

SENATE BILL NO. 2050

Introduced by

Legislative Council

(Water Resources Committee)

(Senator Traynor)
(Representative Jacobs)

1 A BILL for an Act to provide for creation of the Devils Lake basin water authority; and to amend
2 and reenact sections 54-10-14 and 61-32-03 of the North Dakota Century Code, relating to
3 political subdivision audits and drainage permits.

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

5 **SECTION 1. Definitions.** In sections 1 through 34 of this Act, unless the context
6 otherwise requires:

- 7 1. "Authority" means the Devils Lake basin water authority.
8 2. "Board" means the board of directors of the Devils Lake basin water authority.
9 3. "Hydrologic boundary" means a natural ridge on the land surface that divides one
10 drainage area from another.
11 4. "Project" means any project relating to the management, conservation, protection,
12 development, and control of water resources, for preventing flood damage in the
13 Devils Lake basin, or protecting and promoting the health, safety, and general
14 welfare of the people of the Devils Lake basin.

15 **SECTION 2. Devils Lake basin water authority.** The Devils Lake basin water
16 authority consists of that part of the counties of Benson, Cavalier, Nelson, Pierce, Ramsey,
17 Rolette, Towner, and Walsh which is included within the hydrologic boundaries of the Devils
18 Lake basin. Before October 1, 1997, the board of county commissioners of each county
19 comprising the Devils Lake basin water authority shall determine by resolution whether to join
20 the authority. The authority encompassing the entire land area within the hydrologic boundaries
21 of the Devils Lake basin becomes operative when counties comprising sixty-six percent of the
22 geographic land area of the Devils Lake basin have determined by resolution of the board of
23 county commissioners to join the authority. The authority is a governmental agency, body

1 politic and corporate, with the authority to exercise the power specified in, or reasonably implied
2 from, sections 1 through 34 of this Act.

3 **SECTION 3. Devils Lake basin subbasins.** For purposes of sections 1 through 34 of
4 this Act, the Devils Lake basin is divided into the following subbasins: Calio, Comstock, Devils
5 Lake, Edmore, Hurricane Lake, Mauvais Coulee, St. Joe, South Slope, Starkweather, and
6 Stump Lake. Each subbasin constitutes a water resource district and has the same authority,
7 powers, and duties as a water resource district under chapter 61-16.1. Notwithstanding any
8 other provision of law, the existing water resource districts or portions of a district which are
9 located within the boundaries of the authority are dissolved when the authority becomes
10 operative under section 2 of this Act. If a current water resource district lies inside as well as
11 outside the boundaries of the authority, that portion lying outside the boundaries of the authority
12 constitutes the existing water resource district and that portion lying within the boundaries of the
13 authority must be divided into subbasin districts in accordance with this section. Any
14 outstanding obligations, property, and equipment must be allocated based upon the location of
15 the property benefited by the project or apportioned to the subbasin district or districts in the
16 same proportion that the property located within the subbasin district or districts bears to the
17 existing water resource district. However, no water resource district may be dissolved if the
18 district has any outstanding warrants, bonds, or other obligations unless the authority provides
19 for a continuance of assessments upon properties within the dissolved district for the payment
20 of outstanding obligations or for an assumption of the obligations by the newly created district
21 and the spreading of the assessments over properties within the newly created district. The
22 new district shall continue all sinking funds created for the payment of the obligations until the
23 liquidation of the obligations. The boundaries of each subbasin must be approved by the board.
24 The subbasin water resource district board consists of three or five managers. If the subbasin
25 encompasses three or fewer counties, the board consists of three managers, and if the
26 subbasin encompasses more than three counties, the board consists of five managers. The
27 members of the subbasin water district board must be appointed by the board of county
28 commissioners of each county within which a portion of the subbasin is located in the same
29 proportion that the area of the subbasin within that county relates to the area of the entire
30 subbasin. Each county within which a portion of a subbasin is located shall appoint at least one

1 manager. Managers must reside within that portion of the subbasin which is within the county
2 making the appointment.

3 **SECTION 4. Survey.** The state engineer shall cause to be made a survey and map of
4 the hydrologic boundaries of the Devils Lake basin and each subbasin to be embraced within
5 the limits of the authority. The survey must show the courses and distances of the boundaries
6 and the quantity of land contained within the authority and each subbasin within the authority.
7 The survey must be made along quarter quarter property lines.

8 **SECTION 5. Board of directors - Officers - Meetings - Compensation.** The board
9 consists of eleven members. Each director must be a county commissioner and must reside
10 within the area comprising the authority. The boards of county commissioners of each county
11 shall choose the directors comprising the authority as follows: two from Ramsey County, two
12 from Benson County, two from Towner County, one from Cavalier County, one from Nelson
13 County, one from Pierce County, one from Rolette County, and one from Walsh County.
14 However, if none of the members of the board of county commissioners resides within the area
15 comprising the authority, the chairman of the board shall serve as a director and, if necessary,
16 the board of county commissioners shall appoint one additional member as a director. The
17 board shall elect from the directors a chairman, vice chairman, and secretary. The chairman
18 shall designate the time and place for the board to meet; however, the board shall meet if three
19 directors call for a meeting. The secretary shall notify, by mail, each director of meetings. The
20 board must meet at least once each quarter. A director is entitled to receive compensation in
21 the amount not to exceed the amount provided for members of the legislative council by section
22 54-35-10 and is entitled to be reimbursed for mileage and expenses in the amount provided for
23 state officials by sections 44-08-04 and 54-06-09.

