

SENATE BILL NO. 2336

Introduced by

Senators Fischer, Erbele

Representatives Hawken, S. Kelsh

1 A BILL for an Act to create and enact a new section to chapter 61-02 of the North Dakota
2 Century Code, relating to the duties of the state water commission; to amend and reenact
3 subsection 1 of section 21-01-01, sections 54-10-14, 54-52-02, and 54-52.1-03.1, subsection 9
4 of section 57-02-01, subsection 1 of section 57-39.2-26.1, sections 61-01-26.1 and 61-24.6-02,
5 subsection 1 of section 61-33-09, and sections 61-39-01, 61-39-04, 61-39-05, and 61-39-16 of
6 the North Dakota Century Code, relating to the Garrison Diversion Conservancy District; to
7 repeal section 57-15-26.8 and chapter 61-24 of the North Dakota Century Code, relating to the
8 Garrison Diversion Conservancy District; and to provide an effective date.

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

10 **SECTION 1. AMENDMENT.** Subsection 1 of section 21-01-01 of the North Dakota
11 Century Code is amended and reenacted as follows:

12 1. The term "taxing district" when used in this chapter, unless the context thereof
13 clearly requires otherwise, means any county, city, school district, township, park
14 district, water conservation and flood control district, ~~Garrison Diversion~~
15 ~~Conservancy District~~, county park district, joint county park district, or irrigation
16 district in the state.

17 **SECTION 2. AMENDMENT.** Section 54-10-14 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **54-10-14. Political subdivisions - Audits - Fees - Alternative audits and reports.**

20 The state auditor shall audit the following political subdivisions once every two years, except as
21 provided in this section or otherwise by law:

- 22 1. Counties.
- 23 2. Cities.
- 24 3. Park districts.

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- 1 4. School districts.
- 2 5. Firefighters relief associations.
- 3 6. Airport authorities.
- 4 7. Public libraries.
- 5 8. Water resource districts.
- 6 9. ~~Garrison Diversion Conservancy District.~~
- 7 ~~10.~~ Rural fire protection districts.
- 8 ~~11.~~ 10. Special education districts.
- 9 ~~12.~~ 11. Area career and technology centers.
- 10 ~~13.~~ 12. Correction centers.
- 11 ~~14.~~ 13. Recreation service districts.
- 12 ~~15.~~ 14. Weed boards.
- 13 ~~16.~~ 15. Irrigation districts.
- 14 ~~17.~~ 16. Rural ambulance service districts.
- 15 ~~18.~~ 17. Southwest water authority.
- 16 ~~19.~~ 18. Regional planning councils.
- 17 ~~20.~~ 19. Soil conservation districts.

18 The state auditor shall charge the political subdivision an amount equal to the fair value
19 of the audit and any other services rendered. The fees must be deposited in the state auditor
20 operating account. The state treasurer shall credit the state auditor operating account with the
21 amount of interest earnings attributable to the deposits in that account. Expenses relating to
22 political subdivision audits must be paid from the state auditor operating account, within the
23 limits of legislative appropriation.

24 In lieu of conducting an audit every two years, the state auditor may require annual
25 reports from school districts with less than one hundred enrolled students; cities with less than
26 three hundred population; park districts and soil conservation districts with less than two
27 hundred thousand dollars of annual receipts; and other political subdivisions subject to this
28 section, or otherwise provided by law, with less than one hundred thousand dollars of annual
29 receipts, excluding any federal funds passed through the political subdivision to another entity.
30 If any federal agency performs or requires an audit of a political subdivision that receives
31 federal funds to pass through to another entity, the political subdivision shall provide a copy to

1 the state auditor upon request by the state auditor. The reports must contain the financial
2 information required by the state auditor. The state auditor also may make any additional
3 examination or audit determined necessary in addition to the annual report. When a report is
4 not filed, the state auditor may charge the political subdivision an amount equal to the fair value
5 of the additional examination or audit and any other services rendered. The state auditor may
6 charge a political subdivision a fee not to exceed fifty dollars an hour for the costs of reviewing
7 the annual report.

