

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

SENATE BILL NO. 2276

Introduced by

Senator Luick

1 A BILL for an Act to amend and reenact ~~section~~sections 61-16.1-11, 61-16.1-15.1, and
2 61-16.1-59 of the North Dakota Century Code, relating to the joint exercise of powers of joint
3 water resource boards, mandating the formation of joint water resource boards for projects
4 affecting two or more counties, and proceedings to confirm special actions.

5 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

6 **SECTION 1. AMENDMENT.** Section 61-16.1-11 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **61-16.1-11. Joint exercise of powers. (Retroactive application - [See note](#))**

9 1. Two or more districts may, by agreement, jointly or cooperatively exercise any power
10 which is authorized a board by this title. The agreement shall state its purpose and the
11 powers to be exercised, and shall provide for the method by which the power or
12 powers shall be exercised. When the agreement provides for the use of a joint water
13 resource board, the joint board shall be representative of the boards which are parties
14 to the agreement. Notwithstanding other provisions of law, the agreement may specify
15 the number, composition, terms, or qualifications of the members of the joint board.

16 However, the joint board must consist of an equal number of members from each
17 district comprising of the joint board. A joint board created under this section is a
18 political subdivision of the state.

19 2. The districts which are parties to such an agreement may provide for disbursements
20 from their individual budgets to carry out the purpose of the agreement. In addition, a

joint board established pursuant to this section may adopt, by resolution, on or before July first of each year, a budget showing estimated expenses for the ensuing fiscal year and the proposed contributions of each member district as determined by the agreement. The boards of the member districts then shall levy by resolution a tax not to exceed two mills upon the taxable valuation of the real property within each district within the river basin or region subject to the joint agreement. The levy may be in excess of any other levy authorized for a district.

3. The proceeds of one-half of this levy shall be credited to the joint board's administrative fund and shall be used for regulatory activities and for the construction and maintenance of projects of common benefit to the member districts. The remainder shall be credited to the construction funds of the joint board and shall be used for the construction and maintenance of projects of common benefit to more than one district.

4. Funds may be paid to and disbursed by the joint board as agreed upon, but the method of disbursement shall agree as far as practicable with the method provided by law for the disbursement of funds by individual districts. Contracts let and purchases made under the agreements shall conform to the requirements applicable to contracts and purchases by individual districts. The joint board shall be accountable for all funds and reports of all receipts and disbursements to the state water commission in a manner prescribed by the commission.

5. The agreement may be continued for a definite term or until rescinded or terminated in accordance with its terms. The agreement shall provide for the disposition of any property required as the result of a joint or cooperative exercise of powers, and the return of any surplus moneys in proportion to contributions of the several contracting districts after the purpose of the agreement has been completed.

6. Residence requirements for holding office in a district shall not apply to any officer appointed to carry out any agreement.

7. This section does not dispense with procedural requirements of any other statute providing for the joint or cooperative exercise of any governmental power.

~~8. All districts within the Red River, James River, Mouse River, Missouri River, and Devils Lake drainage basins shall, by agreement, form and remain a member of a joint water~~

resource board relative to the district's respective drainage basin. All agreements and subsequent amendments must be filed with the department of water resources. Notwithstanding other provisions of law, the board of county commissioners of the member districts in the Red River, James River, Mouse River, Missouri River, and Devils Lake drainage basins may approve a levy of tax not to exceed two mills upon the taxable valuation of the real property within each joint board's respective drainage basin.

SECTION 2. AMENDMENT. Section 61-16.1-15.1 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-15.1. Projects or benefits in more than one county.

1. ~~The~~Before constructing a project and before assessing the lands or premises for a project located in or benefiting more than one county, the districts from two or more counties may agree to ~~shall jointly construct or assign benefits and assessments for a project. Two or more districts~~ shall create a joint board under section 61-16.1-11 ~~before constructing a project and before assessing the lands or premises for a project that benefits or is located in more than one county. The joint board may exercise all powers afforded to a water resource board under section 61-16.1-09. If the districts do not agree to undertake a joint project, a district may undertake the project by providing notice to the joint board where the project is located, in either the Red River, James River, Mouse River, Missouri River, or Devils Lake Cannon Ball Heart Knife Rivers, Devils Lake Sheyenne River, Grand River Moreau River, James River, Lake Oahe, Lake Sakakawea, Little Missouri River, Lower Red River, Lower Yellowstone, Missouri-Poplar River, Mouse River, and Upper Red River major drainage basin, as mapped by the department of water resources, together with the engineer's report required under section 61-16.1-17.~~
2. If the joint board finds the project is necessary, and the benefits of the project will exceed the costs, the joint board shall proceed with the procedures in sections 61-16.1-15 through 61-16.1-36 regarding:
 - a. The creation, construction, alteration, repair, operation, and maintenance of a project and an assessment district;

- 1 b. The determination and levy of assessments against property benefited by the
2 project; and
- 3 c. The special warrants issued pursuant to this chapter.
- 4 3. If the assessment vote is successful, the joint board shall construct, own, operate, and
5 maintain the project. The joint board shall administer the corresponding assessment
6 district for the project in accordance with this chapter and shall direct the county
7 auditor of each county within the assessment district to levy assessments. Each
8 county auditor shall levy assessments as determined by the joint board.
- 9 4. If a district conducts a reassessment of benefits under this chapter for an existing
10 project and concludes property in another county benefits from the project, the district
11 shall notify the other district of the requirement to form a joint board. If the district
12 refuses to form a joint board, the district shall proceed with the reassessment and
13 include the property in the project assessment district. Affected landowners subject to
14 assessments may appeal the reassessment determination in accordance with this
15 chapter. After the expiration of applicable appeal periods under this chapter, the district
16 shall direct the county auditor of each county within the assessment district to levy
17 assessments. Each county auditor shall levy assessments as determined by the joint
18 board.
- 19 5. If a county auditor refuses to levy assessments as directed by a joint board or a
20 district, the joint board or district may seek a writ of mandamus under chapter 32-34
21 from the district court of the county in which the benefited property is located. If the
22 joint board or district prevails, the district court shall award costs and reasonable
23 attorneys' fees to the joint board or district seeking the writ of mandamus.
- 24 6. If the members of the joint board cannot agree about the necessity of a project, the
25 process to undertake an approved project, or the procedure to assess benefits, the
26 joint board shall request assistance from the North Dakota mediation service to
27 resolve grievances arising from the conflict. After receiving the request, the North
28 Dakota mediation service shall assist the members of the joint board to mediate the
29 conflict. The North Dakota mediation service shall issue a proposed mediation
30 agreement within thirty days of completing the mediation. Each member of the joint
31 board shall participate in good faith in the mediation.

1 7. If the proposed mediation agreement is not agreed to by a majority of the members of
2 a joint board, a member of the joint board may file an appeal within with the
3 department of water resources to issue a determination to resolve the conflict. The
4 appealing party must file the appeal within thirty days of the issuance of the proposed
5 mediation agreement under subsection 6. After receiving the appeal, the department
6 of water resources shall review and investigate the complaint and issue its
7 determination within sixty days of receiving the appeal. A hearing held by the
8 department of water resources under this section is a prerequisite to issuing a
9 determination under this subsection.

10 8. If the determination issued by the department of water resources is not agreed to by a
11 majority of the members of a joint board, a member of the joint board may appeal the
12 decision of the department of water resources to the appropriate district court under
13 chapter 28-32. A hearing held by the department of water resources under this section
14 is a prerequisite to filing an appeal with the district court.

15 **SECTION 3. AMENDMENT.** Section 61-16.1-59 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **61-16.1-59. Proceedings to confirm contracts, special assessments, and other acts.**

18 ~~Any water resource board, before making any~~Before a water resource board enters a
19 ~~contract, or before levying~~levies special assessments, ~~or issuing~~issues special assessment
20 warrants, or ~~before taking~~takes any special action, or if a water resource board in a common
21 river basin does not agree to meet or cooperate in good faith as required under section
22 61-16.1-15.1, a water resource board may commence a special proceeding in district court by
23 which the proceeding leading up to the making of ~~such a~~a contract, levying special assessments,
24 issuing special assessment warrants, or leading up to any other special action, including a
25 request to cooperate under section 61-16.1-15.1, shall be judicially examined, approved, and
26 confirmed. ~~Such~~The court may award reasonable attorneys' fees and costs if a water resource
27 board fails to cooperate or act in good faith under section 61-16.1-15.1. Any judicial
28 ~~proceedings~~proceeding commenced under this section shall comply substantially with the
29 procedure required in the case of judicial confirmation of proceedings, acts, and contracts of an
30 irrigation district.