

Introduced by

Senators Luick, Osland, Vedaa

Representatives Beadle, Mitskog, Pyle

1 A BILL for an Act to amend and reenact sections ~~61-02-01.3~~, 61-02-01.4, 61-02-02, 61-02-04,
2 61-02-07, and 61-02-14 of the North Dakota Century Code, relating to cost-sharing and duties
3 and membership of the state water commission.

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

5 ~~— **SECTION 1. AMENDMENT.** Section 61-02-01.3 of the North Dakota Century Code is~~
6 ~~amended and reenacted as follows:~~

7 ~~— **61-02-01.3. Comprehensive water development plan.**~~

8 ~~— Biennially, the commission shall develop and maintain a comprehensive water development~~
9 ~~plan organized on a river basin perspective, including which must include an inventory of future~~
10 ~~water projects for budgeting and planning purposes. As part of the commission's planning~~
11 ~~process, to facilitate local project sponsor participation and project prioritization, and to assist in~~
12 ~~education regarding life cycle analyses for municipal water supply projects, and economic~~
13 ~~analyses for flood control and water conveyance management projects expected to cost more~~
14 ~~than one million dollars, the commission shall develop a policy that outlines procedures for~~
15 ~~commissioner-hosted meetings within the upper Red River, lower Red River, James River,~~
16 ~~Mouse River, upper Missouri River, lower Missouri River, and Devils Lake drainage basins.~~

17 **SECTION 1. AMENDMENT.** Section 61-02-01.4 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **61-02-01.4. State water commission cost-share policy.**

20 The state water commission shall review, gather stakeholder input on, and rewrite as
21 necessary the commission's "Cost-share Policy, Procedure and General Requirements" and
22 "Project Prioritization Guidance" documents. The commission's cost-share policy:

23 1. Must provide a water supply project is eligible for a cost-share up to seventy-five
24 percent of the total eligible project costs.

- 1 2. May not determine program eligibility of water supply projects based on a population
2 growth factor. However, a population growth factor may be used in prioritizing projects
3 for that purpose.
- 4 3. Must consider all project costs potentially eligible for reimbursement, except the
5 commission shall exclude operations expense ~~and~~, regular maintenance, ~~including~~ and
6 removal of vegetative materials and sediment, for ~~water conveyance~~
7 ~~projects~~ assessment drains, and may exclude operations expense and regular
8 maintenance for other projects. Snagging and clearing of watercourses are not regular
9 maintenance. The commission shall require a water project sponsor to maintain a
10 capital improvement fund from the rates charged customers for future extraordinary
11 maintenance projects as condition of funding an extraordinary maintenance project.
- 12 4. May not determine program eligibility of water supply projects based on affordability.
13 However, affordability may be used in prioritizing projects for that purpose.

14 **SECTION 2. AMENDMENT.** Section 61-02-02 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **61-02-02. Definitions.**

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

- 18 1. "Commission" means the state water commission.
- 19 2. "Cost of works" includes:
 - 20 a. The cost of construction, the cost of all lands, property rights, water rights,
21 easements, and franchises acquired which are deemed necessary for such
22 construction;
 - 23 b. The cost of all water rights acquired or exercised by the commission in
24 connection with ~~such~~ the works;
 - 25 c. The cost of all machinery and equipment, financing charges, interest ~~prior-~~
26 ~~to~~ before and during construction and for a period not exceeding three years after
27 the completion of construction;
 - 28 d. The cost of engineering and legal expenses, plans, specifications, surveys,
29 estimates of cost, and other expenses necessary or incident to determining the
30 feasibility or practicability of ~~any~~ a project;
 - 31 e. Administrative expenses;