8 A political subdivision, at the option of its governing body, may be audited by a certified
9 public accountant or licensed public accountant rather than by the state auditor. The public
10 accountant shall comply with generally accepted government auditing standards for audits of
11 political subdivisions. The report must be in the form and content required by the state auditor.
12 The number of copies of the audit report requested by the state auditor must be filed with the
13 state auditor when the public accountant delivers the audit report to the political subdivision.
14 The state auditor shall review the audit report to determine if the report is in the required form
15 and has the required content, and if the audit meets generally accepted government auditing
16 standards. The state auditor also may periodically review the public accountant's workpapers
17 to determine if the audit meets generally accepted government auditing standards. If the report
18 is in the required form and has the required content, and the report and workpapers comply with
19 generally accepted government auditing standards, the state auditor shall accept the audit
20 report. The state auditor may charge the political subdivision a fee of up to fifty dollars an hour,
21 but not to exceed five hundred dollars per review, for the related costs of reviewing the audit
22 report and workpapers.

23 A political subdivision may not pay a public accountant for an audit until the state auditor
24 has accepted the audit. However, a political subdivision may make progress payments to the
25 public accountant. A political subdivision shall retain twenty percent of any progress payment
26 until the audit report is accepted by the state auditor.

27 The state auditor may require the correction of any irregularities, objectionable
28 accounting procedures, or illegal actions on the part of the governing board, officers, or
29 employees of the political subdivision disclosed by the audit report or workpapers, and failure to
30 make the corrections shall result in audits being resumed by the state auditor until the
31 irregularities, objectionable accounting procedures, or illegal actions are corrected.

1 **SECTION 3. AMENDMENT.** Section 54-52-02 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **54-52-02. Formulation of plan - Exclusion of employees covered by plans in**
4 **existence.** All departments, boards, institutions, commissions, or agencies of the state of North
5 Dakota, ~~the Garrison Diversion Conservancy District~~, district health units, the supreme court,
6 and the district courts, hereinafter referred to as agency, shall participate in a retirement system
7 which will provide for the payment of benefits to state and political subdivision employees or to
8 their beneficiaries thereby enabling the employees to care for themselves and their dependents
9 and which by its provisions will improve state and political subdivision employment, reduce
10 excessive personnel turnover, and offer career employment to high-grade men and women.
11 However, a city health department providing health services in a city-county health district
12 formed under chapter 23-35 is not required to participate in the public employees retirement
13 system but may participate in the public employees retirement system under section
14 54-52-02.1. Employees presently covered by a pension plan or retirement plan to which the
15 state is contributing, except social security, are not eligible for duplicate coverage except as
16 provided under sections 39-03.1-14.1 and 54-52-17.2.

17 **SECTION 4. AMENDMENT.** Section 54-52.1-03.1 of the North Dakota Century Code
18 is amended and reenacted as follows:

19 **54-52.1-03.1. Certain political subdivisions authorized to join uniform group**
20 **insurance program - Employer contribution.** A political subdivision may extend the benefits
21 of the uniform group insurance program under this chapter to its permanent employees, subject
22 to minimum requirements established by the board and a minimum period of participation of
23 sixty months. If the political subdivision withdraws from participation in the uniform group
24 insurance program, before completing sixty months of participation, the political subdivision
25 shall make payment to the board in an amount equal to any expenses incurred in the uniform
26 group insurance program that exceed income received on behalf of the political subdivision's
27 employees as determined under rules adopted by the board. ~~The Garrison Diversion~~
28 ~~Conservancy District, and district~~ District health units required to participate in the public
29 employees retirement system under section 54-52-02; shall participate in the uniform group
30 insurance program under the same terms and conditions as state agencies. A retiree who has
31 accepted a retirement allowance from a participating political subdivision's retirement plan may

1 elect to participate in the uniform group under this chapter without meeting minimum
2 requirements at age sixty-five, when the employee's spouse reaches age sixty-five, upon the
3 receipt of a benefit, when the political subdivision joins the uniform group insurance plan if the
4 retiree was a member of the former plan, or when the spouse terminates employment. If a
5 retiree or surviving spouse does not elect to participate at the times specified in this section, the
6 retiree or surviving spouse must meet the minimum requirements established by the board.
7 Each retiree or surviving spouse shall pay directly to the board the premiums in effect for the
8 coverage then being provided. The board may require documentation that the retiree has
9 accepted a retirement allowance from an eligible retirement plan other than the public
10 employees retirement system.