24 **SECTION 6. Term of office of directors.** A member of the board shall hold office for
25 a term of four years, except that one-half of the initial directors shall hold office for a term of two
26 years, and one-half of the initial directors shall hold office for a term of four years. The directors
27 to serve a two-year term must be determined by lot. Initial appointments expire on June 30,
28 1999, and June 30, 2001, respectively. Directors appointed thereafter shall hold office for a
29 term of four years. If the office of any director becomes vacant by reason of the failure of any
30 director to qualify or for any other reason, the board of county commissioners of the county in
31 which the vacancy occurs shall appoint the director's successor to fill the vacancy. A director

1 appointed to fill a vacancy shall take office immediately and shall hold office for the unexpired
2 term of the director whose office has become vacant and until a successor has been appointed.
3 A director shall assume office on the first Monday in July following appointment.

4 **SECTION 7. Manager.** The board shall appoint a manager. The board may designate
5 the manager its general agent in respect to the operation and maintenance of any project, but
6 any agent is subject to the supervision, limitation, and control of the board.

7 **SECTION 8. Powers of the board.** The board may:

- 8 1. Sue and be sued in the name of the authority.
- 9 2. Exercise the power of eminent domain in the manner provided by title 32 for the
10 purpose of acquiring and securing any right, title, interest, estate, or easement
11 necessary to carry out the duties imposed by sections 1 through 34 of this Act.
12 Provided, however, that the authority, after making a written offer to purchase the
13 right, title, interest, estate, or easement and depositing the amount of the offer with
14 the clerk of the district court of the county wherein the property interest is located,
15 may take immediate possession of the interest in property, as authorized by
16 section 16 of article I of the Constitution of North Dakota. Within thirty days after
17 notice has been given in writing to the landowner by the clerk of the district court
18 that a deposit has been made for the taking of an interest in property as authorized
19 in this subsection, the owner of the property interest taken may appeal to the
20 district court by serving a notice of appeal upon the authority, and the matter must
21 be tried at the next regular or special term of court with a jury unless a jury is
22 waived, in the manner prescribed for trials under chapter 32-15.
- 23 3. Accept funds, property, services, and other assistance, financial or otherwise, from
24 any public or private source for the purpose of aiding and promoting the
25 construction, maintenance, and operation of any project, or any part of a project.
- 26 4. Cooperate and contract with the state, its agencies, or its political subdivisions, or
27 any agency of the United States, in research and investigation or other activities
28 promoting the establishment, construction, development, or operation of any
29 project, or any part of a project.
- 30 5. Furnish assurances of cooperation, and as principal or guarantor, or both, contract
31 with agencies of the United States, and with public corporations and political

- 1 subdivisions of this state for the performance of obligations for the construction,
2 operation, or maintenance of any project, or any part of a project.
- 3 6. Construct or purchase separately or in cooperation with agencies of the United
4 States, or this state or its agencies or political subdivisions, and equip, maintain,
5 and operate an office and principal place of business for the authority, or other
6 buildings or facilities to carry out activities authorized by sections 1 through 34 of
7 this Act.
- 8 7. Appoint and fix the compensation of employees to conduct the business and affairs
9 of the authority, and procure the services of engineers and other technical experts,
10 and retain an attorney to assist, advise, and act for it in its proceedings.
- 11 8. Appoint from the board an executive committee and delegate to the executive
12 committee the duties and work of the board in connection with the business affairs
13 involved in the development, construction, operation, and maintenance of any
14 project, or any part of a project.
- 15 9. Contract for a supply of water from the United States or the state water
16 commission and sell, lease, and otherwise contract to furnish any such water for
17 beneficial use to persons within or outside the authority.
- 18 10. Accept, on behalf of the authority, appointment of the authority as fiscal agent of
19 the United States or the state water commission and authorization to make
20 collections of money for and on behalf of the United States or the state water
21 commission in connection with any project, or any part of a project.
- 22 11. Sell or exchange any property purchased or acquired by the authority. All moneys
23 received pursuant to any sale or exchange must be deposited to the credit of the
24 authority and may be disbursed for the payment of expenses of the authority.
- 25 12. Construct, acquire, purchase, lease, alter, repair, modify, operate, develop, and
26 maintain any project, or any part of a project, and to determine whether a project
27 has basinwide significance.
- 28 13. Issue and sell evidences of indebtedness in the manner provided by sections 1
29 through 34 of this Act for the purpose of financing the construction, acquisition,
30 purchase, lease, alteration, repair, modification, or development of any project
31 authorized by sections 1 through 34 of this Act, in an amount or amounts as

1 determined by the board, plus costs of issuance, interest during construction or
2 development, and any reasonably required reserve funds.

3 14. Refund and refinance outstanding evidences of indebtedness whenever it is
4 advantageous and in the public interest to do so.

5 15. Pledge any and all income and revenues derived by the board under sections 1
6 through 34 of this Act, or from a project constructed, acquired, purchased, leased,
7 or developed under sections 1 through 34 of this Act, to secure the payment or
8 redemption of evidences of indebtedness issued and sold by the board under
9 sections 1 through 34 of this Act.

10 16. Pledge all or any part of any assessments levied under sections 1 through 34 of
11 this Act to secure the payment or redemption of any evidences of indebtedness
12 issued and sold in anticipation of the levy and collection of the assessments.

13 17. Oversee each subbasin water resource district board and shall approve any project
14 of basinwide significance.

15 18. Exercise the same authority, powers, and duties as a water resource district under
16 chapter 61-16.1.

17 **SECTION 9. District budget - Tax levy.** For each taxable year, the authority may levy
18 a tax of not to exceed two mills annually on each dollar of taxable valuation within the
19 boundaries of the authority for the payment of administrative expenses of the authority. All
20 moneys collected pursuant to the levy must be deposited to the credit of the authority.
21 Notwithstanding any language to the contrary in sections 1 through 34 of this Act, the moneys
22 collected pursuant to the levy may be used only for administrative expenses and may not be
23 used or pledged for any other purpose. The board may invest any funds, not needed for
24 immediate disbursement or which are held in reserve for future payments, in any of the
25 following:

26 1. Direct obligations of, or obligations which are fully guaranteed by, the United
27 States.

28 2. Obligations issued or fully insured by any agency or instrumentality of the United
29 States and which are backed by the full faith and credit of the United States.

30 3. Interest-bearing time or demand deposits, or certificates of deposit, with the Bank
31 of North Dakota or any banking association or savings institution provided that the

1 deposits or certificates, if other than with the Bank of North Dakota, are fully
2 insured by the federal deposit insurance corporation or secured by obligations
3 described in subsection 1 or 2.

4 4. Bonds or certificates of indebtedness of this state or any of its political
5 subdivisions.

6 5. Repurchase agreements with a national banking association or a bank or trust
7 company organized under the laws of any state, which agreements are secured by
8 a perfected security interest in one or more of the securities described in
9 subsection 1 or 2.

10 Disbursements may be made only upon vouchers signed by the chairman of the board.

11 **SECTION 10. Authority budget - Determination of amount to be levied - Approval**

12 **- Adoption of levy - Limitation.** In July of each year the board shall estimate and itemize all
13 the administrative expenses and obligations of the authority, including expenses of directors,
14 expenses of operating the office, and any other obligations and liabilities relating to
15 administrative, clerical, engineering, surveying, investigations, and legal matters. The budget
16 must be approved by the boards of county commissioners of counties comprising sixty-six
17 percent of the geographic land area of the Devils Lake basin. Upon the completion, adoption,
18 and approval of the budget, the board shall make a tax levy within any applicable levy
19 limitations in mills in an amount sufficient to meet the budget. The levy must be in the form of a
20 resolution adopted by the board.

21 **SECTION 11. Board to certify levy to county auditors and state tax**

22 **commissioner.** Upon the adoption and approval of the annual mill levy, but no later than
23 October first, the secretary of the board shall send one certified copy of the mill levy to the
24 county auditor of each county in which land comprising the authority is located. The secretary
25 shall send a copy of each document to the state tax commissioner.

26 **SECTION 12. County auditors to extend tax levy.** The county auditor of each county

27 in which land comprising the authority is located, to whom a mill levy is certified in accordance
28 with section 11, shall extend the levy upon the tax lists for the current year against property
29 within that portion of the county in which any land located within the authority is located in the
30 same manner and with the same effect as other taxes are extended.

1 **SECTION 13. County treasurer to collect and remit authority taxes.** The treasurer
2 of each county in which a mill levy has been certified shall collect the taxes, together with
3 interest and penalty thereon, if any, in the same manner as the general taxes are collected, and
4 shall pay to the board, on demand, all taxes, interest, and penalties so collected.

5 **SECTION 14. Financing of special improvements - Procedure.** When it is proposed
6 to finance in whole or in part the construction of a project with funds raised through the
7 collection of special assessments levied against lands and premises benefited by construction
8 and maintenance of the project, the board shall examine the proposed project, and if in its
9 opinion further proceedings are warranted, it shall adopt a resolution and declare that it is
10 necessary to construct and maintain the project. The resolution must briefly state the nature
11 and purpose of the proposed project and designate a registered engineer to assist the board.
12 For the purpose of making examinations or surveys, the board or its employees, after written
13 notice to each landowner, may enter upon any land on which the proposed project is located or
14 any other lands necessary to gain access. The engineer shall prepare and file with the board a
15 report including profiles, plans, and specifications of the proposed project and estimates of the
16 total cost of the project. The estimate of costs prepared by the engineer must include
17 acquisition of right of way and must be in sufficient detail to allow the board to determine the
18 probable share of the total costs that will be assessed against each of the affected landowners
19 in the proposed project assessment district.

20 **SECTION 15. Hearing - Notice - Contents.** Upon the filing of the engineer's report
21 provided for in section 14 of this Act, and after satisfying the requirements of section 18 of this
22 Act, the board shall fix a date and place for public hearing on the proposed project. The board
23 shall cause a complete list of the benefits and assessments to be made, setting forth each
24 county, township, or city assessed in its corporate capacity as well as each lot, piece, or parcel
25 of land assessed, the amount each is benefited by the improvement and the amount assessed
26 against each. At least ten days before the hearing, the board shall file with the county auditor of
27 each county or counties in which the project is or will be located the list showing the percentage
28 assessment against each parcel of land benefited by the proposed project and the approximate
29 assessment in terms of money apportioned thereto. Notice of the filing must be included in the
30 notice of hearing. Notices of the hearing must contain a copy of the resolution of the board as
31 well as the time and place where the board will conduct the hearing. The notice of hearing

1 must specify the general nature of the project as finally determined by the engineer and the
2 board. The notice of hearing must also specify when and where votes concerning the proposed
3 project may be filed and an assessment list showing the percentage assessment against each
4 parcel of land benefited by the proposed project and the approximate assessment in terms of
5 money apportioned thereto. The board shall cause the notice of hearing to be published once a
6 week for two consecutive weeks in the newspaper or newspapers of general circulation within
7 the authority and in the official county newspaper of each county in which the benefited lands
8 are located. The date set for the hearing may not be less than twenty days after the date of first
9 publication of the notice. A record of the hearing must be made by the board, including a list of
10 affected landowners present in person or by agent, and the record must be preserved in the
11 minutes of the meeting. Affected landowners, and the governing body of any county, township,
12 or city to be assessed, must be informed at the hearing of the probable total cost of the project
13 and their individual share of the cost and the portion of their property, if any, to be acquired for
14 the project.

