3 that the assessments have not been made equitably, the state engineer may proceed to correct
4 the assessments. The state engineer's correction and adjustment of assessments is final. If it
5 appears to the state engineer that the project has been improperly located or designed, the
6 state engineer may order a relocation and redesign, which must be followed in the construction
7 of the proposed project. Upon filing a bond for two hundred fifty dollars with the board for the
8 payment of the costs of the state engineer in the matter, any landowner or political subdivision
9 claiming to receive no benefit from the project may appeal to the state engineer the question of
10 whether there is any benefit. The appeal must be filed with the state engineer within ten days
11 after the hearing on assessments in section 61-24.8-17. The state engineer may not determine
12 the specific amount of benefit upon an appeal by an individual landowner or political subdivision
13 and may determine only if there is any benefit to the landowner or political subdivision. The
14 determination of the state engineer upon the appeal is final.

15 **61-24.8-19. When assessments may be made.**

16 After the requirements of this chapter have been satisfied and a contract and bond for any
17 work for which a special assessment is to be levied have been approved by the district board,
18 the board may direct special assessments to be levied for the payment of appropriate costs and
19 the secretary shall certify to the board the items of total cost to be paid by special assessments
20 so far as they have been ascertained. The certificate must include the estimated construction
21 cost under the terms of any contract; a reasonable allowance for cost of extra work that may be
22 authorized under the plans and specifications; acquisition of right of way; engineering, fiscal
23 agents, and attorney's fees for any services in connection with the authorization and financing
24 of the improvement; cost of publication of required notices; printing of improvement bonds; cost
25 necessarily paid for damages caused by such improvement; interest during the construction
26 period; and all expenses incurred in making the improvement and levy of assessments. A
27 contract or contracts may not be awarded which exceed, by forty percent or more, the
28 estimated cost of the project as presented to and approved by the affected landowners.

1 **61-24.8-20. Correction of errors and mistakes in special assessments - Requirements**
2 **governing.**

3 If mathematical errors or other mistakes occur in making any assessment resulting in a
4 deficiency in that assessment, the district board shall cause additional assessments to be made
5 in a manner substantially complying with chapter 40-26 as it relates to special assessments.

6 **61-24.8-21. Lien of special assessment.**

7 A special assessment imposed by the district, with accrued interest and penalties, is a lien
8 upon the property on which the assessment is levied from the time the assessment list is
9 approved by the district board until the assessment is fully paid. The liens have precedence
10 over all other liens except general tax liens and may not be divested by any judicial sale.
11 Mistake in the description of the property covered by the special assessment lien or in the name
12 of the owner of such property does not defeat the lien if the assessed property can be identified
13 by the description in the assessment list. This chapter must be considered notice to all
14 subsequent encumbrances of the priority of special assessments imposed under this chapter.

15 **61-24.8-22. Irrigation or water improvements in districts - Paid by service charges.**

16 The district constructing an irrigation or water improvement under the special assessment
17 method may resolve in the resolution or ordinance required by section 61-24.8-07 that a portion
18 of the cost of the improvement must be raised by service charges for the use of the
19 improvement and of the utility of which it forms a part. If the district so resolves, it may
20 determine in its resolutions, ordinances, and other proceedings relating to the levying of special
21 assessments and the issuing of bonds to pay the cost of such improvement that a specified
22 portion or all of such special assessments may be reduced each year by the amount of
23 revenues on deposit in the fund required by section 61-24.8-37. All of the applicable provisions
24 of this chapter relating to special assessments are applicable to such improvements except as
25 to the portion of the cost of improvements resolved or ordained to be paid by service charges.
26 The board of the district shall provide for the establishment, imposition, and collection of service
27 charges for the services furnished by the improvement and the utility of which it forms a part,
28 and in that connection it has all the rights and powers respecting such service charges as it
29 would have with respect to like matters if the improvement were made in accordance with
30 sections 61-24-22 through 61-24-32. The net revenues derived from the imposition and
31 collection of the service charges or any portion of the service charges as are determined by the

1 board in the resolutions and ordinances must be paid into the appropriate improvement district
2 funds created under section 61-24.8-37. The revenues when collected must be used and
3 applied in the same manner as moneys paid into such funds from the collection of special
4 assessments. The board in issuing bonds to finance any such improvement, in its resolutions
5 and ordinances, may establish an assessment reserve in the fund of the improvement district,
6 to which it may appropriate net revenues of the utility or system from time to time received in
7 excess of amounts required, with special assessments then on hand, to meet the principal and
8 interest next due on the bonds. Before November first of any year, the district may by resolution
9 determine the proportion which the amount then on hand in the assessment reserve, and
10 irrevocably appropriated to the payment of the bond, bears to the aggregate amount of the
11 installment of the special assessments levied for the improvement which is payable in the
12 following year, including interest. The district may direct the auditor to reduce, by not more than
13 a proportionate amount, the total of that installment and interest which would otherwise be
14 placed upon the tax list of the district for the current year against each lot and tract of land
15 assessed or taxed for improvement. If the installment of the special assessment on any
16 property has been prepaid, the board may direct the district to refund, out of the assessment
17 reserve, to the owner of the property at the time of the refund as indicated in the records of the
18 recorder of the county a sum not exceeding a similar proportion of the principal amount of such
19 installment excluding interest.

20 **61-24.8-23. Abbreviations, letters, or figures.**

21 In all proceedings for the levy and collection of special assessments, abbreviations, letters,
22 and figures may be used to denote all or parts of additions, lots, lands, blocks, sections,
23 townships, ranges, years, days of the month, and amounts of money.

24 **61-24.8-24. Record of improvements - Record as evidence.**

25 The district office shall keep a complete record of all the proceedings taken in the matter of
26 making any improvements under this chapter. The record must include all reports and
27 confirmations, all petitions, orders, notices and proofs of publication, and resolutions of the
28 board. The record, a certified transcript of the record, or the original papers, proofs of
29 publications, orders, or resolutions on file in the office must be admitted in evidence in any court
30 or place in this state without further proof as evidence of the facts in those documents.

1 **61-24.8-25. Defects and irregularities in improvement proceedings.**

2 Defects and irregularities in any proceedings had or to be had under this chapter relating to
3 district improvements by the special assessment method, if the proceedings are for a lawful
4 purpose and are unaffected by fraud and do not violate any constitutional limitation or
5 restriction, do not invalidate the proceedings. No action may be commenced or maintained and
6 no defense or counterclaim in any action may be recognized in the courts of this state founded
7 on any such defects or irregularities in the proceedings unless commenced within thirty days of
8 the adoption of the resolution of the board awarding the sale of bonds to finance the
9 improvement.

10 **61-24.8-26. Payment of special assessments - Interest.**

11 All special assessments levied under this chapter may be paid without interest within ten
12 days after they have been approved by the board and thereafter bear interest at an annual rate
13 not exceeding one and one-half percentage points above the average net annual interest rate
14 on any bonds for the payment of which they are pledged on the total amount remaining unpaid.

15 **61-24.8-27. Lien between vendor and vendee of special assessments.**

16 As between a vendor and vendee of real property, unless the purchase contract otherwise
17 provides, the installment of all special assessments for local improvements which are required
18 to be certified and returned to the county auditor in each year become a lien upon the real
19 property upon which they are assessed from and after the first day of December in that year.

20 **61-24.8-28. Irrigation special assessments extended over a period of not more than**
21 **thirty years.**

22 Special assessments for the payment of the cost of constructing any irrigation works are
23 payable in equal annual amounts, or in such annual amounts as will permit the annual increase
24 in payment of principal to approximate the annual decrease in the interest on amounts
25 remaining unpaid, extending over a period of not exceeding thirty years as the board may fix by
26 ordinance or resolution.

27 **61-24.8-29. Water main and waterworks special assessments extended over a period**
28 **of not more than thirty years.**

29 Special assessments for the payment of the cost of constructing or laying any water mains
30 or constructing any waterworks are payable in equal annual amounts, or in such annual
31 amounts as will permit the annual increase in payment of principal to approximate the annual

1 decrease in the interest on amounts remaining unpaid, extending over a period of not more than
2 thirty years as the board may fix by ordinance or resolution.

3 **61-24.8-30. Payments in full of assessments - Payments to county treasurer or**
4 **district treasurer - Receipts.**

5 The owner of any property against which an assessment has been made under this chapter
6 for the cost of any improvement may pay in full or in part the amount remaining unpaid and the
7 unpaid accumulated interest. The payment in full discharges the lien of the assessment upon
8 that property. The payment may be made to the county treasurer upon all installments of the
9 assessments which have been certified to the county auditor, and may be made to the district
10 treasurer upon all portions of the assessment which have not been certified. Any person
11 desiring to pay any portion of the assessment to the district treasurer shall obtain from the
12 district treasurer a certificate of the amount due upon the assessment which has not been
13 certified to the county auditor and shall present the certificate to the district treasurer. The
14 district treasurer shall receive and collect that amount and issue a receipt to the person paying
15 the assessment. The district treasurer shall note upon the treasurer's records the payment of
16 the assessment.

17 **61-24.8-31. Certification of assessments to county auditor.**

18 When the district board, by resolution, has caused special assessments to be levied to
19 cover the cost of constructing a project the board shall determine the rate of interest unpaid
20 special assessments are to bear, which rate may not exceed one and one-half percent above
21 the bond rate. Interest on unpaid special assessments commences on the date the
22 assessments are finally confirmed by the board. Special assessments may be certified and
23 made payable in equal annual installments, the last of which must be due and payable not more
24 than thirty years after the date of the bonds to be paid. The secretary of the district shall certify
25 to the county auditor of the county in which the district is situated, or if the district embraces
26 more than one county to the county auditor of each county in which district lands subject to
27 such special assessments are situated, the total amount assessed against each piece, parcel,
28 lot, or tract of land. The secretary of the district also shall file with the county auditor of each
29 county in which district lands lie a statement showing the cost of the project and the part of the
30 project to be financed by special assessments. Funds needed to pay the cost of maintaining a
31 project may be raised in the same manner as funds were raised to meet construction costs. If

1 the project was financed in whole or in part through the use of special assessments, the district
2 board shall prorate the cost of construction. The district treasurer annually shall certify to the
3 county auditor all uncertified installments of assessments which are to be extended upon the
4 tax lists of the district for the current year, in the manner provided in this section. The annual
5 certification must continue until the amount of moneys on deposit in the fund established under
6 section 61-24.8-37 is sufficient to cover outstanding principal of and interest on any obligations
7 issued to fund the projects, and in addition, to repay the district for any payments made by the
8 district to fund deficiencies in the fund established under section 61-24.8-37.

9 **61-24.8-32. District treasurer to insert amount of improvements in county real estate**
10 **book or other forms - Regulations governing.**

11 The district treasurer shall notify the county auditor not later than August twentieth in each
12 year of any special assessments that were made in the district in addition to those reported in
13 the previous year. The county auditor shall make and deliver to the district treasurer on or
14 before September twentieth each year a copy of the real estate assessment book or other
15 forms for the current year covering all additions in which any special assessments have existed
16 and where any will appear for the current year as advised by the district treasurer. The district
17 treasurer shall insert in the proper columns under the appropriate headings the amount of each
18 of the installments of the assessments on the lots or subdivisions of lots or tracts of land which
19 are to be extended upon the tax lists of the district for the current year. The district treasurer
20 shall show the total amount of special assessments certified to the county auditor for the current
21 year. If a division of property has been made since the original assessment, the district
22 treasurer shall make or cause to be made the proper division of the special assessments on the
23 lots or tracts of land in the same manner as general taxes are divided and assessed as
24 furnished by the county auditor. The district treasurer shall certify the special assessments to
25 the county auditor by November first of each year.

26 **61-24.8-33. Extension of special assessments on tax lists - Collection - Payment over**
27 **to district.**

28 The county auditor shall extend the special assessments upon the tax lists of the district for
29 the current year and the assessments with interest and penalties must be collected as general
30 taxes are collected and paid over to the district treasurer and shall be placed by the district
31 treasurer in the respective funds for which they were collected.

1 **61-24.8-34. Special assessment record book kept by county auditor - Assessments**
2 **certified for more than one year.**

3 The county auditor shall keep a special assessment record. When the district causes the
4 installments of special assessments for a period of more than one year to be certified, the
5 county auditor shall cause the certified special assessments to be recorded for the respective
6 years and in the amounts shown in the certificate of the district treasurer. The certificate of the
7 district treasurer must include a list of all lots and tracts of land upon which such assessments
8 are levied, designating the purpose of the assessment, the fund to which it belongs, and the
9 installment of such assessment for each year against each lot or tract, including interest.

10 **61-24.8-35. County treasurer to certify and receipt for amount of special assessments**
11 **collected - Contents of certificate - Procedure for abatement.**

12 Special assessments of any kind certified to the county auditor by the district treasurer must
13 be paid to the county treasurer and included in the receipt required by section 57-20-08. If the
14 county treasurer receives less than the full amount of taxes and special assessments due at
15 any time on any lot or tract of real estate, the county treasurer shall allocate the amount of such
16 payment between taxes and special assessments in proportion to the respective amounts of
17 taxes and special assessments which are then due. When prorating any tax payment received
18 before October fifteenth, the term "due", as it pertains to real estate taxes, includes only the first
19 installment of real estate taxes. Special assessments are not subject to abatement or refund by
20 proceedings under chapter 57-32 but may be reviewed and corrected only in the manner and
21 upon the conditions provided in chapter 40-26. The county treasurer, at the time set by law for
22 the payment to the district treasurer of all the taxes and special assessments collected during
23 the preceding month, shall certify the amounts of special assessments collected. The certificate
24 must state specifically the lot or known subdivision as it appears on the tax books of the county
25 treasurer; the block, addition, amount collected, and amount credited to each lot or known
26 subdivision; and the year for which the sum was collected. The certificate must be furnished to
27 the district treasurer.

28 **61-24.8-36. Interest and penalties added to special assessments - County treasurer to**
29 **collect and pay over.**

30 The county treasurer shall add to all special assessments the same interest and penalties
31 that are added in the case of general taxes and at the same time. The county treasurer shall

1 collect the interest and penalties with the special assessments and shall pay all such interest
2 and penalties collected over to the district treasurer.

3 **61-24.8-37. Special improvement moneys to be kept separate - Designation and**
4 **numbering of funds - Diversion of moneys prohibited.**

5 All special assessments and taxes levied and other revenues pledged under the provisions
6 of this chapter to pay the cost of an improvement constitute a fund for the payment of that cost,
7 including all principal of and interest on bonds and other obligations issued by the district to
8 finance the improvement, and may be diverted to no other purpose. The district treasurer shall
9 hold all moneys received for any such fund as a special fund to be applied to payment for the
10 improvement. Each fund must be designated by the name and number of the improvement
11 district in or for which the special assessments, taxes, and revenues are collected. When all
12 principal and interest on bonds and other obligations of the fund have been fully paid, all
13 moneys remaining in a fund may be transferred into the general fund of the district. Any
14 deficiency in any fund created for the payment of district bonds payable in whole or in part out
15 of collections of special assessment taxes must be the general obligation of the district.

16 **61-24.8-38. Bonds - When payable - Amounts - Interest.**

17 At any time after entering a contract for a project to be financed in whole or in part by
18 special assessments, the district may issue temporary and definitive bonds on the project fund
19 created for that purpose in the manner and subject to the limitations prescribed in
20 section 40-24-19. If the bonds are issued to finance an irrigation or water project, the net
21 revenues derived from the imposition of service charges to be imposed and collected with
22 respect to the project as provided in section 61-24.8-22 may be pledged to payment of those
23 bonds. Bonds issued under this section must be in amounts as in the judgment of the board will
24 be necessary for the project. The bonds must bear interest at a rate or rates and be sold at a
25 price resulting in an average net interest cost not exceeding twelve percent per annum if sold at
26 private sale. There is no interest rate ceiling on bond issues sold at public sale or to the state or
27 any of its agencies or instrumentalities. The bonds must state upon their face the purpose for
28 which they are issued and the project fund from which they are payable and must be signed by
29 the manual or facsimile signature of the chairman of the board and countersigned by the
30 manual or facsimile signature of the secretary of the district. The bonds must be payable in such
31 amounts as the board determines, extending over a period of not more than thirty years.

1 **61-24.8-39. Bonds may be used in making payments on contract - Bonds payable out**
2 **of fund on which drawn - May be used to pay special assessments.**

3 Improvement bonds may be sold for cash at not less than ninety-eight percent of par and
4 accrued interest, and the proceeds, less accrued interest, must be credited to the construction
5 account of the fund and must be used exclusively to pay those contracts and construction costs.
6 Any balance remaining in any construction account after completion of any project must be
7 transferred to the sinking fund account of the assessment fund. The treasurer of the district shall
8 pay special assessment bonds as they mature and are presented for payment out of the fund
9 on which they are drawn and shall cancel the bonds when paid.

10 **61-24.8-40. Refunding special assessment bonds - Purposes for which such bonds**
11 **may be issued - Payment of bonds.**

12 Any district having outstanding special assessment bonds, payable in whole or in part out of
13 collections from special assessments, which are past-due or which are redeemable, either at
14 the option of the district or with the consent of the bondholders, may issue refunding special
15 assessment bonds if there is not sufficient money in the project fund against which such bonds
16 are drawn to pay the same. The issuance of refunding bonds must be authorized by resolution
17 of the district board. The resolution must describe the bonds to be refunded and their amount
18 and maturity. Refunding bonds may be issued to extend the maturities of bonds payable in
19 whole or in part by special assessments or to reduce the interest on the bonds. Refunding
20 bonds must bear such date, be in such date, be in such denominations, and mature serially
21 within such time, not exceeding thirty years from date of issuance, as the board determines.
22 The treasurer of the district shall pay special assessment bonds as they mature and are
23 presented for payment out of the fund against which they are drawn and shall cancel the bonds
24 when paid.

25 **61-24.8-41. Foreclosure of tax lien on property when general and special assessment**
26 **taxes are delinquent.**

27 Special assessments imposed under this chapter become due and delinquent and are
28 subject to penalties for nonpayment at the same date and rates as first installments of real
29 estate taxes at the same time and in the same manner as provided in title 57. If there is no
30 delinquent general property tax against a tract or parcel of land and it is foreclosed for special
31 assessments alone, the notice of foreclosure of tax lien must state that the foreclosure is for

1 special assessments and a tax deed in such case must be issued in the usual course of
2 procedure.

3 **61-24.8-42. Call for bids - Contents - Advertising.**

4 Proposals for the work of making improvements provided for in this chapter which exceed
5 the amount provided for construction of a public improvement under section 48-01.2-02 must be
6 advertised for by the district in the official newspaper of the county where the district office is
7 located once each week for two consecutive weeks. The board may cause the work on two or
8 more improvements to be combined in one advertisement and one contract awarded pursuant
9 to that advertisement. The advertisement for bids must:

- 10 1. Specify the work to be done according to the plans and specifications on file in the
11 office of the district;
- 12 2. Call for bids upon the basis of cash payment for the work;
- 13 3. State the time within which the bids will be received; and
- 14 4. State the time within which the work on the improvement is to be completed.

15 **61-24.8-43. Bid to be accompanied by a bond - Bond retained upon failure of bidder**
16 **to contract - Amount of bond.**

17 Each bid for any work to be done under this chapter must be accompanied by a separate
18 envelope containing a bidder's bond in the amount of five percent of the amount of the bid,
19 executed as provided in this chapter and running to the district that the bidder will enter a
20 contract for performance of the work in case a contract is awarded to the bidder. If any bidder to
21 whom a contract is awarded fails or refuses to enter the contract when requested to do so, the
22 bond accompanying the bidder's bid must be retained by the district as liquidated damages for
23 the failure. The bond must be delivered to the district office and credited to the fund from which
24 the consideration for the work is payable. The sufficiency of any bond filed by a bidder must be
25 determined by the board at the time of considering bids.

26 **61-24.8-44. Execution of bidder's bond.**

27 The bidder's bond must be executed by the bidder as principal and may be provided by a
28 surety company authorized to do business in this state as surety or by a bank letter of credit, a
29 cash bond, or a certified check.

1 **61-24.8-45. Conditions of bidder's bond.**

2 A bidder's bond must be made payable to the district and conditioned that if the principal's
3 bid is accepted and the contract for the work of improvement awarded to the bidder, the bidder,
4 within ten days after the acceptance of the bid, or within such further time as the board grants,
5 will execute a contract bond in a sum equal to the amount of the bid, and a contract with the
6 district to perform and complete the work for which the bid was accepted, in accordance with
7 the plans and specifications and the terms of the bid and within the time required by the terms
8 of the contract, and that the bidder will pay for all the labor and materials used in such work.
9 The bond must be for the benefit of the district.

10 **61-24.8-46. Bids - Filing - Sealing - Endorsing - Opening - Considering.**

11 Bids for the work to be let under this chapter must be forwarded to the district office and
12 must be sealed to prevent opening without detection. There must be endorsed upon the outside
13 of the envelope containing the bid a statement of what work the proposal is for. The bids must
14 be opened by the district at the expiration of the time limited in the advertisement for receiving
15 the same, which may not be less than fifteen days after the first publication of the
16 advertisement, or at such other time as the board may appoint. Only bids that are accompanied
17 by the bond provided for in section 61-24.8-42 may be considered by the board.

18 **61-24.8-47. Opening of bids - Bids to be entered on minutes.**

19 After the bids have been opened and made public, they must be entered upon the minutes
20 of the meeting of the district board at which they are considered, and they must be preserved
21 carefully by the district secretary.

22 **61-24.8-48. Rejection of bids - Readvertising for bids or construction by district**
23 **without contract - Reevaluation of project.**

24 If in its opinion the best interests of the district require, the board may reject any and all bids
25 filed under this chapter. If all bids are rejected, the board may:

- 26 1. Readvertise for new bids;
27 2. Cause the work described in the plans, specifications, and estimates to be done
28 directly by the district by the employment of labor and the purchase of materials
29 required, or in any other manner the board considers proper, and payment for the work
30 may be provided through special assessments in the same manner as though the
31 work had been performed under contract, provided this work amounts to no more than

1 the amount provided for construction of a public improvement under section
2 48-01.2-02; or

3 3. Cause the work described in the plans, specifications, and estimates to be reviewed
4 and reevaluated by the engineer for the district so that the board may determine
5 whether the entire project or only a portion of the project is feasible.

6 **61-24.8-49. Engineer's statement of estimated cost required - Board to enter**
7 **contracts.**

8 Before adopting or rejecting any bid filed under this chapter, the board shall require the
9 engineer for the district to make a careful and detailed statement of the estimated cost of the
10 work. The board may not award the contract to any bidder if the engineer's estimate prepared
11 under this section exceeds the engineer's estimate prepared under section 61-24.8-09 by forty
12 percent or more. If all bids are not rejected, the board shall award the contract to the lowest
13 responsible bidder, upon the basis of cash payment for the work, if the bidder has furnished the
14 certified check or bidder's bond required under the provisions of this chapter.

15 **61-24.8-50. Contractor's bond - Execution.**

16 Within the time fixed by the board for executing the contract, the successful bidder shall file
17 with the district a contract bond in a sum equal to the full amount of the contract. The bond must
18 be executed by the bidder or contractor as principal and by a surety company authorized to do
19 business in this state as surety.

20 **61-24.8-51. Conditions for contractor's bond.**

21 The contractor's bond must be made payable to the district and must be conditioned:

- 22 1. That the contractor well and faithfully will perform the work bid for in accordance with
23 the terms of and within the time provided for in the contract, and pursuant to the plans
24 and specifications for the work on file in the district office;
25 2. That the contractor will pay for all labor and material used in that work; and
26 3. That in case of a default on the part of the bidder or contractor in the performance of
27 the work as provided in the contract, the sum named in the bond must be taken and
28 held to cover the amount necessary to compensate the district for the correction,
29 repair, or replacement caused by the default, and that the full amount may be
30 recovered from the bidder and the bidder's sureties in an action by the district against
31 them on the bond only in the event of a complete failure of performance on the part of

1 the contractor. Nothing in this section may be construed to prevent the district from
2 receiving the amount, not in excess of the amount of the bond, necessary to
3 compensate the district for correction, repair, or replacement caused by default of the
4 contractor which does not constitute complete failure of performance by the contractor.

5 **61-24.8-52. Approval of bonds - Return of bidder's bond.**

6 The contractor's bond must be approved by the governing body, and thereupon it is and
7 remains in full force and effect. Upon the execution of the contract and the approval of the
8 contract bond, the bidder's bond must be returned.

9 **61-24.8-53. Failure to execute contractor's bond.**

10 If the successful bidder, within ten days after the acceptance of the bid or such further time
11 as the board may grant, does not execute a contractor's bond and a contract for the completion
12 of the work described in the bid, the board may cause the work to be done, or it may contract
13 with some other contractor to do or complete the work. In that case, the district may recover in a
14 suit on the defaulting bidder's bond the difference between the actual cost to the district of the
15 improvements and the sum that it would have cost if the defaulting bidder had complied with the
16 bidder's bid.

17 **61-24.8-54. Insufficiency of bonds - New bonds required - Failure to furnish.**

18 If the board, at any time, deems the bond of a contractor insufficient either in form or as to
19 sureties, it may require the successful bidder or contractor to furnish, within such reasonable
20 time as the board may fix, a new bond to be approved by the board. If the contractor fails, after
21 notice, to furnish the new bond within the time required, the contractor's contract may be
22 canceled, and in that event the contractor's bond will be liable as if the contractor had failed to
23 perform the contract.

