

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.~~ for an Act to provide for a legislative
4 management study of special assessments.

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

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

8 ~~— **40-22-01. Power of municipalities to defray expense of improvements** capital projects~~
9 ~~**by special assessments.**~~

10 ~~— Any municipality, upon complying with the provisions of this chapter, may defray the~~
11 ~~expense of any or all of the following types of improvements~~ capital projects ~~by special~~
12 ~~assessments:~~

13 ~~— 1. The construction of a water supply system, or a sewerage system, or both, or any part~~
14 ~~thereof, or any improvement thereto or extension or replacement thereof~~ of a system,
15 ~~including the construction and erection of wells, intakes, pumping stations, settling~~
16 ~~basins, filtration plants, standpipes, water towers, reservoirs, water mains, sanitary~~
17 ~~and storm sewer mains and outlets, facilities for the treatment and disposal of sewage~~
18 ~~and other municipal, industrial, and domestic wastes, and all other appurtenances,~~
19 ~~contrivances, and structures used or useful for a complete water supply and sewerage~~
20 ~~system. Expenses for general maintenance or operation of a water supply and~~
21 ~~sewerage system may not be defrayed by special assessments.~~

22 ~~— 2. The improvement~~ construction ~~of the municipal street system and any part thereof,~~
23 ~~including any one or more of the processes of acquisition, opening, widening, grading,~~

1 graveling, paving, repaving, surfacing with tar, asphalt, bituminous, or other
2 appropriate material, or resurfacing, or resealing, and repairing of any street, highway,
3 avenue, alley, or public place within the municipality, and the construction and
4 reconstruction of overhead pedestrian bridges, pedestrian tunnels, storm sewers,
5 curbs and gutters, sidewalks, and service connections for water and other utilities, and
6 the installation, operation, and maintenance of streetlights and all types of decorative
7 streetlighting, including but not restricted to Christmas streetlighting decorations.
8 Expenses for general maintenance or operation of a municipal street system or any
9 other project authorized under this subsection may not be defrayed by special
10 assessments.

11 ~~3.~~ The improvement of boulevards and other public places by the planting of trees, the
12 construction of grass plots and the sowing of grass seed therein, and the maintenance
13 and preservation of such improvements by the watering of such trees and grass, the
14 cutting of such grass, and the trimming of such trees, or otherwise in any manner
15 which may appear necessary and proper to the governing body of the municipality.
16 Expenses for general maintenance or operation of a project authorized under this
17 subsection may not be defrayed by special assessments.

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

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

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

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

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

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

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

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

1 ~~— **40-23.1-04. Levy of assessments – Items included in cost of improvement.**~~

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

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

19 ~~— **40-24-18. Special improvement moneys to be kept separate – Designation and**~~
20 ~~**numbering of funds – Diversion of moneys prohibited.**~~

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

~~obligations and the interest thereon, the balance must be returned to the owners of the property against which assessments were levied, on a pro rata basis.~~

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

~~40-27-05. Special fund for payment of bonds issued for purchase of special assessment warrants – Tax levy.~~

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

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

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - SPECIAL ASSESSMENTS. During the 2015-16 interim, the legislative management shall consider studying the use of special assessments by political subdivisions. The study must include how special assessment and improvement districts across the state are determined and created, how administrative costs are calculated in determining project costs, how project costs are distributed among affected property owners, and how excess revenues and fees collected by the special assessment and improvement districts are handled. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly.