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Sixty-ninth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2153

Introduced by

Senators Dwyer, Sorvaag, Weber

Representatives Brandenburg, Mitskog, Hagert

- 1 A BILL for an Act to amend and reenact subsection 9 of section 61-02-02 of the North Dakota
2 Century Code, relating to water conveyance projects and works.

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

4 **SECTION 1. AMENDMENT.** Subsection 9 of section 61-02-02 of the North Dakota Century
5 Code is amended and reenacted as follows:

- 6 9. "Project" means a water conveyance project or any one of the works defined in
7 subsection ~~4011~~, or any combination of such works, which are physically connected or
8 jointly managed and operated as a single unit.

- a. All property rights, easements, and franchises relating to and deemed necessary or convenient for their operation;
- b. All water rights acquired and exercised by the commission in connection with such works;
- c. All means of conserving and distributing water, including reservoirs, dams, diversion canals, distributing canals, channels, lateral ditches, pumping units, mains, pipelines, treatment plants, and waterworks systems; and
- d. All works for the conservation, control, development, storage, treatment, distribution, and utilization of water, including works for the purpose of irrigation, flood control, watering stock, supplying water for public, domestic, industrial, and recreational use, fire protection, and the draining of lands injured or in danger of injury as a result of such water utilization.

61-02-03. Apportioning or allocating water rights by commission.

In case any water rights shall be acquired or exercised by the commission in connection with two or more works and projects, the commission, by resolution, shall apportion or allocate to each of such works or projects such part of such water rights as it may determine, and upon adoption of such a resolution, such water rights shall be deemed to be a part of each of such works and projects to the extent that such water rights have been so apportioned or allocated thereto respectively.

61-02-04. State water commission - Members - Terms - Qualifications.

The state water commission consists of the governor, agriculture commissioner, and eight other members appointed by the governor who shall take into account reasonable geographic considerations in making the appointments with the intent of having each of the eight major drainage basins represented by a commissioner who resides in the basin. The major drainage basins are the upper Missouri River basin; the lower Missouri River basin; the James River basin; the upper Red River basin; the lower Red River basin; the Mouse River basin; the Devils Lake basin; and the Little Missouri River, upper Heart River, and upper Cannonball River basin. The governor or the agriculture commissioner, or both, may appoint a representative to serve in that official's capacity at meetings that official is unable to attend. The eight appointive members of the commission must be appointed for a term of six years each with the terms of office so arranged that not more than four terms expire on the first day of July of each odd-numbered year. Each appointive member must be a qualified elector of the state and is subject to removal by judicial procedure. In case of a vacancy, the vacancy must be filled by appointment by the governor for the remainder of the unexpired term. Before entering upon the discharge of official duties, each appointive member shall take, subscribe, and file with the secretary of state the oath prescribed for civil officers.

61-02-04.1. Conflict of interest.

1. A member of the commission who has a direct or indirect personal or pecuniary interest in a matter before the commission must disclose that fact to the commission and may not participate in or vote on that particular matter.
2. Sections 12.1-13-02, 12.1-13-03, and 48-01.2-08 do not apply to contracts in which a member of the commission is directly or indirectly interested if the requirements of subsection 1 have been met.

61-02-05. Chairman of commission.

The governor is the chairman of the commission. The governor shall designate a vice chairman from the members of the commission. The director of the department of water resources is the secretary of the commission.

61-02-06. Principal and branch offices of commission.

The commission shall maintain its principal office in the city of Bismarck and may maintain such branch offices in the state as it may determine.

of watercourses and deepening or widening of existing drains are eligible for reimbursement. The commission shall require a water project sponsor to maintain a capital improvement fund from the rates charged customers for future extraordinary maintenance projects as condition of funding an extraordinary maintenance project.

4. May not determine program eligibility of water supply projects based on affordability. However, affordability may be used in prioritizing projects for that purpose.

61-02-01.5. North Dakota outdoor heritage fund grants - Effect on local cost-share.

Repealed by S.L. 2021, ch. 489, § 2.

61-02-02. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Commission" means the state water commission.
2. "Cost of works" includes:
 - a. The cost of construction, the cost of all lands, property rights, water rights, easements, and franchises acquired which are deemed necessary for such construction;
 - b. The cost of all water rights acquired or exercised by the commission in connection with the works;
 - c. The cost of all machinery and equipment, financing charges, interest before and during construction and for a period not exceeding three years after the completion of construction;
 - d. The cost of engineering and legal expenses, plans, specifications, surveys, estimates of cost, and other expenses necessary or incident to determining the feasibility or practicability of a project;
 - e. Administrative expenses;
 - f. The construction of the works and the placing of the works in operation; and
 - g. Other expenses necessary or incident to the financing authorized in this chapter, including funding of debt service, repair and replacement reserves, capitalized interest, and the payment of bond issuance costs.
3. "Cost-share" means funds appropriated by the legislative assembly or otherwise transferred by the commission to a local entity under commission policy as reimbursement for a percentage of the total approved cost of a project approved by the commission.
4. "Economic analysis" means an estimate of economic benefits and direct costs that result from the development of a project.
5. "Grant" means a one-time sum of money appropriated by the legislative assembly and transferred by the commission to a local entity for a particular purpose. A grant is not dependent on the local entity providing a particular percentage of the cost of the project.
6. "Life cycle analysis" means the summation of all costs associated with the anticipated useful life of a project, including project development, land, construction, operation, maintenance, and disposal or decommissioning.
7. "Loan" means an amount of money lent to a sponsor of a project approved by the commission to assist with funding approved project components. A loan may be stand-alone financial assistance.
8. "Owner" includes all individuals, associations, corporations, limited liability companies, districts, municipalities, and other political subdivisions of this state having any title or interest in any properties, rights, water rights, easements, or franchises to be acquired.
9. "Project" means any one of the works defined in subsection 10, or any combination of such works, which are physically connected or jointly managed and operated as a single unit.
10. "Water conveyance project" means any assessment drain, streambank stabilization, or snagging and clearing of water courses.
11. "Works" includes: