

Introduced by

1 A BILL for an Act to create and enact chapter 40-22.2 of the North Dakota Century Code,
2 relating to authority for municipalities to establish special assessment districts for residential
3 energy efficiency improvements.

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

5 **SECTION 1.** Chapter 40-22.2 of the North Dakota Century Code is created and enacted as
6 follows:

7 **40-22.2-01. Improvements by special assessments for residential energy efficiency**
8 **projects.**

9 A municipality may defray the expense of improvements by special assessments for
10 residential energy efficiency projects. The governing body of the municipality may make and
11 execute necessary or convenient agreements to exercise the powers and functions under this
12 chapter, including contracts with any entity. In planning an improvement project under this
13 chapter, the governing body may include any work and materials which are deemed necessary
14 or reasonably incidental to the project. A municipality may issue warrants, bonds, or any other
15 form of indebtedness in anticipation of the levy and collection of assessments under this
16 chapter.

17 **40-22.2-02. Improvement districts to be created.**

18 For an improvement project authorized under section 40-22.2-01 and defraying the costs of
19 the project by special assessments, a municipality may create and alter a residential energy
20 efficiency project district by ordinance or resolution. The governing body of the municipality shall
21 designate the district by an appropriate name and by a number distinguishing it from other
22 improvement districts. A municipality may make and finance any improvement and levy special
23 assessments for the improvement under any alternate procedure in this chapter on its own
24 motion or if the proposal for creation of an improvement project under this chapter is made by

1 any person, group, or entity that is not an officer, board, or agency of the municipality, and the
2 person, group, or entity files a bond or other sufficient security with the city auditor, payable to
3 the municipality, to defray all costs incurred by the municipality if the improvement project is
4 later abandoned. The governing body of the municipality shall determine the amount and form
5 of the bond or other sufficient security required under this section.

6 **40-22.2-03. Size and form of improvement district - Regulations governing.**

7 Any residential energy efficiency improvement district created by a municipality may
8 embrace two or more separate property areas. A residential energy efficiency improvement
9 district must include all residential properties for which the property owner has elected to
10 participate by filing consent in the form required by the governing body and which, after
11 consultation by the governing body with the city auditor or city auditor's designee planning the
12 improvement, the governing body believes will be benefited by the creation of all or a portion of
13 the residential energy efficiency project. A district may be created without uniformity among the
14 types, items, or quantities of work and materials to be used at particular locations throughout
15 the district. The jurisdiction of a municipality to make, finance, and assess the cost of any
16 improvement project may not be impaired by any lack of commonness, unity, or singleness of
17 the location, purpose, or character of the improvement, or by the fact that any one or more of
18 the properties included in the district is subsequently determined not to be benefited by all or
19 part of the improvement or the owners of one or more of the properties ultimately declines to
20 participate in the improvements.

21 **40-22.2-04. Auditor's report required - Contents.**

22 After a residential energy efficiency project district has been created, the governing body of
23 the municipality, to make residential energy efficiency improvements in the manner provided in
24 this chapter, shall direct the city auditor for the municipality or some other person, group, or
25 entity to prepare a report as to the general nature, purpose, and feasibility of the proposed
26 improvement and an estimate of the probable cost of the work. Estimated probable cost of the
27 work must be provided in a manner that allows a residential property owner to determine the
28 estimated cost of each type of energy efficiency improvement available under the project for the
29 owner's property, based on a list of types of energy efficiency improvements approved by the
30 governing body for inclusion in the project.

1 **40-22.2-05. Approval of plans, specifications, and estimates.**

2 At any time after receiving the report required by section 40-22.2-04, the governing body
3 may direct the city auditor or other person, group, or other entity preparing the report to prepare
4 detailed plans and specifications that are suitable for presentation to residential property owners
5 in a manner that allows a residential property owner to determine the estimated cost of each
6 type of energy efficiency improvement available under the project for the owner's property if the
7 owner elects to participate and have the cost of one or more of the improvements, plus a
8 proportional share of the cost to the municipality of conducting the project, assessed as special
9 assessments against the property. The plans and specifications must be approved by a
10 resolution of the governing body of the municipality. The plans, specifications, and estimates
11 must be made available to property owners in a manner directed by the governing body and
12 must be filed in the office of the city auditor and remain on file in that office subject to inspection
13 by the public.

14 **40-22.2-06. Resolution declaring improvements necessary - Contents of resolution -**
15 **Publication of resolution.**

16 After the report required by section 40-22.2-04 has been filed and approved, the governing
17 body of the municipality shall declare by resolution that it is necessary to make the
18 improvements. The resolution must refer intelligibly to the report and must include a map of the
19 municipality showing the proposed residential energy efficiency project district. The resolution
20 must establish a filing deadline for property owners who elect to participate to file their consent
21 in the form required by the governing body. The resolution must be published once each week
22 for two consecutive weeks in the official newspaper of the municipality.

