

Sixty-fifth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1374

Introduced by

Representatives Schmidt, D. Anderson, J. Nelson, Sanford, Streyle, Zubke

Senators Bekkedahl, Kreun, G. Lee, Luick, Schaible, Sorvaag

1 A BILL for an Act to create and enact sections 61-02-14.3, 61-02-80, 61-02-81, and a new
2 section to chapter 61-03 of the North Dakota Century Code, relating to contracts and financial
3 assistance for water projects and duties of the state engineer; and to amend and reenact
4 sections 61-02-01.3, 61-02-01.4, 61-02-02, 61-02-04, 61-02-07, and 61-02-08, subsection 1 of
5 section 61-02-14, and subsection 4 of section 61-02-62 of the North Dakota Century Code,
6 relating to definitions of types of financial assistance for water projects and the composition and
7 operation of the state water commission.

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

9 **SECTION 1. AMENDMENT.** Section 61-02-01.3 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **61-02-01.3. Comprehensive water development plan.**

12 Biennially, the commission shall develop and maintain a comprehensive water development
13 plan organized on a river basin perspective, including an inventory of future water projects for
14 budgeting and planning purposes. As part of the commission's planning process, ~~in order to~~
15 facilitate local project sponsor participation and project prioritization and to assist in ~~project-~~
16 ~~cost-benefit analysis~~education regarding life cycle analyses for municipal water supply projects,
17 and economic analyses for flood control and water conveyance projects expected to cost more
18 than ~~five~~seven hundred fifty thousand ~~one million~~ dollars, the commission shall develop a policy
19 that outlines procedures for commissioner-hosted meetings within the upper Red River, lower
20 Red River, James River, Mouse River, upper Missouri River, lower Missouri River, and Devils
21 Lake drainage basins.

22 **SECTION 2. AMENDMENT.** Section 61-02-01.4 of the North Dakota Century Code is
23 amended and reenacted as follows:

1 **61-02-01.4. State water commission cost-share policy.**

2 The state water commission shall ~~adopt a cost-share policy for the financing of water~~
3 ~~projects. The policy~~review, gather stakeholder input on, and rewrite as necessary the
4 commission's "Cost-share Policy, Procedure and General Requirements" and "Project
5 Prioritization Guidance" documents. The commission's cost-share policy:

- 6 1. Must provide a water supply project is eligible for ~~grants~~a cost-share up to seventy-five
7 percent of the total eligible project costs.
- 8 2. May not determine program eligibility of water supply projects based on a population
9 growth factor. However, a population growth factor may be used in prioritizing projects
10 for that purpose.
- 11 3. Must consider all project costs potentially eligible for reimbursement, except the
12 commission ~~shall exclude operations expense, and regular maintenance, and-~~
13 ~~improvements~~including removal of vegetative materials and sediment, for water
14 conveyance projects and may exclude operations expense and regular maintenance
15 for other projects. The commission shall require a water project sponsor to maintain a
16 capital improvement fund from the rates charged customers for future extraordinary
17 maintenance projects as condition of funding an extraordinary maintenance project.
- 18 4. May not determine program eligibility of water supply projects based on affordability.
19 However, affordability may be used in prioritizing projects for that purpose.

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

22 **61-02-02. Definitions.**

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

- 24 1. "Commission" means the state water commission.
- 25 2. "Cost of works" includes:
 - 26 a. The cost of construction, the cost of all lands, property rights, water rights,
27 easements, and franchises acquired which are deemed necessary for such
28 construction;
 - 29 b. The cost of all water rights acquired or exercised by the commission in
30 connection with such works;

- 1 c. The cost of all machinery and equipment, financing charges, interest prior to and
2 during construction and for a period not exceeding three years after the
3 completion of construction;
- 4 d. The cost of engineering and legal expenses, plans, specifications, surveys,
5 estimates of cost, and other expenses necessary or incident to determining the
6 feasibility or practicability of any project;
- 7 e. Administrative expenses;
- 8 f. The construction of the works and the placing of the same in operation; and
- 9 g. Such other expenses as may be necessary or incident to the financing authorized
10 in this chapter, including funding of debt service, repair and replacement
11 reserves, capitalized interest, and the payment of bond issuance costs.
- 12 3. "Cost-share" means funds appropriated by the legislative assembly or otherwise
13 transferred by the commission to a local entity under commission policy as
14 reimbursement for a percentage of the total approved cost of a project approved by
15 the commission.
- 16 4. "Economic analysis" means an estimate of economic benefits and direct costs that
17 result from the development of a project.
- 18 5. "Grant" means a one-time sum of money appropriated by the legislative assembly and
19 transferred by the commission to a local entity for a particular purpose. A grant is not
20 dependent on the local entity providing a particular percentage of the cost of the
21 project.
- 22 6. "Life cycle analysis" means the summation of all costs associated with the anticipated
23 useful life of a project, including project development, land, construction, operation,
24 maintenance, and disposal or decommissioning.
- 25 7. "Loan" means an amount of money lent to a sponsor of a project approved by the
26 commission to assist with funding approved project components. A loan may be
27 stand-alone financial assistance.
- 28 8. "Owner" includes all individuals, associations, corporations, limited liability companies,
29 districts, municipalities, and other political subdivisions of this state having any title or
30 interest in any properties, rights, water rights, easements, or franchises to be acquired.

1 ~~4.9.~~ "Project" means any one of the works defined in subsection 5, or any combination of
2 such works, which are physically connected or jointly managed and operated as a
3 single unit.

4 ~~5-10.~~ "Water conveyance project" means any surface or subsurface drainage works, bank
5 stabilization, or snagging and clearing of water courses.

6 ~~11.~~ "Works" includes:

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

21 **SECTION 4. AMENDMENT.** Section 61-02-04 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **61-02-04. State water commission - Members - Terms - Qualifications.**

24 The state water commission ~~shall consist~~consists of the governor, agriculture commissioner,
25 and seven other members ~~to be~~ appointed by the governor who shall take into account
26 reasonable geographic considerations in making such the appointments with the intent of having
27 each of the seven major drainage basins represented by a commissioner who resides in the
28 basin. The major drainage basins are the upper Missouri River basin, the lower Missouri River
29 basin, the James River basin, the upper Red River basin, the lower Red River basin, the Mouse
30 River basin, and the Devils Lake basin. The governor or the agriculture commissioner, or both,
31 may appoint a representative to serve in that official's capacity at such meetings as that official

1 ~~may be~~ is unable to attend. ~~Each of the six major drainage basins in the state must be~~
2 ~~represented by at least one commissioner who resides in the basin. The major basins are the~~
3 ~~upper Missouri River basin, the lower Missouri River basin, the James River basin, the Red~~
4 ~~River basin, the Mouse River basin, and the Devils Lake basin.~~ The seven appointive members
5 of the commission must be appointed for a term of six years each with ~~their~~the terms of office so
6 arranged that two terms and not more than three terms expire on the first day of July of each
7 odd-numbered year. Each appointive member must be a qualified elector of the state and is
8 subject to removal by judicial procedure. In case of a vacancy, the vacancy must be filled by
9 appointment by the governor for the remainder of the unexpired term. Before entering upon the
10 discharge of official duties, each appointive member shall take, subscribe, and file with the
11 secretary of state the oath prescribed for civil officers.

12 **SECTION 5. AMENDMENT.** Section 61-02-07 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **61-02-07. Quorum - What constitutes.**

15 A majority of the members of the commission ~~shall constitute~~constitutes a quorum, and the
16 affirmative or negative vote of five members ~~shall be~~is necessary to bind the commission except
17 for adjournment.

18 **SECTION 6. AMENDMENT.** Section 61-02-08 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **61-02-08. Meetings of commission - Chairman and vice chairman.**

21 The commission ~~may hold meetings at such times and~~shall hold at least one meeting every
22 two months at such places as it, by resolution, may provide. The chairman, or in the chairman's
23 absence or disability, the vice chairman of the commission, may issue a call for any meeting at
24 any time. The governor, as chairman, shall preside at all meetings of the commission and in
25 case of the governor's~~chairman's~~ absence or disability, the vice chairman shall preside. The
26 seven appointed members of the commission shall select an appointed member to serve as
27 vice chairman of the commission.

28 **SECTION 7. AMENDMENT.** Subsection 1 of section 61-02-14 of the North Dakota Century
29 Code is amended and reenacted as follows:

- 1 1. To investigate, plan, regulate, undertake, construct, establish, maintain, control,
2 operate, and supervise all works, dams, and projects, public and private, which in its
3 judgment may be necessary or advisable:
- 4 a. To control the low-water flow of streams in the state.
- 5 b. To impound water for the improvement of municipal, industrial, and rural water
6 supplies.
- 7 c. To control and regulate floodflow in the streams of the state to minimize the
8 damage of such floodwaters.
- 9 d. To conserve and develop the waters within the natural watershed areas of the
10 state and, subject to vested rights, to divert the waters within a watershed area to
11 another watershed area and the waters of any river, lake, or stream into another
12 river, lake, or stream.
- 13 e. To improve the channels of the streams for more efficient transportation of the
14 available water in the streams.
- 15 f. To provide sufficient water flow for the abatement of stream pollution.
- 16 g. To develop, restore, and stabilize the waters of the state for domestic,
17 agricultural, and municipal needs, irrigation, flood control, recreation, and wildlife
18 conservation by the construction and maintenance of dams, reservoirs, and
19 diversion canals.
- 20 h. To promote the maintenance of existing drainage channels in agricultural lands
21 and to construct any needed channels.
- 22 i. To provide more satisfactory subsurface water supplies for the municipalities of
23 the state.
- 24 j. To finance the construction, establishment, operation, and maintenance of public
25 and private works, dams, and irrigation projects, which in its judgment may be
26 necessary and advisable, except the commission may not provide a cost-share
27 for the costs of operation ~~and~~or maintenance ~~or improvement~~, including removal
28 of vegetative materials and sediment, of a water conveyance project.
- 29 k. To provide for the storage, development, diversion, delivery, and distribution of
30 water for the irrigation of agricultural land and supply water for municipal and
31 industrial purposes.

