

HOUSE BILL NO. 1322

Introduced by

Representatives B. Koppelman, Belter, Dockter, Headland, Louser, Owens, Rohr, Streyle,
Toman

Senators Larsen, Luick, Unruh

1 A BILL for an Act to amend and reenact sections 40-22-01, 40-23-05, 40-23.1-04, 40-24-18, and
2 40-27-05 of the North Dakota Century Code, relating to allowable costs in improvements by
3 special assessments; and to provide for application.

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

5 **SECTION 1. AMENDMENT.** Section 40-22-01 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **40-22-01. Power of municipalities to defray expense of improvementscapital projects**
8 **by special assessments.**

9 Any municipality, upon complying with the provisions of this chapter, may defray the
10 expense of any or all of the following types of improvementscapital projects by special
11 assessments:

- 12 1. The construction of a water supply system, or a sewerage system, or both, ~~or any part~~
13 ~~thereof~~, or any improvement ~~thereto~~ or extension or replacement ~~thereof~~ of a system,
14 including the construction and erection of wells, intakes, pumping stations, settling
15 basins, filtration plants, standpipes, water towers, reservoirs, water mains, sanitary
16 and storm sewer mains and outlets, facilities for the treatment and disposal of sewage
17 and other municipal, industrial, and domestic wastes, and all other appurtenances,
18 contrivances, and structures used or useful for a complete water supply and sewerage
19 system. Expenses for general maintenance or operation of a water supply and
20 sewerage system may not be defrayed by special assessments.
- 21 2. The ~~improvement~~construction of the municipal street system and any part thereof,
22 including any one or more of the processes of acquisition, opening, widening, grading,
23 graveling, paving, repaving, surfacing with tar, asphalt, bituminous, or other

1 appropriate material, ~~or~~ resurfacing; ~~or~~ resealing; ~~and repairing~~ of any street, highway,
2 avenue, alley, or public place within the municipality, and the construction and
3 reconstruction of overhead pedestrian bridges, pedestrian tunnels, storm sewers,
4 curbs and gutters, sidewalks, and service connections for water and other utilities, and
5 the installation, ~~operation, and maintenance~~ of streetlights and all types of decorative
6 streetlighting, including ~~but not restricted to~~ Christmas streetlighting decorations.

7 Expenses for general maintenance or operation of a municipal street system or any
8 other project authorized under this subsection may not be defrayed by special
9 assessments.

- 10 3. The improvement of boulevards and other public places by the planting of trees, the
11 construction of grass plots and the sowing of grass seed therein, ~~and the maintenance~~
12 ~~and preservation of such improvements by the watering of such trees and grass, the~~
13 ~~cutting of such grass, and the trimming of such trees, or otherwise in any manner~~
14 ~~which may appear necessary and proper to the governing body of the municipality.~~

15 Expenses for general maintenance or operation of a project authorized under this
16 subsection may not be defrayed by special assessments.

- 17 4. The acquiring of the necessary land and easements and the construction of the
18 necessary works, within and without the municipality, for flood protection of properties
19 within the municipality. Expenses for general maintenance or operation of a project
20 authorized under this subsection may not be defrayed by special assessments.

- 21 5. The acquiring or leasing of the necessary property and easements and the
22 construction of parking lots, ramps, garages, and other facilities for motor vehicles.
23 Expenses for general maintenance or operation of a project authorized under this
24 subsection may not be defrayed by special assessments.

25 In planning an improvement project of a type specified in any one of the foregoing subsections,
26 the governing body may not include in such plans any ~~and all~~ items of work and materials which
27 ~~in its judgment are necessary or reasonably incidental to the completion of an improvement~~
28 ~~project of such type or any fees not specifically authorized by law. Only costs actually incurred~~
29 may be included in the cost of a project. The governing body may not include in the cost of a
30 project any work performed by an employee of the municipality unless that cost is unique to the
31 project and is separately tracked to demonstrate that it is. The governing body may only include

1 engineering and architect fees for third party architects and engineers. If the architect or
2 engineer is an employee of the municipality, no additional costs may be included unless that
3 cost is unique to the project and is separately tracked to demonstrate that it is. A charter or
4 ordinance or act of the governing body of a city or county under home rule authority may not
5 supersede the limitations of this section.

