

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, and  
2 61-02-14 of the North Dakota Century Code, relating to cost-sharing and duties of the state  
3 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 2. 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  
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. The commission shall require a water project sponsor  
9            to maintain a capital improvement fund from the rates charged customers for future  
10           extraordinary maintenance projects as condition of funding an extraordinary  
11           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 3. 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 ~~anya~~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~~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, bank stabilization, or~~
- 29          ~~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 4. AMENDMENT.** Section 61-02-14 of the North Dakota Century Code is  
16 amended and reenacted as follows:

17 **61-02-14. Powers and duties of the commission.**

18 The commission ~~shall have full and complete power, authority, and general jurisdiction~~  
19 authorized:

- 20 1. To investigate, plan, regulate, undertake, construct, establish, maintain, control,  
21 operate, and supervise all works, dams, and projects, public and private, which in  
22 ~~its~~the commission's judgment may be necessary or advisable:
  - 23 a. To control the low-water flow of streams in the state.
  - 24 b. To impound water for the improvement of municipal, industrial, and rural water  
25 supplies.
  - 26 c. To control and regulate floodflow in the streams of the state to minimize the  
27 damage of such floodwaters.
  - 28 d. To conserve and develop the waters within the natural watershed areas of the  
29 state and, subject to vested rights, to divert the waters within a watershed area to  
30 another watershed area and the waters of any river, lake, or stream into another  
31 river, lake, or stream.

- 1 e. To improve the channels of the streams for more efficient transportation of the  
2 available water in the streams.
- 3 f. To provide sufficient water flow for the abatement of stream pollution.
- 4 g. To develop, restore, and stabilize the waters of the state for domestic,  
5 agricultural, and municipal needs; irrigation; flood control; recreation; and  
6 wildlife conservation by the construction and maintenance of dams, reservoirs,  
7 and diversion canals.
- 8 h. To promote the maintenance of existing drainage channels in agricultural lands  
9 and to construct any needed channels.
- 10 i. To provide more satisfactory subsurface water supplies for the state's  
11 municipalities of the state.
- 12 j. To finance the construction, establishment, operation, and maintenance of public  
13 and private works, dams, and irrigation projects, which in ~~its~~the commission's  
14 judgment may be necessary and advisable, except the. The commission may not  
15 provide a cost-share for the costs of operation or maintenance, including removal  
16 of vegetative materials and sediment, of ~~a water conveyance project~~assessment  
17 drains or other man-made projects.
- 18 k. To provide for the storage, development, diversion, delivery, and distribution of  
19 water for the irrigation of agricultural land and supply water for municipal and  
20 industrial purposes.
- 21 l. To provide for the drainage of lands injured by or susceptible of injury from  
22 excessive rainfall or from the utilization of irrigation water, and subject to the  
23 limitations prescribed by law, to aid and cooperate with the United States and any  
24 department, agency, or officer ~~thereof~~of the United States, and with any county,  
25 township, drainage district, or irrigation district of this state, or of ~~other~~  
26 statesanother state, in the construction or improvement of ~~such~~the drains.
- 27 m. To provide water for stock.
- 28 n. To provide water for the generation of electric power and for mining and  
29 manufacturing purposes.
- 30 2. To define, declare, and establish rules and regulations:

- 1           a. For the sale of waters and water rights to individuals, associations, corporations,  
2                   limited liability companies, municipalities, and other political subdivisions of the  
3                   state and for the delivery of water to users.
- 4           b. For the full and complete supervision, regulation, and control of the water  
5                   supplies within the state.
- 6           c. ~~Repealed by S.L. 1975, ch. 575, § 2.~~
- 7           ~~d.~~ Governing and providing for financing by local participants to the maximum  
8                   extent deemed practical and equitable in any water development project in which  
9                   the state participates in cooperation with the United States or with political  
10                  subdivisions or local entities.
- 11          3. To exercise full power and control of the construction, operation, and maintenance of  
12              works and the collection of rates, charges, and revenues realized ~~therefrom~~from the  
13              works.
- 14          4. To sell, lease, and otherwise distribute all waters which may be developed,  
15              impounded, and diverted by the commission under ~~the provisions of~~ this chapter, for  
16              the purposes of irrigation, the development of power, and the watering of livestock,  
17              and for any other private or public use.
- 18          5. To exercise all express and implied rights, power, and authority that may be  
19              necessary, and to do, perform, and carry out ~~all of~~ the expressed purposes of this  
20              chapter and ~~all of~~ the purposes reasonably implied incidentally ~~thereto~~to or lawfully  
21              connected ~~therewith~~with the expressed purposes of this chapter.
- 22          6. To acquire, own, and develop lands for irrigation and water conservation and to  
23              acquire, own, and develop damsites and reservoir sites and to acquire easements and  
24              rights of way for diversion and distributing systems.
- 25          7. To cooperate with the United States and any department, agency, or officer ~~thereof~~  
26              the United States in the planning, establishment, operation, and maintenance of dams,  
27              reservoirs, diversion and distributing systems, for the utilization of the waters of the  
28              state for domestic, municipal, and industrial needs, irrigation, flood control, water  
29              conservation, and generation of electric power and for mining, agricultural, and  
30              manufacturing purposes, ~~and in this connection the state water.~~ The commission is-  
31              ~~hereby authorized~~may, within the limitations prescribed by law, ~~to~~ acquire, convey,

- 1 contribute, or grant to the United States, moneys, real and personal property, including
- 2 land or easements for dams and reservoir sites and rights of way and easements for
- 3 diversion and distribution systems or participate in the cost of any project.
- 4 8. To consider cost-sharing for water quality improvement projects.