

Introduced by

1 A BILL for an Act to authorize the governor to negotiate reserved water rights of the United  
2 States and federally recognized Indian tribes.

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

4 **SECTION 1. Negotiation for reserved water rights.**

- 5 1. The governor or the governor's designee may negotiate with any federally  
6 recognized Indian tribe claiming a reserved water right in North Dakota and  
7 representatives of the federal government as trustee for the federally recognized  
8 Indian tribe to define the scope and attributes of rights to water claimed by the  
9 Indian tribe. The governor or the governor's designee may also negotiate with the  
10 federal government to define the scope and attributes of non-Indian reserved water  
11 rights claimed by the federal government.
- 12 2. During negotiations conducted under subsection 1, the governor or the governor's  
13 designee, in the manner the governor or the governor's designee determines  
14 appropriate, shall provide public notice of the negotiations and shall allow public  
15 input.

16 **SECTION 2. Agreement.**

- 17 1. When the governor or the governor's designee and representatives of any federally  
18 recognized Indian tribe claiming a federal reserved water right in North Dakota and  
19 the federal government as trustee for the federally recognized Indian tribe have  
20 completed an agreement, the agreement, upon approval of the legislative  
21 assembly, must be signed by the governor on behalf of the state of North Dakota  
22 and by authorized representatives of the Indian tribe and the federal government  
23 as trustee for the Indian tribe.
- 24 2. When the governor or the governor's designee and the federal government with  
25 regard to non-Indian reserved water rights have completed an agreement, the  
26 agreement, upon approval of the legislative assembly, must be signed by the

1            governor on behalf of the state of North Dakota and by authorized representatives  
2            of the federal government.

3            3. The agreement must have the approval of the legislative assembly by concurrent  
4            resolution approved by a majority vote of the members-elect of each house of the  
5            legislative assembly.

6            **SECTION 3. Notice to persons affected by agreement.** After signing the agreement,  
7 the governor or the governor's designee shall give written notice to the owners of water right  
8 permits, including the holders of conditional permits, who may be affected by the agreement,  
9 that the agreement has been signed, the time and manner for filing an exception to the  
10 agreement, and the telephone number or address at which a copy of the agreement may be  
11 requested. The notice must be served in the manner allowed for service under the North  
12 Dakota Rules of Civil Procedure or by depositing the notice in the United States mail or with a  
13 third-party commercial carrier, postage or shipping prepaid, and directed to the owner's or  
14 holder's last reasonably ascertainable address.

15            **SECTION 4. Effective date of agreement - Remand.**

16            1. An agreement negotiated under section 1 of this Act is not effective until  
17            incorporated in a final order of the state engineer after the state engineer has  
18            provided an opportunity for the owners of water rights, including the holders of  
19            conditional permits that may be affected by the agreement, to file an exception to  
20            the agreement.

21            2. Once an exception is filed with the state engineer, the proceeding is deemed to be  
22            an adjudicative proceeding under chapter 28-32 and the provisions of chapter  
23            28-32 apply to proceedings to sustain or reject exceptions. The state engineer  
24            shall appoint an administrative law judge or request the office of administrative  
25            hearings to designate an administrative law judge to preside over the proceedings.

26            3. If the administrative law judge does not sustain an exception, the state engineer  
27            shall issue a final order incorporating the agreement as submitted without  
28            alteration.

29            4. If the administrative law judge sustains an exception to the agreement, the  
30            administrative law judge shall remand the agreement to the governor or the

1                    governor's designee for further negotiation according to sections 1 through 5 of this  
2                    Act, if desired by the parties to the agreement.

3                    **SECTION 5. Procedures after remand of agreement.** Within one hundred eighty  
4 days after the administrative law judge remands the agreement under section 4 of this Act, the  
5 governor or the governor's designee shall file with the administrative law judge:

- 6                    1. An amended agreement complying with section 2 of this Act, which is subject to  
7                    the procedures specified by sections 3 and 4 of this Act;
- 8                    2. A motion to dismiss the proceedings without prejudice; or
- 9                    3. A motion for a continuance.