24 **61-24.8-55. Execution and filing of contract.**

25 All contracts for any work provided for in this chapter must be entered in the name of the
26 district and must be executed on the part of the district by the chairman and countersigned by
27 the secretary. After the contract is signed by the contractor, the contract must be filed in the
28 office of the district.

1 **61-24.8-56. Conditions and terms.**

2 A contract let under this chapter requires the work to be done pursuant to the plans and
3 specifications on file in the office of the district, subject to the approval of the engineer acting for
4 the district. The contract must provide:

5 1. That the board has the right to suspend the work at any time for improper construction
6 and to relet the contract or to order a reconstruction of the work as to any part
7 improperly done.

8 2. The time within which the work must be completed.

9 3. The period of time for which the work must be guaranteed as to workmanship and
10 materials.

11 4. The fund from which the contract price is to be paid by the district.

12 5. That the consideration expressed in the contract is payable only in warrants drawn on
13 the fund described in the contract.

14 6. That the district assumes and incurs no general liability under the contract.

15 7. That failure of the engineer to reject work and materials that are not up to
16 specifications and acceptance of the job by the engineer does not release the
17 contractor from liability for any failure on the contractor's part to perform work or
18 furnish materials in accordance with the plans and specifications.

19 The engineer acting for the district shall provide construction administration and observation of
20 the work during its progress. In addition to any rights the district may have under its contract for
21 construction of part or all of an improvement after a contract has been awarded and before work
22 under the contract has been completed, the district, with the consent of the contractor and
23 without advertising for bids, may order additional work done by that contractor of the same
24 character as the work that was contracted for, whether within or without the improvement district
25 for which the original contract was made, and upon the same terms and conditions specified in
26 the original contract except as to time of performance, and at the same prices for the additional
27 work; provided, that the total price payable to the contractor for the additional work may not
28 exceed twenty percent of the amount estimated by the engineer for the district to be payable for
29 that character of work under the original contract.

**61-24.8-57. Contractor to be paid during progress of work - Retainage - Failure to pay
- Rate of interest - Investment of retainage.**

If the contractor to whom a contract is let properly performs the work designated in the contract, the district, at least once in each calendar month during the continuance of the contract work, shall receive and consider estimates furnished by the agent, engineer, or architect acting for the district or if not so furnished, then by the contractor, and shall allow such estimates in an amount of the estimated value of the labor and material furnished upon the contract, and of the material then upon the ground for use in the contract, subject to retentions as follows: ten percent of each estimate presented until such time as the project is fifty percent completed, with no further retainage on estimates during the continuance of the contract. Upon completion of ninety-five percent of the contract according to the estimates, the district may pay to the contractor ninety-five percent of the amount retained from previous estimates. Any amount retained after ninety-five percent completion of the contract must be paid to the contractor in such amounts and at such times as are approved by the district, upon estimates by its agent, engineer, or architect or the contractor, with final payment of all moneys due to the contractor to be made immediately following completion and acceptance of the project. Immediately after considering and allowing any such estimate, the district shall certify and forward the same to the district treasurer or other official having the power to draw bonds, who forthwith shall draw a warrant upon the proper fund and transmit the same promptly to the contractor. If the district fails or neglects to receive and allow such estimate or certify any estimate or final payment upon completion and acceptance or the proper officer required to issue such warrant fails or neglects to issue a warrant as provided in this section, for a period of more than thirty days from the date of such estimate or completion date, then the estimate or final payment, together with any retainage properly payable, draws interest from its date at the rate per annum of two percentage points below the Bank of North Dakota prime interest rate as set thirty days from the date of such estimate or completion date until the issuance of a proper warrant. Interest must be computed and added to the face of the estimate, final payment, or retainage by the officer required to issue the warrant; must be included in the warrant when drawn; and must be charged to the fund from which payment for the improvement is to be made. On the amounts of estimates retained as provided in this section, the board, authorized committee, or public body in charge of the work may invest or deposit the retained amounts in

- 1 any financial association or institution in this state earning interest or dividends for the benefit of
- 2 the contractor. Any amounts so invested or deposited must remain in the name of the board or
- 3 public body in charge of the work until final payment of all money due to the contractor is to be
- 4 made. A contractor may not use or pledge such amount in any manner until released and
- 5 received by the contractor upon completion of the contract.