- 1 f. The construction of the works and the placing of the ~~samew~~works in operation; and
- 2 g. ~~Such other~~Other expenses ~~as may be~~ necessary or incident to the financing
- 3 authorized in this chapter, including funding of debt service, repair and
- 4 replacement reserves, capitalized interest, and the payment of bond issuance
- 5 costs.
- 6 3. "Cost-share" means funds appropriated by the legislative assembly or otherwise
- 7 transferred by the commission to a local entity under commission policy as
- 8 reimbursement for a percentage of the total approved cost of a project approved by
- 9 the commission.
- 10 4. "Economic analysis" means an estimate of economic benefits and direct costs that
- 11 result from the development of a project.
- 12 5. "Grant" means a one-time sum of money appropriated by the legislative assembly and
- 13 transferred by the commission to a local entity for a particular purpose. A grant is not
- 14 dependent on the local entity providing a particular percentage of the cost of the
- 15 project.
- 16 6. "Life cycle analysis" means the summation of all costs associated with the anticipated
- 17 useful life of a project, including project development, land, construction, operation,
- 18 maintenance, and disposal or decommissioning.
- 19 7. "Loan" means an amount of money lent to a sponsor of a project approved by the
- 20 commission to assist with funding approved project components. A loan may be
- 21 stand-alone financial assistance.
- 22 8. "Owner" includes all individuals, associations, corporations, limited liability companies,
- 23 districts, municipalities, and other political subdivisions of this state having any title or
- 24 interest in any properties, rights, water rights, easements, or franchises to be acquired.
- 25 9. "Project" means any one of the works defined in subsection 4110, or any combination
- 26 of such works, which are physically connected or jointly managed and operated as a
- 27 single unit.
- 28 10. "Water conveyance project" means any surface drainage works, bankassessment
- 29 drain, streambank stabilization, or snagging and clearing of water courses.
- 30 11. "Works" includes:

- 1 a. All property rights, easements, and franchises relating thereto and deemed
- 2 necessary or convenient for their operation;
- 3 b. All water rights acquired and exercised by the commission in connection with
- 4 such works;
- 5 c. All means of conserving and distributing water, including ~~without limiting the~~
- 6 ~~generality of the foregoing two subdivisions~~, reservoirs, dams, diversion canals,
- 7 distributing canals, channels, lateral ditches, pumping units, mains, pipelines,
- 8 treatment plants, and waterworks systems; and
- 9 d. All works for the conservation, control, development, storage, treatment,
- 10 distribution, and utilization of water, including ~~without limiting the generality of the~~
- 11 ~~foregoing subdivisions~~, works for the purpose of irrigation, flood control, watering
- 12 stock, supplying water for public, domestic, industrial, and recreational use, fire
- 13 protection, and the draining of lands injured or in danger of injury as a result of
- 14 such water utilization.

15 **SECTION 3. AMENDMENT.** Section 61-02-04 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **61-02-04. State water commission - Members - Terms - Qualifications.**

18 The state water commission consists of the governor, agriculture commissioner, and
19 ~~seven~~eight other members appointed by the governor who shall take into account reasonable
20 geographic considerations in making the appointments with the intent of having each of the
21 ~~seven~~eight major drainage basins represented by a commissioner who resides in the basin. The
22 major drainage basins are the upper Missouri River basin;; the lower Missouri River basin;; the
23 James River basin;; the upper Red River basin;; the lower Red River basin;; the Mouse River
24 basin,~~and~~; the Devils Lake basin; and the Little Missouri River, upper Heart River, and upper
25 Cannonball River basin. The governor or the agriculture commissioner, or both, may appoint a
26 representative to serve in that official's capacity at meetings that official is unable to attend. The
27 ~~seven~~eight appointive members of the commission must be appointed for a term of six years
28 each with the terms of office so arranged that ~~two terms and~~ not more than ~~three~~four terms
29 expire on the first day of July of each odd-numbered year. Each appointive member must be a
30 qualified elector of the state and is subject to removal by judicial procedure. In case of a
31 vacancy, the vacancy must be filled by appointment by the governor for the remainder of the

1 unexpired term. Before entering upon the discharge of official duties, each appointive member
2 shall take, subscribe, and file with the secretary of state the oath prescribed for civil officers.

3 **SECTION 4. AMENDMENT.** Section 61-02-07 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **61-02-07. Quorum - What constitutes.**

6 A majority of the members of the commission constitutes a quorum, and the affirmative or
7 negative vote of ~~five~~six members is necessary to bind the commission except for adjournment.

8 **SECTION 5. AMENDMENT.** Section 61-02-14 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **61-02-14. Powers and duties of the commission.**

11 The commission ~~shall have full and complete power, authority, and general jurisdiction is~~
12 authorized:

- 13 1. To investigate, plan, regulate, undertake, construct, establish, maintain, control,
14 operate, and supervise all works, dams, and projects, public and private, which in
15 ~~is~~the commission's judgment may be necessary or advisable:
 - 16 a. To control the low-water flow of streams in the state.
 - 17 b. To impound water for the improvement of municipal, industrial, and rural water
18 supplies.
 - 19 c. To control and regulate floodflow in the streams of the state to minimize the
20 damage of ~~such~~ floodwaters.
 - 21 d. To conserve and develop the waters within the natural watershed areas of the
22 state and, subject to vested rights, to divert the waters within a watershed area to
23 another watershed area and the waters of any river, lake, or stream into another
24 river, lake, or stream.
 - 25 e. To improve the channels of the streams for more efficient transportation of the
26 available water in the streams.
 - 27 f. To provide sufficient water flow for the abatement of stream pollution.
 - 28 g. To develop, restore, and stabilize the waters of the state for domestic,
29 agricultural, and municipal needs; ~~irrigation; flood control; recreation; and~~
30 wildlife conservation by the construction and maintenance of dams, reservoirs,
31 and diversion canals.