11 **SECTION 5. AMENDMENT.** Subsection 9 of section 57-02-01 of the North Dakota
12 Century Code is amended and reenacted as follows:

13 9. "Municipality" or "taxing district" means a county, city, township, school district,
14 water conservation and flood control district, ~~Garrison Diversion Conservancy~~
15 ~~District~~, county park district, joint county park district, irrigation district, park district,
16 rural fire protection district, or any other subdivision of the state empowered to levy
17 taxes.

18 **SECTION 6. AMENDMENT.** Subsection 1 of section 57-39.2-26.1 of the North Dakota
19 Century Code is amended and reenacted as follows:

20 1. Fifty-three and seven-tenths percent of the revenues must be allocated to counties
21 in the first month after each quarterly period as provided in this subsection.
22 a. Sixty-four percent of the amount must be allocated among the seventeen
23 counties with the greatest population, in the following manner:
24 (1) Thirty-two percent of the amount must be allocated equally among the
25 counties; and
26 (2) The remaining amount must be allocated based upon the proportion
27 each such county's population bears to the total population of all such
28 counties.
29 b. Thirty-six percent of the amount must be allocated among all counties,
30 excluding the seventeen counties with the greatest population, in the following
31 manner:

1 Dakota involve, necessitate, and require the exercise of the sovereign powers of the state and
2 concern a public purpose. Therefore, in order to accomplish this public purpose, it is declared
3 necessary that a means to supply and distribute water to the people of eastern North Dakota for
4 all beneficial purposes must be developed. In furtherance of this public purpose, the supply
5 and delivery of water to eastern North Dakota is established as a critical priority and the state
6 water commission shall, in cooperation with the ~~Garrison Diversion Conservancy District and~~
7 ~~the~~ communities and rural water systems in eastern North Dakota, address this critical priority
8 by developing a plan and estimate of the costs for supplementing the water resources of
9 eastern North Dakota with water supplies from other available resources, including the Missouri
10 River.

11 The state water commission may employ full-time personnel and may employ such
12 other personnel as are necessary for the administration of this section as appropriated funds
13 permit. Notwithstanding section 61-02-64.1, funds disbursed from the contract fund or
14 appropriated for purposes of administering this section may be used for salaries and expenses
15 of persons employed pursuant to this section.

16 **SECTION 8.** A new section to chapter 61-02 of the North Dakota Century Code is
17 created and enacted as follows:

18 **Commission as successor in interest to Garrison Diversion Conservancy District.**

19 The commission shall take possession of all files, records, books, papers, equipment, fixtures,
20 furniture, moneys, and any other property owned by the Garrison Diversion Conservancy
21 District; shall assume all the rights, interests, and liabilities of the district; and is the successor
22 in interest to any securities, contracts, or other property of the district. The commission may
23 contract with local political subdivisions for operation and maintenance of Garrison diversion
24 unit project features.

25 **SECTION 9. AMENDMENT.** Section 61-24.6-02 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **61-24.6-02. Northwest area water supply advisory committee - Created.** The
28 northwest area water supply advisory committee consists of the following representatives,
29 appointed by the state engineer:

- 30 1. One person from the city of Minot recommended by the Minot city council.
31 2. One person from the city of Williston recommended by the Williston city council.