6 **SECTION 2. AMENDMENT.** Section 40-23-05 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **40-23-05. Notice to special assessment commission.**

9 At any time after the contract and bond for any work for which a special assessment is
10 required have been executed and approved by the governing body of the municipality and the
11 total cost of such work shall have been estimated as nearly as practicable, the governing body
12 may direct assessments to be levied for the payment of all or any part of such cost, and the city
13 auditor shall notify the chairman of the special assessment commission and shall certify to the
14 chairman the items of the total cost thereof so far as the same have been ascertained. The
15 chairman immediately shall call a meeting of the commission, which shall proceed as
16 expeditiously as possible to make and return the special assessment as provided in this
17 chapter. The total cost of the improvement which may be certified to the assessment
18 commission ~~shall~~may include the estimated construction cost under the terms of the contract; a
19 reasonable allowance as determined by the governing body for cost of extra construction work
20 which may be authorized under the plans and specifications; ~~;~~ engineering, fiscal agent's and
21 attorney's fees for any services in connection with the authorization and financing of the
22 improvement, if the services are provided by a third party not employed by the city; and the cost
23 of publication of required notices and printing of improvement warrants, ~~and all expenses~~
24 ~~incurred in the making of the improvement and levy of assessments therefor.~~ If any error is
25 made in estimating the cost, the governing body may direct a supplemental assessment to be
26 made as provided in section 40-26-02.

27 **SECTION 3. AMENDMENT.** Section 40-23.1-04 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **40-23.1-04. Levy of assessments - Items included in cost of improvement.**

30 At any time after the contract and bond for any work for which a special assessment is
31 required have been executed and approved by the governing body of the municipality and the

1 total cost of such work shall have been estimated as nearly as practicable, the governing body
2 may direct assessments to be levied for the payment of all or any part of such cost, and the city
3 auditor shall ascertain and return, as provided in this chapter, the total assessment against each
4 separate lot, tract, or parcel of land in the improvement district. The total cost of the
5 improvement shall include the estimated construction cost under the terms of the contract; a
6 reasonable allowance as determined by the governing body for cost of extra construction work
7 which may be authorized under the plans and specifications; engineering, fiscal agent's, and
8 attorney's fees for any services in connection with the authorization and financing of the
9 improvement, if the services are provided by a third party not employed by the city; and the cost
10 of publication of required notices and printing of improvement warrants; and all expenses-
11 incurred in the making of the improvement and levy of assessment therefor. In the event that if
12 any error is made in estimating the cost, the governing body may direct a supplemental
13 assessment to be made as provided in section 40-26-02.

14 **SECTION 4. AMENDMENT.** Section 40-24-18 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **40-24-18. Special improvement moneys to be kept separate - Designation and**
17 **numbering of funds - Diversion of moneys prohibited.**

18 All special assessments and taxes levied and other revenues pledged under the provisions
19 of this title to pay the cost of an improvement shall constitute a fund for the payment of such
20 cost, including all principal of and interest on warrants and other obligations issued by the
21 municipality to finance the improvement, and shall be diverted to no other purpose. The city-
22 auditor shall hold all moneys received for any such fund as a special fund to be applied to
23 payment for the improvement. Each such fund shall be designated by the name and number of
24 the improvement district in or for which said special assessments, taxes, and revenues are
25 collected. When all principal and interest on warrants and other obligations of the fund have
26 been fully paid, all moneys remaining if less than one thousand dollars remains in a fund may it
27 must be transferred into the general fund of the municipality. If one thousand dollars or more
28 remains in the special fund after the payment of the principal of all the warrants and other
29 obligations and the interest thereon, the balance must be returned to the owners of the property
30 against which assessments were levied, on a pro rata basis.

1 **SECTION 5. AMENDMENT.** Section 40-27-05 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **40-27-05. Special fund for payment of bonds issued for purchase of special**
4 **assessment warrants - Tax levy.**

5 The governing body of a municipality which issues bonds for the purchase of special
6 assessment warrants shall create a special fund for the payment of the principal and interest of
7 such bonds as they become due and shall credit to such fund all special assessments collected
8 for the payment of the special assessment warrants purchased. The governing body shall make
9 a general tax levy annually on all the property in the municipality which, together with the
10 special assessments collected, shall be sufficient to pay the principal and interest of the bonds
11 when they become due. The levy imposed shall not be subject to any of the tax levy limitations
12 imposed by section 57-15-08 or acts amendatory thereof. If any money less than one thousand
13 dollars remains in the special fund after the payment of the principal of all the bonds and the
14 interest thereon, such balance may~~may~~must be transferred to the general fund. If one thousand
15 dollars or more remains in the special fund after the payment of the principal of all the bonds
16 and the interest thereon, such balance must be returned to the owners of the property against
17 which assessments were levied, on a pro rata basis.

18 **SECTION 6. APPLICATION.** This Act is effective for special assessment district projects
19 initiated by approval of an engineer's report after December 31, 2014.