15 **SECTION 16. Voting on proposed project.** At the hearing, the affected landowners,
16 and any county, township, or city to be assessed, must also be informed when and where votes
17 concerning the proposed project may be filed. Affected landowners, and the governing body of
18 any county, township, or city to be assessed, have thirty days after the date of the hearing to file
19 their votes with the secretary of the authority concerning the project. Once the deadline for
20 filing votes has been reached, no more votes may be filed and no person may withdraw a vote.
21 Any withdrawal of a vote concerning the proposed project before that time must be in writing.
22 When the votes have been filed and the deadline for filing votes has passed, the board shall
23 immediately determine whether the project is approved. If the board finds that fifty percent or
24 more of the total votes filed are against the proposed project, then the vote constitutes a bar
25 against proceeding further with the project. If the board finds that the number of votes filed
26 against the proposed project is less than fifty percent of the votes filed, the board shall issue an
27 order establishing the proposed project and may proceed, after complying with the
28 requirements of sections 18 and 19 of this Act, to contract or provide for the construction or
29 maintenance of the project in substantially the manner and according to the forms and
30 procedure provided in title 40 for the construction of sewers within municipalities. The board
31 may enter into an agreement with any federal or state agency under the terms of which the

1 contract for the project is to be let by the federal agency, the state agency, or a combination
2 thereof. In projects where there is an agreement that a party other than the board will let the
3 contract, the board may dispense with all of the requirements of title 40. Upon making an order
4 establishing or denying establishment of a project, the board shall publish notice of the order in
5 the official county newspaper of each county in which the benefited lands are located.

6 **SECTION 17. Voting right or powers of landowners.** In order that there may be a
7 fair relation between the amount of liability for assessments and the power of objecting to the
8 establishment of a proposed project, the voting rights of affected landowners on the question of
9 establishing the project are as provided in this section. The landowner or landowners of tracts
10 of land affected by the project have one vote for each dollar of assessment as established in
11 the engineer's report prepared pursuant to section 14 of this Act that the land is subject to or
12 one vote for each dollar of the assessed valuation of land acquired for the project, as
13 determined in accordance with title 57. The governing body of any county, township, or city to
14 be assessed also has one vote for each dollar of assessment against such county, township, or
15 city. There may be only one vote for each dollar of assessment, regardless of the number of
16 owners of such tract of land. Where more than one owner of the land exists, the votes must be
17 prorated among them in accordance with each owner's property interest. A written power of
18 attorney authorizes an agent to protest a project on behalf of any affected landowner or
19 landowners.

20 **SECTION 18. Assessment of cost of project.** Whenever the board proposes to
21 make any special assessment under sections 1 through 34 of this Act, the board, before the
22 hearing required under section 15 of this Act, shall inspect the lots and parcels of land, which
23 may be subject to assessment and shall determine from the inspection the particular lots and
24 parcels of lands which, in the opinion of the board, will be especially benefited by the
25 construction of the work for which the assessment is made and shall assess the proportion of
26 the total cost of acquiring right of way and constructing and maintaining the improvement in
27 accordance with benefits received but not exceeding the benefits, against any county, township,
28 or city, in its corporate capacity, that may be benefited directly or indirectly thereby, and against
29 any lot, piece, or parcel of land that is directly benefited by the improvement. In determining
30 benefits, the board must consider property values, degree of improvement of properties, and
31 productivity. Property belonging to the United States is exempt from assessment, unless the

1 United States has provided for the payment of any assessment that may be levied against its
2 property for benefits received. Benefited property belonging to counties, cities, school districts,
3 park districts, and townships is not exempt from the assessment and political subdivisions
4 whose property is so assessed must provide for the payment of assessments, installments
5 thereof, and interest thereon, by the levy of taxes according to law. Any county, township, or
6 city assessed in its corporate capacity for benefits received shall provide for the payment of the
7 assessments, installments thereof, and interest thereon from its general fund or by levy of a
8 general property tax against all the taxable property therein in accordance with law. No tax
9 limitation provided by any statute of this state applies to tax levies made by any political
10 subdivision for the purpose of paying any special assessments made in accordance with
11 sections 1 through 34 of this Act. There must be attached to the list of assessments a
12 certificate signed by a majority of the members of the board certifying that the same is a true
13 and correct assessment of the benefit therein described to the best of their judgment and
14 stating the several items of expense included in the assessment.