- 1 3. One person from the Bottineau, Burke, Divide, McHenry, McLean, Mountrail,
2 Pierce, Renville, Ward, or Williams County water resource districts recommended
3 jointly by the governing boards of the Bottineau, Burke, Divide, McHenry, McLean,
4 Mountrail, Pierce, Renville, Ward, or Williams County water resource districts.
- 5 4. One representative of the state water commission recommended by the
6 commission.
- 7 5. One representative of the Three Affiliated Tribes, representing that area of the Fort
8 Berthold Indian Reservation north of the Missouri River and Lake Sakakawea
9 recommended by the tribal council.
- 10 6. One representative of rural water distribution systems located in northwestern
11 North Dakota. This representative must be a resident of Bottineau, Burke, Divide,
12 McHenry, McLean, Mountrail, Pierce, Renville, Ward, or Williams County.
- 13 7. One representative of a municipality other than the city of Minot, located in
14 Bottineau, Burke, Divide, McHenry, McLean, Mountrail, Pierce, Renville, Ward, or
15 Williams County.
- 16 8. ~~One representative of the Garrison Diversion Conservancy District recommended~~
17 ~~by the board of directors of the conservancy district.~~
- 18 9. One at large representative.

19 **SECTION 10. AMENDMENT.** Subsection 1 of section 61-33-09 of the North Dakota
20 Century Code is amended and reenacted as follows:

- 21 1. The board consists of the ~~manager of the Garrison Diversion Conservancy District,~~
22 ~~the~~ state engineer, the commissioner of university and school lands, the director of
23 the parks and recreation department, the director of the game and fish department,
24 and the state health officer, or their representative.

25 **SECTION 11. AMENDMENT.** Section 61-39-01 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **61-39-01. Findings and declaration of policy.** The legislative assembly declares that
28 many areas and localities in eastern North Dakota do not enjoy adequate quantities of
29 high-quality drinking water; that other areas and localities in eastern North Dakota do not have
30 sufficient quantities of water to ensure a dependable, long-term supply; that greater economic
31 security and the protection of health and property benefits the land and water resources of this

1 state; and that the promotion of the prosperity and general welfare of all of the people of this
2 state depend on the effective development and utilization of the land and water resources of
3 this state and necessitates and requires the exercise of the sovereign powers of this state and
4 concern a public purpose. To accomplish this public purpose, it is declared necessary that a
5 water authority to store and distribute water to eastern North Dakota be established to provide
6 for the supply and distribution of water to the people of eastern North Dakota for purposes,
7 including domestic, rural water, municipal, livestock, light industrial, and other uses, with
8 primary emphasis on domestic, rural water, and municipal uses; and provide for the future
9 economic welfare and prosperity of the people of this state, and particularly the people of
10 eastern North Dakota, by the bulk purchase of water ~~from the Garrison Diversion Conservancy~~
11 ~~District~~ delivered by the Red River valley water supply project for beneficial and public uses.
12 The ~~Garrison Diversion Conservancy District~~ state water commission may acquire, construct,
13 improve, and own the Red River valley water supply project and the Lake Agassiz water
14 authority may enter one or more contracts to provide for the authority to acquire bulk water ~~from~~
15 ~~the Garrison Diversion Conservancy District~~ and may enter water supply contracts with member
16 cities and water districts for the resale of this water for consumption within or outside the state.

17 The legislative assembly acknowledges that North Dakota and Minnesota communities
18 jointly use the Red River as a water resource. It is in the best interest of eastern North Dakota
19 also to study and possibly provide for the water needs of those Minnesota communities through
20 a Red River valley water supply project, particularly if that project maintains the use of the Red
21 River for North Dakota communities.

22 In furtherance of this public purpose, the state water commission may provide for the
23 issuance of bonds in accordance with chapter 61-02 to finance the costs of any project to
24 deliver water to eastern North Dakota. This chapter does not abrogate or limit the rights,
25 powers, duties, and functions of the state water commission or state engineer, but is
26 supplementary to those rights, powers, duties, and functions.

