

**Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019**

SENATE BILL NO. 2139
(Senators Luick, Osland, Vedaa)
(Representatives Beadle, Mitskog, Pyle)

AN ACT to amend and reenact sections 61-02-01.4, 61-02-02, 61-02-04, 61-02-07, and 61-02-14 of the North Dakota Century Code, relating to cost-sharing and duties and membership of the state water commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

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

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

61-02-02. Definitions.

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

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

- c. The cost of all machinery and equipment, financing charges, interest ~~prior to~~before and during construction and for a period not exceeding three years after the completion of construction;
 - d. The cost of engineering and legal expenses, plans, specifications, surveys, estimates of cost, and other expenses necessary or incident to determining the feasibility or practicability of ~~any~~a project;
 - e. Administrative expenses;
 - f. The construction of the works and the placing of the ~~same~~works in operation; and
 - g. ~~Such other~~Other expenses as ~~may be~~ necessary or incident to the financing authorized in this chapter, including funding of debt service, repair and replacement reserves, capitalized interest, and the payment of bond issuance costs.
3. "Cost-share" means funds appropriated by the legislative assembly or otherwise transferred by the commission to a local entity under commission policy as reimbursement for a percentage of the total approved cost of a project approved by the commission.
 4. "Economic analysis" means an estimate of economic benefits and direct costs that result from the development of a project.
 5. "Grant" means a one-time sum of money appropriated by the legislative assembly and transferred by the commission to a local entity for a particular purpose. A grant is not dependent on the local entity providing a particular percentage of the cost of the project.
 6. "Life cycle analysis" means the summation of all costs associated with the anticipated useful life of a project, including project development, land, construction, operation, maintenance, and disposal or decommissioning.
 7. "Loan" means an amount of money lent to a sponsor of a project approved by the commission to assist with funding approved project components. A loan may be stand-alone financial assistance.
 8. "Owner" includes all individuals, associations, corporations, limited liability companies, districts, municipalities, and other political subdivisions of this state having any title or interest in any properties, rights, water rights, easements, or franchises to be acquired.
 9. "Project" means any one of the works defined in subsection 4410, or any combination of such works, which are physically connected or jointly managed and operated as a single unit.
 10. "Water conveyance project" means ~~any surface drainage works, bank~~assessment drain, streambank stabilization, or snagging and clearing of water courses.
 11. "Works" includes:
 - a. All property rights, easements, and franchises relating ~~thereto~~to and deemed necessary or convenient for their operation;
 - b. All water rights acquired and exercised by the commission in connection with such works;
 - c. All means of conserving and distributing water, including ~~without limiting the generality of the foregoing two subdivisions,~~ reservoirs, dams, diversion canals, distributing canals, channels, lateral ditches, pumping units, mains, pipelines, treatment plants, and waterworks systems; and
 - d. All works for the conservation, control, development, storage, treatment, distribution, and utilization of water, including ~~without limiting the generality of the foregoing subdivisions,~~

works for the purpose of irrigation, flood control, watering stock, supplying water for public, domestic, industrial, and recreational use, fire protection, and the draining of lands injured or in danger of injury as a result of such water utilization.

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

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

The state water commission consists of the governor, agriculture commissioner, and ~~seventy~~eight other members appointed by the governor who shall take into account reasonable geographic considerations in making the appointments with the intent of having each of the ~~seventy~~eight major drainage basins represented by a commissioner who resides in the basin. The major drainage basins are the upper Missouri River basin; the lower Missouri River basin; the James River basin; the upper Red River basin; the lower Red River basin; the Mouse River basin; ~~and;~~ the Devils Lake basin; ~~and the Little Missouri River, upper Heart River, and upper Cannonball River basin.~~ The governor or the agriculture commissioner, or both, may appoint a representative to serve in that official's capacity at meetings that official is unable to attend. The ~~seventy~~eight appointive members of the commission must be appointed for a term of six years each with the terms of office so arranged that ~~two terms and~~ not more than ~~three~~four terms expire on the first day of July of each odd-numbered year. Each appointive member must be a qualified elector of the state and is subject to removal by judicial procedure. In case of a vacancy, the vacancy must be filled by appointment by the governor for the remainder of the unexpired term. Before entering upon the discharge of official duties, each appointive member shall take, subscribe, and file with the secretary of state the oath prescribed for civil officers.

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

61-02-07. Quorum - What constitutes.

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

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

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

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

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

- f. To provide sufficient water flow for the abatement of stream pollution.
 - g. To develop, restore, and stabilize the waters of the state for domestic, agricultural, and municipal needs; irrigation; flood control; recreation; and wildlife conservation by the construction and maintenance of dams, reservoirs, and diversion canals.
 - h. To promote the maintenance of existing drainage channels in agricultural lands and to construct any needed channels.
 - i. To provide more satisfactory subsurface water supplies for the state's municipalities of the state.
 - j. To finance the construction, establishment, ~~operation,~~ and extraordinary maintenance of public ~~and private~~ works, dams, and irrigation projects, which in ~~its~~ the commission's judgment may be necessary and advisable, ~~except the.~~ The commission may not provide a cost-share for the costs of operation or regular maintenance, ~~including~~ or removal of vegetative materials and sediment, ~~of a water conveyance project for assessment drains.~~ Snagging and clearing of watercourses are not regular maintenance.
 - k. To provide for the storage, development, diversion, delivery, and distribution of water for the irrigation of agricultural land and supply water for municipal and industrial purposes.
 - l. To provide for the drainage of lands injured by or susceptible of injury from excessive rainfall or from the utilization of irrigation water, and subject to the limitations prescribed by law, to aid and cooperate with the United States and any department, agency, or officer ~~thereof of the United States,~~ and with any county, township, drainage district, or irrigation district of this state, or of ~~other states~~ another state, in the construction or improvement of ~~such~~ the drains.
 - m. To provide water for stock.
 - n. To provide water for the generation of electric power and for mining and manufacturing purposes.
2. To define, declare, and establish rules and regulations:
 - a. For the sale of waters and water rights to individuals, associations, corporations, limited liability companies, municipalities, and other political subdivisions of the state and for the delivery of water to users.
 - b. For the full and complete supervision, regulation, and control of the water supplies within the state.
 - c. ~~Repealed by S.L. 1975, ch. 575, § 2.~~
 - ~~d.~~ Governing and providing for financing by local participants to the maximum extent deemed practical and equitable in any water development project in which the state participates in cooperation with the United States or with political subdivisions or local entities.
 3. To exercise full power and control of the construction, operation, and maintenance of works and the collection of rates, charges, and revenues realized ~~therefrom~~ from the works.
 4. To sell, lease, and otherwise distribute all waters which may be developed, impounded, and diverted by the commission under ~~the provisions of~~ this chapter, for the purposes of irrigation, the development of power, and the watering of livestock, and for any other private or public use.

5. To exercise all express and implied rights, power, and authority that may be necessary, and to do, perform, and carry out ~~all of~~ the expressed purposes of this chapter and ~~all of~~ the purposes reasonably implied incidentally ~~thereteto~~ or lawfully connected ~~therewithwith the~~ expressed purposes of this chapter.
6. To acquire, own, and develop lands for irrigation and water conservation and to acquire, own, and develop damsites and reservoir sites and to acquire easements and rights of way for diversion and distributing systems.
7. To cooperate with the United States and any department, agency, or officer ~~thereof of the~~ United States in the planning, establishment, operation, and maintenance of dams, reservoirs, diversion and distributing systems, for the utilization of the waters of the state for domestic, municipal, and industrial needs, irrigation, flood control, water conservation, and generation of electric power and for mining, agricultural, and manufacturing purposes, ~~and in this connection the state water. The~~ commission is hereby authorized may, within the limitations prescribed by law, ~~to~~ acquire, convey, contribute, or grant to the United States, moneys, real and personal property, including land or easements for dams and reservoir sites and rights of way and easements for diversion and distribution systems or participate in the cost of any project.
8. To consider cost-sharing for water quality improvement projects.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2139.

Senate Vote: Yeas 43 Nays 3 Absent 1

House Vote: Yeas 91 Nays 2 Absent 1

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2019.

Approved at _____ M. on _____, 2019.

Governor

Filed in this office this _____ day of _____, 2019,

at _____ o'clock _____ M.

Secretary of State