15 **SECTION 19. Assessment list to be published - Notice of hearing - Alteration of**
16 **assessments - Confirmation of assessment list - Filing.** After entering an order establishing
17 the project, the board shall cause the assessment list to be published once each week for two
18 successive weeks in the official county newspaper of each county in which the benefited lands
19 are located together with a notice of the time when, and place where, the board will meet to
20 hear objections to any assessment by any interested party, or an agent or attorney for that
21 party. The date set for the hearing may be not less than twenty days after the first publication
22 of the notice. At the hearing, the board may make such alterations in the assessments as in its
23 opinion may be just and necessary to correct any error in the assessment but must make the
24 aggregate of all assessments equal to the total amount required to pay the entire cost of the
25 work for which the assessments are made, or the part of the cost to be paid by special
26 assessment. No assessment may exceed the benefit as determined by the board to the parcel
27 of land or political subdivision assessed. The board shall then confirm the assessment list and
28 the secretary shall attach to the list a certificate that the same is correct as confirmed by the
29 board and thereupon file the list in the office of the secretary.

30 **SECTION 20. Appeals.** A person aggrieved by a decision of the board may appeal
31 either to the state engineer or alternatively to the district court as provided in this section. After

1 the hearing provided for in section 19 of this Act, affected landowners and any political
2 subdivision subject to assessment, having not less than twenty-five percent of the possible
3 votes, as determined by section 17 of this Act, that believe the assessment was not fairly or
4 equitably made, or that the project is not properly located or designed, may appeal to the state
5 engineer by petition, within ten days after the list is filed with the secretary, to make a review of
6 the assessments and to examine the location and design of the proposed project. Upon receipt
7 of the petition, the state engineer shall examine the lands assessed and the location and design
8 of the proposed project, and if it appears that the assessments have not been made equitably,
9 the state engineer may proceed to correct the same, and the state engineer's correction and
10 adjustment of the assessment is final. Should it appear that, in the judgment of the state
11 engineer, the project has been improperly located or designed, the state engineer may order a
12 relocation and redesign. The relocation and redesign must be followed in the construction of
13 the proposed project. Upon filing a bond for two hundred fifty dollars with the board for the
14 payment of the costs of the state engineer in the matter, any landowner or political subdivision
15 that claims the landowner or political subdivision will receive no benefit at all from the
16 construction of a new project may appeal to the state engineer within ten days after the hearing
17 on assessments, the question of whether there is any benefit. The state engineer may not
18 determine the specific amount of benefit upon an appeal by an individual landowner or political
19 subdivision, but may only determine if there is any benefit to the landowner or political
20 subdivision, and the determination of the state engineer upon the question is final.
21 Alternatively, after the hearing provided for in section 19 of this Act, affected landowners and
22 any political subdivision subject to assessment, having not less than twenty-five percent of the
23 possible votes, as determined by section 17 of this Act, that believe the assessment was not
24 fairly or equitably made, or that the project is not properly located or designed, may appeal to
25 the district court, within ten days after the list is filed with the secretary. An appellant shall file
26 an undertaking in the sum of two hundred dollars with such sureties as may be approved by the
27 clerk of the district court to which the appeal is taken. The undertaking must be conditioned
28 that the appellant will prosecute the appeal without delay and will pay all costs adjudged against
29 the appellant in the district court. The undertaking must be in favor of the board as obligee, and
30 may be sued on in the name of the obligee. The appeal must be taken to the district court of

1 the county in which the assessed land or project is located and is governed by the procedure
2 provided in section 28-34-01.

3 **SECTION 21. When assessments may be made.** After the requirements of sections
4 1 through 34 of this Act have been satisfied and a contract and bond for any work for which a
5 special assessment is to be levied have been approved by the board, the board may direct
6 special assessments to be levied for the payment of appropriate costs, and the secretary shall
7 certify to the board the items of total cost to be paid by special assessments so far as they have
8 been ascertained. The certificate must include the estimated construction cost under the terms
9 of any contract, a reasonable allowance for cost of extra work that may be authorized under the
10 plans and specifications, acquisition of right of way, engineering, fiscal agents' and attorneys'
11 fees for any services in connection with the authorization and financing of the improvement,
12 cost of publication of required notices, and printing of improvement warrants, cost necessarily
13 paid for damages caused by the improvement, interest during the construction period, and all
14 expenses incurred in making the improvement and levy of assessments. No contract or
15 contracts may be awarded that exceed, by twenty percent or more, the estimated cost of the
16 project as presented to and approved by the affected landowners.

17 **SECTION 22. Improvement bonds.**

18 1. The board, after issuing an order establishing a project as provided in section 16 of
19 this Act, and in anticipation of the levy and collection of special assessments and of
20 any revenues to be derived from the services or commodities furnished by the
21 project, may issue improvement bonds against the special fund established for the
22 project. The issuance of improvement bonds constitutes a representation and
23 covenant binding upon the board that the aggregate benefits to be derived from the
24 project by the properties to be assessed are not less than the aggregate amount of
25 the special assessments required to be levied for the project.

26 2. The improvement bonds must be issued and must mature and be payable in the
27 amounts as in the judgment of the board will be provided for, at or before the
28 specified maturity dates, by the collection of assessments to be levied and spread
29 and any revenues pledged for the bonds. The improvement bonds must bear
30 interest at a rate or rates and must be sold at a price, not less than ninety-eight
31 percent of par, resulting in an average net interest cost not to exceed twelve

1 percent per year, payable annually or semiannually, except that there is no interest
2 rate ceiling on an issue sold at public sale or to the state of North Dakota or any of
3 its agents or instrumentalities.

4 3. The treasurer of the authority, or its paying agent, if any, shall pay improvement
5 bonds as they mature and are presented for payment out of the special fund
6 against which they are drawn and shall cancel the bonds when paid.