27 **SECTION 12. AMENDMENT.** Section 61-39-04 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **61-39-04. Board of directors - Officers - Meetings.** The board of directors may adopt
30 such rules and bylaws for the conduct of the business affairs of the authority as it determines
31 necessary, including the time and place of regular meetings of the board and a dues structure

1 for membership in the authority. The board shall elect from its members a chairman and a vice
2 chairman. The board shall also elect a secretary and a treasurer, which offices may be held by
3 the same individual, and either or both offices may be held by an individual who is not a
4 member of the board. Special meetings of the board may be called by the secretary on order of
5 the chairman or upon written request of a majority of the qualified members of the board.
6 Notice of a special meeting must be mailed to each member of the board at least six days
7 before the meeting, provided that a special meeting may be held at any time when all members
8 of the board are present or consent in writing. The ~~Garrison Diversion Conservancy District~~
9 state water commission shall provide administrative, technical, and legal support for the
10 authority.

11 **SECTION 13. AMENDMENT.** Section 61-39-05 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **61-39-05. Authority of the Lake Agassiz water authority.** The board of directors of
14 the Lake Agassiz water authority may:

- 15 1. Sue and be sued in the name of the authority.
- 16 2. Exercise the power of eminent domain in the manner provided by title 32 for the
17 purpose of acquiring and securing any rights, titles, interests, estates, or
18 easements necessary or proper to carry out the duties imposed by this chapter,
19 and particularly to acquire the necessary rights in land for the construction of
20 pipelines, reservoirs, connections, valves, pumping installations, or other facilities
21 for the storage, transportation, or utilization of water and all other appurtenant
22 facilities used in connection with the authority, or any part thereof.
- 23 3. Accept funds, property, and services or other assistance, financial or otherwise,
24 from federal, state, and other public or private sources for the purpose of aiding
25 and promoting the construction, maintenance, and operation of the authority.
- 26 4. Cooperate and contract with the agencies or political subdivisions of the state of
27 North Dakota or other states, in research and investigation or other activities
28 promoting the establishment, construction, development, or operation of the
29 authority.
- 30 5. Appoint and fix the compensation and reimbursement of expenses of such
31 employees as the board deems necessary to conduct the business and affairs of

- 1 the authority and to procure the services of engineers and other technical experts,
2 and to retain attorneys to assist, advise, and act for the authority in its proceedings.
- 3 6. Operate and manage the authority to distribute water to its members and others
4 within or outside the territorial boundaries of this state.
- 5 7. Sell or exchange any and all real property purchased or acquired by the authority.
6 All money received from any such sale or exchange must be deposited to the
7 credit of the authority and may be used to pay expenses of the authority.
- 8 8. Enter a contract or contracts to provide for a supply of bulk water ~~from the Garrison~~
9 ~~Diversion Conservancy District~~ which contract or contracts may provide for
10 payments to fund some or all of the ~~Garrison Diversion Conservancy District's~~
11 costs of acquiring, constructing, or reconstructing one or more Red River valley
12 water supply projects, ~~which Red River valley water supply projects the Garrison~~
13 ~~Diversion Conservancy District may acquire, construct, improve, and own, as well~~
14 ~~as the Garrison Diversion Conservancy District's costs of operating and~~
15 ~~maintaining one or more Red River valley water supply projects;~~ whether the
16 acquisition, construction, or reconstruction of any Red River valley water supply
17 project actually is completed and whether water actually is delivered pursuant to
18 the contract or contracts, ~~and which contract or contracts the Garrison Diversion~~
19 ~~Conservancy District may execute without limitation on term of years.~~
- 20 9. Enter a contract or contracts to provide for a bulk sale, lease, or other supply of
21 water for beneficial use to persons within or outside the authority, ~~which contract or~~
22 ~~contracts may provide for payments to fund some or all of the Garrison Diversion~~
23 ~~Conservancy District's costs of acquiring, constructing, or reconstructing one or~~
24 ~~more Red River valley water supply projects, as well as the Garrison Diversion~~
25 ~~Conservancy District's costs of operating and maintaining one or more Red River~~
26 ~~valley water supply projects;~~ whether the acquisition, construction, or
27 reconstruction of any Red River valley water supply project actually is completed
28 and whether water actually is delivered pursuant to the contract or contracts, which
29 contract or contracts cities and water districts that are members of the Lake
30 Agassiz water authority are authorized to execute without limitation on term of
31 years.