23 **40-22.2-07. Execution and filing of contracts.**

24 All contracts under this chapter must be entered in the name of the municipality and must
25 be executed for the municipality by the executive officer and countersigned by the auditor. After
26 the contract is signed by the other party, it must be filed in the office of the city auditor.

27 **40-22.2-08. Contracts - Conditions and terms.**

28 A contract executed under this chapter must require the work to be done pursuant to the
29 plans and specifications on file in the office of the city auditor, subject to the approval of the city
30 auditor acting for the municipality, and must provide:

- 1 1. The governing body may suspend the work at any time for improper performance and
2 relet the contract or order reperformance of all or any of the work improperly done.
- 3 2. The time within which the work is to be completed.
- 4 3. The period of time for which the work must be guaranteed or warranted.
- 5 4. The fund from which the contract price is to be paid by the municipality.
- 6 5. That the consideration expressed in the contract is payable only in warrants drawn on
7 the fund described in the contract.
- 8 6. That the municipality assumes and incurs no general liability under the contract.
- 9 7. That the failure of the city auditor to reject work and materials which are not up to
10 specifications and acceptance of the job by the city auditor does not release the party
11 from liability for any failure to perform work or furnish materials in accordance with the
12 plans and specifications.

13 The city auditor, or the city auditor's designee, acting for the municipality shall supervise and
14 inspect the work during its progress. In addition to any rights a municipality may have under its
15 contract for establishment and operation of part or all of a residential energy efficiency
16 improvement after a contract has been awarded and before contract work has been completed,
17 a municipality, with the consent of the other party and without advertising for bids, may order
18 additional work done by that party of the same character as that which was contracted for,
19 whether within or without the improvement district for which the original contract was made, and
20 upon the same terms and conditions specified in the original contract except as to time of
21 performance, and at a total price payable to said party for such additional work not exceeding
22 twenty percent more than the amount estimated by the city auditor for the municipality to be
23 payable for that character of work under the original contract.

24 **40-22.2-09. Abbreviations, letters, and figures may be used in proceedings for levy**
25 **and collection of special assessments.**

26 In all proceedings for the levy and collection of special assessments, abbreviations, letters,
27 and figures may be used to denote full or partial additions, lots, blocks, sections, townships, and
28 ranges or years, days of the month, and amounts of money.

1 **40-22.2-10. City auditor to keep complete record of improvements - Record as**
2 **evidence.**

3 The city auditor shall keep a complete record of all the proceedings in the matter of making
4 any improvements under this chapter. The records must include all reports and confirmations,
5 all petitions, orders, appointments of commissioners, notices and proofs of publication, and
6 resolutions of the governing body. The records, a certified transcript of the records, or the
7 original papers, proofs, publications, orders, or resolutions on file in the city auditor's office may
8 be admitted in evidence in any court or place in this state without further proof as evidence of
9 the facts they contain.

10 **40-22.2-11. Defects and irregularities in improvement proceedings are not fatal.**

11 If the proceedings are for a lawful purpose, unaffected by fraud, and do not violate any
12 constitutional limitation or restriction, defects or irregularities in proceedings under this chapter
13 do not invalidate the proceedings. No action may be commenced or maintained and no defense
14 or counterclaim in any action may be recognized in the courts of this state founded on any
15 defects or irregularities in proceedings under this chapter, unless commenced within thirty days
16 of the adoption of the resolution of the governing body awarding the sale of warrants to finance
17 the improvement.

18 **40-22.2-12. City auditor's statement of estimated cost required - Governing body to**
19 **enter contracts.**

20 Before adopting or rejecting any contract proposed under this chapter, the governing body
21 shall require the city auditor for the municipality to make a careful and detailed statement of the
22 estimated cost of the work based on bids received. The governing body may seek and accept
23 bids on all or any part of the types of energy efficiency improvements approved by the
24 governing body for inclusion in the project. The governing body may not award the contract if
25 the city auditor's estimate prepared under this section exceeds the estimate prepared under
26 section 40-22.1-04. If all proposals are not rejected, the governing body shall award the contract
27 to the party or parties best able to perform the work, upon the basis of cash payment for the
28 work.

1 **40-22.2-13. Residential property owner election to participate and subject property to**
2 **special assessments.**

3 When the governing body has awarded contracts under this chapter, the governing body
4 shall cause preparation of estimated contract cost of work in a manner that allows a residential
5 property owner to determine estimated cost of each type of energy efficiency improvement
6 available under the project for the owner's property and file with the governing body the owner's
7 acceptance of any or all types of energy efficiency improvement available under the project for
8 the owner's property and acceptance of imposition of the cost of any accepted work as special
9 assessments against the property. Improvements under this chapter may not be made to any
10 residential property for which the owner has not filed acceptance under this section.