- 1 h. To promote the maintenance of existing drainage channels in agricultural lands
2 and to construct any needed channels.
- 3 i. To provide more satisfactory subsurface water supplies for the state's
4 municipalities ~~of the state~~.
- 5 j. To finance the construction, establishment, ~~operation~~, and extraordinary
6 maintenance of public ~~and private~~ works, dams, and irrigation projects, which in
7 its ~~the commission's~~ judgment may be necessary and advisable, ~~except the~~. The
8 commission may not provide a cost-share for the costs of operation ~~or~~, regular
9 maintenance, including or removal of vegetative materials and sediment, ~~of a~~
10 water conveyance project for assessment drains ~~or other man-made projects~~.
11 Snagging and clearing of watercourses are not regular maintenance.
- 12 k. To provide for the storage, development, diversion, delivery, and distribution of
13 water for the irrigation of agricultural land and supply water for municipal and
14 industrial purposes.
- 15 l. To provide for the drainage of lands injured by or susceptible of injury from
16 excessive rainfall or from the utilization of irrigation water, and subject to the
17 limitations prescribed by law, to aid and cooperate with the United States and any
18 department, agency, or officer ~~thereof~~ of the United States, and with any county,
19 township, drainage district, or irrigation district of this state, or of ~~other~~
20 ~~states~~ another state, in the construction or improvement of ~~such~~ the drains.
- 21 m. To provide water for stock.
- 22 n. To provide water for the generation of electric power and for mining and
23 manufacturing purposes.
- 24 2. To define, declare, and establish rules and regulations:
- 25 a. For the sale of waters and water rights to individuals, associations, corporations,
26 limited liability companies, municipalities, and other political subdivisions of the
27 state and for the delivery of water to users.
- 28 b. For the full and complete supervision, regulation, and control of the water
29 supplies within the state.
- 30 c. ~~Repealed by S.L. 1975, ch. 575, § 2.~~

- 1 d- Governing and providing for financing by local participants to the maximum
2 extent deemed practical and equitable in any water development project in which
3 the state participates in cooperation with the United States or with political
4 subdivisions or local entities.
- 5 3. To exercise full power and control of the construction, operation, and maintenance of
6 works and the collection of rates, charges, and revenues realized ~~therefrom~~from the
7 works.
- 8 4. To sell, lease, and otherwise distribute all waters which may be developed,
9 impounded, and diverted by the commission under ~~the provisions of~~ this chapter, for
10 the purposes of irrigation, the development of power, and the watering of livestock,
11 and for any other private or public use.
- 12 5. To exercise all express and implied rights, power, and authority that may be
13 necessary, and to do, perform, and carry out ~~all of~~ the expressed purposes of this
14 chapter and ~~all of~~ the purposes reasonably implied incidentally ~~thereto~~to or lawfully
15 connected ~~therewith~~with the expressed purposes of this chapter.
- 16 6. To acquire, own, and develop lands for irrigation and water conservation and to
17 acquire, own, and develop damsites and reservoir sites and to acquire easements and
18 rights of way for diversion and distributing systems.
- 19 7. To cooperate with the United States and any department, agency, or officer ~~thereof~~
20 the United States in the planning, establishment, operation, and maintenance of dams,
21 reservoirs, diversion and distributing systems, for the utilization of the waters of the
22 state for domestic, municipal, and industrial needs, irrigation, flood control, water
23 conservation, and generation of electric power and for mining, agricultural, and
24 manufacturing purposes, ~~and in this connection the state water. The~~ commission is
25 ~~hereby authorized~~may, within the limitations prescribed by law, ~~to~~ acquire, convey,
26 contribute, or grant to the United States, moneys, real and personal property, including
27 land or easements for dams and reservoir sites and rights of way and easements for
28 diversion and distribution systems or participate in the cost of any project.
- 29 8. To consider cost-sharing for water quality improvement projects.