- 1 l. To provide for the drainage of lands injured by or susceptible of injury from
2 excessive rainfall or from the utilization of irrigation water, and subject to the
3 limitations prescribed by law, to aid and cooperate with the United States and any
4 department, agency, or officer thereof, and with any county, township, drainage
5 district, or irrigation district of this state, or of other states, in the construction or
6 improvement of such drains.
- 7 m. To provide water for stock.
- 8 n. To provide water for the generation of electric power and for mining and
9 manufacturing purposes.

10 **SECTION 8.** Section 61-02-14.3 of the North Dakota Century Code is created and enacted
11 as follows:

12 **61-02-14.3. Commission agreements - Terms, conditions, and reapplication.**

13 An agreement for funding which is approved by the commission to fund a water project
14 under this chapter ~~may not have a term exceeding four years. If a water project is not~~
15 ~~completed when the agreement for its funding terminates, the project sponsor responsible for~~
16 ~~the project may reapply to the commission for another funding obligation to complete the~~
17 ~~project. The commission shall prioritize the timing of its review of the reapplication.~~ must require
18 a progress report to the commission at least every four years if the term of the project exceeds
19 four years. If a progress report is not timely received or, if after a review of a progress report,
20 the commission determines the project has not made sufficient progress, the commission may
21 terminate the agreement for project funding. The project sponsor may submit a new application
22 to the commission for funding for a project for which the commission previously terminated
23 funding.

24 **SECTION 9. AMENDMENT.** Subsection 4 of section 61-02-62 of the North Dakota Century
25 Code is amended and reenacted as follows:

- 26 4. Covenant to fix and establish such prices, rates, and charges for water and other
27 services made available in connection with the works or project as to provide at all
28 times funds together with other funds the commission may pledge which will be
29 sufficient:
- 30 a. To pay all costs of operation and maintenance of the works or project, as
31 permitted under this chapter, together with necessary repairs thereto;

- 1 b. To meet and pay the principal and interest of all the bonds as they severally
2 become due and payable; and
3 c. To create such reserves for the principal and interest of all the bonds and for the
4 meeting of contingencies in the operation, repair, replacement, and maintenance
5 of the works or project as the commission shall determine.

6 **SECTION 10.** Section 61-02-80 of the North Dakota Century Code is created and enacted
7 as follows:

8 **Flood control projects - Financial assistance limited.**

9 ~~For flood control projects, the commission shall calculate the amount of its financial~~
10 ~~assistance, including loans, grants, cost share, and issuance of bonds, based on the needs for~~
11 ~~protection of health, property, and enterprise against one hundred year flood events or the~~
12 ~~equivalent alternative to the national economic development alternative. Except for flood control~~
13 ~~projects authorized by the legislative assembly or the commission before July 1, 2017, the~~
14 ~~commission shall calculate the amount of its financial assistance, including loans, grants, cost-~~
15 ~~share, and issuance of bonds, based on the needs for protection of health, property, and~~
16 ~~enterprise, against:~~

- 17 1. One hundred year flood events as determined by a federal agency;
18 2. The national economic development alternative; or
19 3. The local sponsor's preferred alternative if the commission first determines the
20 historical flood prevention costs and flood damages, and the risk of future flood
21 prevention costs and flood damages, warrant protection to the level of the local
22 sponsor's preferred alternative.

23 **SECTION 11.** Section 61-02-81 of the North Dakota Century Code is created and enacted
24 as follows:

25 **Development in breach inundation zones - No financial assistance for dam**
26 **improvements.**

27 ~~If~~Notwithstanding any other provision of law, if a political subdivision permits building or
28 development within a breach inundation zone and the building or development causes a change
29 in a dam's current hazard classification necessitating structural improvements or upgrades to
30 the dam, state the political subdivision shall pay for the necessary improvements or upgrades.
31 State loans, grants, cost-share, and other financial assistance may not be provided to pay for

1 | the dam improvements or upgrades. For purposes of this section, "breach inundation zone"
2 | means the area downstream of the dam which would be flooded in the event of a dam failure or
3 | uncontrolled release of water.

4 | **SECTION 12.** A new section to chapter 61-03 of the North Dakota Century Code is created
5 | and enacted as follows:

6 | **Economic analysis process required for certain projects.**

7 | The state engineer shall develop an economic analysis process for water conveyance
8 | projects and flood-related projects expected to cost more than seven hundred fifty thousand
9 | dollars, and a life cycle analysis process for municipal water supply projects. When the state
10 | water commission is considering whether to fund a water conveyance project, flood-related
11 | project, or water supply project, the state engineer shall review the economic analysis or life
12 | cycle analysis, and inform the state water commission of the findings from the analysis and
13 | review.