- 1 10. Borrow money as provided in this chapter.
- 2 11. Issue and sell revenue bonds for its own benefit ~~or for the benefit of the Garrison~~
3 ~~Diversion Conservancy District~~, in an amount or amounts determined by the board,
4 including an amount or amounts for costs of issuance and financing, and any
5 necessary reserve funds, for the purpose of financing the cost of a project,
6 purchasing bulk water, or otherwise making capital payments required under a
7 water purchase contract.
- 8 12. Lend some or all proceeds of its revenue bonds to the ~~Garrison Diversion~~
9 ~~Conservancy District~~, to the state of North Dakota, or to a political subdivision or
10 public body within the state, to facilitate the ~~Garrison Diversion Conservancy~~
11 ~~District's~~ state water commission's acquisition, construction, reconstruction, or
12 improvement of one or more Red River valley water supply projects, or any
13 feasibility study or preliminary economic, engineering, or legal work relating to any
14 Red River valley water supply project.
- 15 13. Refund and refinance its bonds from time to time as often as it is advantageous
16 and in the interest of the authority.
- 17 14. Pledge any and all income, profits, and revenues received by the authority in
18 connection with the operation, lease, sale, or other disposition of all or any part of a
19 project to secure the payment of bonds issued and sold to finance the project or
20 otherwise.
- 21 15. Prescribe, revise, and collect rates, fees, tolls, or charges for the services, facilities,
22 or commodities furnished by the authority, and in anticipation of the collection of
23 the revenues of the authority, issue revenue bonds to finance all or part of the
24 costs of the acquisition, construction, reconstruction, improvement, betterment, or
25 extension of a project.
- 26 16. Pledge revenues of the authority to the punctual payment of principal and interest
27 on bonds or water purchase contract obligations. A pledge under this subsection
28 applies to the revenues of improvements, betterments, or extensions of the
29 authority which may be constructed or acquired after the issuance of bonds, the
30 revenues of existing systems, plants, works, instrumentalities, and properties of
31 any part of the authority improved, bettered, or extended, and the revenues

1 received from payments made under water sale contracts between the authority
2 and persons that contract to purchase water from the authority.

3 17. Make all contracts, execute all instruments, and do all things necessary or
4 convenient in the exercise of its powers or in the performance of its covenants or
5 duties or in order to secure the payment of its bonds, but an encumbrance,
6 mortgage, or other pledge of property of the authority may not be created by any
7 such contract or instrument.

8 18. Accept from any authorized federal agency loans or grants for the planning,
9 construction, acquisition, lease, or other provision of a project, and to enter into
10 agreements with the agency respecting the loan or grants.

11 19. Contract debts and borrow money, pledge property of the authority for repayment
12 of indebtedness other than bonded indebtedness, and provide for payment of
13 debts and expenses of the authority.

14 20. Operate and manage the authority to distribute water to western Minnesota cities
15 that are members of the authority.

16 Property of the authority may not be liable to be forfeited or taken in payment of any bonds
17 issued under this chapter, and debt on the general credit of the authority may not be incurred in
18 any manner for payment of bonds under this chapter.

19 **SECTION 14. AMENDMENT.** Section 61-39-16 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **61-39-16. Project - Definition.** As used in this chapter, unless the context otherwise
22 requires, the term project means either a system, plant, works, instrumentality, or property used
23 to provide water supply in connection with the Red River valley water supply project, or a
24 contract for the purchase of water, ~~including a contract for the bulk purchase of water from the~~
25 ~~Garrison Diversion Conservancy District delivered by means of a Red River valley water supply~~
26 ~~project.~~

27 **SECTION 15. REPEAL.** Section 57-15-26.8 and chapter 61-24 of the North Dakota
28 Century Code are repealed.

29 **SECTION 16. EFFECTIVE DATE.** This Act is effective for taxable years beginning
30 after December 31, 2008.