7 **SECTION 23. General tax for special assessment fund deficiency - General**
8 **obligation bonds.**

9 1. Any deficiency in any special fund created for the payment of improvement bonds
10 or refunding improvement bonds payable in whole or in part out of collections of
11 special assessments is the general obligation of the authority. If at any time the
12 board determines that a deficiency in any special fund created for the payment of
13 improvement bonds or refunding improvement bonds payable in whole or in part
14 with special assessments has occurred, or is likely to occur within one year, the
15 board shall levy a general tax upon all taxable property within the boundaries of the
16 authority for the payment of the deficiency.

17 2. The board may issue general obligation bonds of the authority without an election
18 in the amount of the deficiency described in subsection 1, provided that the bonds
19 may not be issued in an amount which, with all other outstanding general obligation
20 indebtedness of the authority, exceeds five percent of the assessed value of the
21 taxable property within the authority. The bonds must be issued as provided in
22 chapter 21-03.

23 **SECTION 24. Financial reports - Liability for deficiencies.**

24 1. In June and December of each year, the treasurer shall report to the board in
25 writing the amount of money in the treasury, the receipts, if any, in the preceding
26 period and the amount and items of expenditure during that period. The report
27 must be verified and filed with the secretary of the authority. A verified copy of the
28 report must also be filed in the office of the county auditor of each county in which
29 the authority lies and is open to public inspection.

30 2. During the month of January of each year, the board shall prepare a complete
31 statement of the condition of the finances of the district for the past year and cause

1 the same to be filed with the county auditor of each county in which the authority
2 lies on or before February first next following. The statement must show
3 separately, and in detail, the condition and resources of each and every
4 assessment fund for the payment of project bonds of the district, including the
5 amount of any anticipated deficit and the apportionment thereof. At its February
6 meeting next following the filing of the statement of condition of any district, the
7 board shall examine the statement and make inquiry regarding the same to
8 determine whether the authority has defaulted or may soon default on payment of
9 its financial obligations as the same become due.

10 3. The audit required to be conducted under section 54-10-14 must be conducted
11 annually if the authority has any outstanding bonds.

12 **SECTION 25. Reassessment of benefits.** The board may hold at any time or, upon
13 petition of any affected landowner or political subdivision that has been assessed after a project
14 has been in existence for at least one year, shall hold a hearing for the purpose of determining
15 the benefits of the project to each tract of land affected. At least ten days' notice of the hearing
16 must be given by publication in the official county newspaper of each county in which the
17 benefited lands are located and by mailing notice thereof by ordinary mail to each owner of land
18 whose assessment is proposed to be raised as determined by the records of the register of
19 deeds or county treasurer. The provisions of sections 1 through 34 of this Act governing the
20 original determination of benefits and assessment of costs apply to any reassessment of
21 benefits carried out under this section. The board may not be forced to make the reassessment
22 more than once every ten years, nor may any assessment or balance thereof supporting a
23 project fund be reduced or impaired by reassessment or otherwise as long as bonds payable
24 out of the fund remain unpaid and moneys are not available in the fund to pay all the bonds in
25 full, with interest.

26 **SECTION 26. Correction of errors and mistakes in special assessments -**
27 **Requirements governing.** If mathematical errors or other mistakes occur in making any
28 assessment resulting in a deficiency in that assessment, the board shall cause additional
29 assessments to be made in a manner substantially complying with chapter 40-26 as it relates to
30 special assessments.

1 **SECTION 27. Certification of assessments to county auditor.** When the board, by
2 resolution, has caused special assessments to be levied to cover the cost of constructing a
3 project, it shall determine the rate of interest unpaid special assessments must bear, which rate
4 may not exceed one and one-half percent above the warrant rate. Interest on unpaid special
5 assessments commences on the date the assessments are finally confirmed by the board.
6 Special assessments may be certified and made payable in equal annual installments, the last
7 of which is due and payable not more than thirty years after date of the warrants to be paid.
8 The secretary of the authority shall certify to the county auditor of the county in which the
9 project is situated, or if the project embraces more than one county, to the county auditor of
10 each county in which authority lands subject to such special assessments are situated, the total
11 amount assessed against the lands in that county and the proportion or percentage of the
12 amount assessed against each piece, parcel, lot, or tract of land. The secretary of the authority
13 shall also file with the county auditor of each county in which authority lands lie a statement
14 showing the cost of the project and the part to be financed by special assessments. Funds
15 needed to pay the cost of maintaining a project may be raised in the same manner as funds
16 were raised to meet construction costs. If the project was financed in whole or in part through
17 the use of special assessments, the water resource board shall prorate the costs of maintaining
18 projects in the same proportion as were the original costs of construction or, in the event a
19 reassessment of benefits has been adopted, the costs shall be prorated in accordance with the
20 reassessment of benefits as authorized by section 61-16.1-54.

21 **SECTION 28. Extension of special assessments on tax lists - Collection -**
22 **Payment to authority.** The county auditor of each county shall extend the special
23 assessments certified to the county auditor on the tax list of the authority for the current year
24 and the assessments, with interest and penalties, if any, must be collected by the county
25 treasurer as general taxes are collected and must be paid to the treasurer of the authority.

26 **SECTION 29. Lien of special assessment.** A special assessment imposed by the
27 authority, together with interest and penalties which accrue thereon, becomes a lien upon the
28 property on which the assessment is levied from the time the assessment list is approved by
29 the board until the assessment is fully paid. The liens have precedence over all other liens
30 except general tax liens and may not be divested by any judicial sale. No mistake in the
31 description of the property covered by the special assessment lien or in the name of the owner

1 of the property may defeat the lien if the assessed property can be identified by the description
2 in the assessment list. Sections 1 through 34 of this Act must be considered notice to all
3 subsequent encumbrancers of the priority of special assessments imposed under those
4 sections.

5 **SECTION 30. Sale of property when general and special assessment taxes are**
6 **delinquent.**

- 7 1. Special assessments imposed under sections 1 through 34 of this Act become due
8 and delinquent and are subject to penalties and nonpayment at the same date and
9 rates as first installments of real estate taxes. Real property must be sold to
10 enforce the collection of special assessments or installments of special
11 assessments which have become delinquent at the same time and in the same
12 manner as provided in title 57. The sale must be made by the same officer making
13 the sale as in the case of the sale of real property for general taxes. Delinquent
14 general taxes and delinquent special assessments, or installments thereof, must
15 be advertised and sold together in one sum and one certificate must be issued
16 therefor.
- 17 2. If real estate is sold for both delinquent general taxes and delinquent special
18 assessments or installments of special assessments and there are no bidders, the
19 county auditor shall strike off the parcel of land to the county and one certificate of
20 sale covers both general taxes and special assessments which are delinquent.
- 21 3. If there is no delinquent general property tax against a tract or parcel of land and it
22 is sold for special assessments alone, the certificate of tax sale must state that the
23 sale was for special assessments and, if there is no private bidder the tax sale
24 certificate and tax deed in that case must be issued in the usual course of
25 procedure.

26 **SECTION 31. Collection of tax or assessment levied not to be enjoined or**
27 **declared void - Exceptions.**

- 28 1. The collection of any tax or assessment levied or ordered to be levied to pay for
29 the location and construction of any project under sections 1 through 34 of this Act
30 may not be enjoined perpetually or absolutely declared void by reason of any of the
31 following:

- 1 a. Any error of any officer or board in the location and establishment thereof.
2 b. Any error or informality appearing in the record of the proceedings by which
3 any project was established.
4 c. A lack of any proper conveyance or condemnation of the right of way.
5 2. The court in which any proceeding is brought to reverse or declare void the
6 proceedings by which any project has been established, or to enjoin the tax levied
7 to pay therefor, on application of either party, shall order examination of the
8 premises, or survey of the same, or both, as may be deemed necessary. The
9 court, on a final hearing, shall enter an order which is just and equitable, and may
10 order the tax or any part thereof to remain on the tax lists for collection, or if the tax
11 were paid under protest, may order, if justice requires, the whole or any part
12 thereof to be refunded. The costs of the proceedings must be apportioned among
13 the parties as justice requires.

14 **SECTION 32. Board may apportion assessments for benefits of a project against**
15 **a county or city or any tract of land benefited.**

- 16 1. Whenever the board discovers or ascertains that the county, a township, or city
17 therein, or that any tract, parcel, or piece of land is being benefited by a project and
18 that the county or the township, municipality, tract, piece, or parcel of land was not
19 included in the project area assessed for the cost of construction and maintenance
20 of the project when established, the board shall commence proceedings for
21 reassessment of lands originally assessed for the cost of establishing and
22 constructing the project and shall apportion and assess the part of the balance
23 remaining unpaid, if any, of the cost of the project, and the expense of
24 maintenance, which the county, township, or city and each tract of land found
25 benefited thereby should bear.
26 2. Before making the reassessment or reapportionment of benefits, the board shall
27 hold a hearing for the purpose of determining the benefits of the project to the
28 county, the township, or city and to each tract, piece, or parcel of land being
29 benefited. At least ten days' notice of the hearing must be given by publication in
30 the newspaper or newspapers having general circulation in the county and by
31 mailing notice thereof to each owner of land assessed for the cost of construction

1 and maintenance when the project was established, and by mailing the notice to
2 the governing body of the county, township, municipality, and to the owner, as
3 determined by the records in the office of the register of deeds or county treasurer
4 of each tract, piece, or parcel of land found to be benefited since the establishment
5 of the project. The provisions of sections 1 through 34 of this Act governing the
6 original determination of benefits and assessment of costs shall apply to the
7 reassessment and assessment of benefits carried out under the provisions of this
8 section.

9 **SECTION 33. Proceedings to confirm contract.** The board, after contracting with the
10 United States government, this state, or with any public corporation or political subdivision of
11 this state, may commence a special proceeding in which the contract is judicially examined,
12 approved, and confirmed, or disapproved and disaffirmed. The proceeding must comply as
13 nearly as possible with the procedure required in the case of irrigation districts under the laws of
14 this state.

15 **SECTION 34. Easement granted for ditches, canals, tramways, and transmission**
16 **lines on any public lands.** In connection with the construction and development of any
17 project, there is granted over all lands belonging to the state, including lands owned or acquired
18 for highway right-of-way purposes, a right of way for pipelines, connections, valves, and all
19 other appurtenant facilities constructed as part of any project; provided, however, that the
20 director of the department of transportation and the state engineer must approve the plans of
21 the authority with respect to the use of any and all right of way of roads before the grant
22 becomes effective.

23 **SECTION 35. AMENDMENT.** Section 54-10-14 of the 1995 Supplement to the North
24 Dakota Century Code is amended and reenacted as follows:

25 **54-10-14. Political subdivisions - Audits - Fees - Alternative audits and reports.**

26 The state auditor shall audit the following political subdivisions once every two years, except as
27 provided in this section or otherwise by law:

- 28 1. Counties.
- 29 2. Cities.
- 30 3. Park districts.
- 31 4. School districts.

Fifty-fifth
Legislative Assembly

- 1 5. ~~Firemen's~~ Firefighters relief associations.
- 2 6. Airport authorities.
- 3 7. Public libraries.
- 4 8. Water resource districts.
- 5 9. Garrison Diversion Conservancy District.
- 6 10. Rural fire protection districts.
- 7 11. Special education districts.
- 8 12. Area vocational and technology centers.
- 9 13. Correction centers.
- 10 14. Recreation service districts.
- 11 15. Weed boards.
- 12 16. Irrigation districts.
- 13 17. Rural ambulance service districts.
- 14 18. ~~West river water supply district.~~
- 15 49. Southwest water authority.
- 16 19. Devils Lake basin water authority.

17 The state auditor shall charge the political subdivision an amount equal to the fair value
18 of the audit and any other services rendered. Fees for the audit performed by the state auditor
19 must be paid to the state treasurer by the political subdivision audited. The fees must be
20 deposited in the state auditor operating account. Expenses relating to political subdivision
21 audits must be paid from the state auditor operating account, within the limits of legislative
22 appropriation.

23 The state auditor may in lieu of conducting an audit every two years require annual
24 reports from school districts with less than one hundred enrolled students, cities with less than
25 three hundred population, and other political subdivisions subject to this section, or otherwise
26 provided by law, with less than one hundred thousand dollars of annual receipts. The reports
27 must contain the financial information required by the state auditor. The state auditor may also
28 make such additional examination or audit as deemed necessary in addition to the annual
29 report. When a report is not filed, the state auditor may charge the political subdivision an
30 amount equal to the fair value of the additional examination or audit and any other services

1 rendered. The state auditor may charge a political subdivision a fee not to exceed fifty dollars
2 an hour for the costs of reviewing the annual report.

3 A political subdivision may, at the option of its governing body, be audited by a certified
4 public accountant or licensed public accountant rather than by the state auditor. The public
5 accountant shall comply with generally accepted government auditing standards for audits of
6 political subdivisions. The report must be in the form and content required by the state auditor.
7 The number of copies of the audit report requested by the state auditor must be filed with the
8 state auditor when the public accountant delivers the audit report to the political subdivision.
9 The state auditor shall review the audit reports to determine if the reports are in the required
10 form and have the required content, and if the audit meets generally accepted government
11 auditing standards. The state auditor may also periodically review the public accountant's
12 workpapers to determine if the audit meets generally accepted government auditing standards.
13 If the reports are in the required form and have the required content, and the reports and
14 workpapers comply with generally accepted government auditing standards, the state auditor
15 shall accept the audit report. The state auditor may charge the political subdivision a fee of up
16 to fifty dollars an hour, but not to exceed five hundred dollars per review, for the related costs of
17 reviewing the audit report and workpapers.

18 A political subdivision may not pay a public accountant for an audit until the state auditor
19 has accepted the audit. However, a political subdivision may make progress payments to the
20 public accountant. A political subdivision shall retain twenty percent of any progress payment
21 until the audit report is accepted by the state auditor.

22 The state auditor may require the correction of any irregularities, objectionable
23 accounting procedures, or illegal actions on the part of the governing board, officers, or
24 employees of the political subdivision disclosed by the audit report or workpapers, and failure to
25 make the corrections ~~shall result~~ results in audits being resumed by the state auditor until the
26 irregularities, objectionable accounting procedures, or illegal actions are corrected.

27 **SECTION 36. AMENDMENT.** Section 61-32-03 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **61-32-03. Permit to drain waters required - Penalty.** Any person, before draining
30 water from a pond, slough, or lake, or any series thereof, which has a watershed area
31 comprising eighty acres [32.37 hectares] or more, shall first secure a permit to do so. The

1 permit application must be submitted to the state engineer. The state engineer shall refer the
2 application to the water resource district or districts within which is found a majority of the
3 watershed or drainage area of the pond, slough, or lake for consideration and approval, but the
4 state engineer may require that applications proposing drainage of statewide or interdistrict
5 significance be returned to the state engineer for final approval or that applications proposing
6 drainage of Devils Lake basinwide significance be returned to the Devils Lake basin water
7 authority for final approval. A permit may not be granted until an investigation discloses that the
8 quantity of water which will be drained from the pond, slough, or lake, or any series thereof, will
9 not flood or adversely affect downstream lands. If the investigation shows that the proposed
10 drainage will flood or adversely affect lands of downstream landowners, the water resource
11 board may not issue a permit until flowage easements are obtained. The flowage easements
12 must be filed for record in the office of the register of deeds of the county or counties in which
13 the lands are situated. An owner of land proposing to drain shall undertake and agree to pay
14 the expenses incurred in making the required investigation. This section does not apply to the
15 construction or maintenance of any existing or prospective drain constructed under the
16 supervision of a state or federal agency, as determined by the state engineer.

17 Any person draining, or causing to be drained, water of a pond, slough, or lake, or any
18 series thereof, which has a watershed area comprising eighty acres [32.37 hectares] or more,
19 without first securing a permit to do so, as provided by this section, is liable for all damage
20 sustained by any person caused by the draining, and is guilty of an infraction. When temporary
21 ponding of water occurs due to spring runoff or heavy rains, an area not in excess of eighty
22 acres [32.37 hectares] may be drained without first securing a permit.