

HOUSE BILL NO. 1307

Introduced by

Representatives Satrom, Beadle, Becker, Schauer

1 A BILL for an Act to amend and reenact subsection 4 of section 21-03-07, sections 40-22-01,
2 40-22-05, 40-22-09, 40-22-15, 40-22-17, 40-23-07, 40-23-11, 40-23-15, 40-23-19, 40-23.1-09,
3 40-23.1-13, and 40-26-02 of the North Dakota Century Code, relating to special assessments.

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

5 **SECTION 1. AMENDMENT.** Subsection 4 of section 21-03-07 of the North Dakota Century
6 Code is amended and reenacted as follows:

7 4. The governing body of any city may also by resolution adopted by a two-thirds vote
8 authorize and issue general obligation bonds of the city for the purpose of providing
9 funds to pay the cost of any improvement of the types stated below, to the extent that
10 the governing body determines that such cost should be paid by the city and should
11 not be assessed upon property specially benefited thereby; provided that the initial
12 resolution authorizing such bonds must be published in the official newspaper, and
13 any owner of taxable property within the city may, within sixty days after such
14 publication, file with the city auditor a protest against the adoption of the resolution. If
15 the governing body finds such protests to have been signed by the owners of taxable
16 property having an assessed valuation equal to five percent or more of the assessed
17 valuation of all taxable property within the city, as theretofore last finally equalized, all
18 further proceedings under such initial resolution are barred. This procedure is
19 authorized for the financing of the following types of improvements:

20 a. Any street improvement, as ~~defined in subsection 2 of~~provided in section
21 40-22-01, to be made in or upon any federal or state highway or any other street
22 designated by ordinance as an arterial street.

- 1 b. The construction of a bridge, culvert, overpass, or underpass at the intersection
2 of any street with a stream, watercourse, drain, or railway, and the acquisition of
3 any land or easement required for that purpose.
- 4 c. Any improvement incidental to the carrying out of an urban renewal project, the
5 issuance of bonds for which is authorized by subsection 4 of section 40-58-13.
6 Nothing herein may be deemed to prevent any municipality from appropriating funds
7 for or financing out of taxes, special assessments, or utility revenues any work
8 incidental to any such improvement, in the manner and to the extent otherwise
9 permitted by law.

10 **SECTION 2. AMENDMENT.** Section 40-22-01 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **40-22-01. Power of municipalities to defray expense of improvements by special**
13 **assessments - Limitations.**

- 14 1. Any municipality, upon complying with ~~the provisions of~~ this chapter, may defray the
15 expense of any or all of the following types of improvements by special assessments:
- 16 ~~1.~~ a. The construction of a water supply system, or a sewerage system, or both, or any
17 part thereof, or any improvement thereto or extension or replacement thereof,
18 including the construction and erection of wells, intakes, pumping stations,
19 settling basins, filtration plants, standpipes, water towers, reservoirs, water
20 mains, sanitary and storm sewer mains and outlets, facilities for the treatment
21 and disposal of sewage and other municipal, industrial, and domestic wastes,
22 and all other appurtenances, contrivances, and structures used or useful for a
23 complete water supply and sewerage system.
- 24 ~~2.~~ b. The improvement of the municipal street system and any part thereof, including
25 any one or more of the processes of acquisition, opening, widening, grading,
26 graveling, paving, repaving, surfacing with tar, asphalt, bituminous, or other
27 appropriate material, resurfacing, resealing, and repairing of any street, highway,
28 avenue, alley, or public place within the municipality, and the construction and
29 reconstruction of overhead pedestrian bridges, pedestrian tunnels, storm sewers,
30 curbs and gutters, sidewalks, and service connections for water and other
31 utilities, and the installation, operation, and maintenance of streetlights and all

1 types of decorative streetlighting, including but not restricted to Christmas
2 streetlighting decorations.

3 ~~3.~~ c. The improvement of boulevards and other public places by the planting of trees,
4 the construction of grass plots and the sowing of grass seed therein, and the
5 maintenance and preservation of such improvements by the watering of such
6 trees and grass, the cutting of such grass, and the trimming of such trees, or
7 otherwise in any manner which may appear necessary and proper to the
8 governing body of the municipality.

9 4. d. The acquiring of the necessary land and easements and the construction of the
10 necessary works, within and without the municipality, for flood protection of
11 properties within the municipality.

12 ~~5.~~ e. The acquiring or leasing of the necessary property and easements and the
13 construction of parking lots, ramps, garages, and other facilities for motor
14 vehicles.

15 2. In planning an improvement project of a type specified in any one of the foregoing
16 subsections, the governing body may include in such plans any and all items of work
17 and materials which in its judgment are necessary or reasonably incidental to the
18 completion of an improvement project of such type.

19 3. For a special assessment to be valid under this section:

20 a. The lot or parcel must receive a special benefit from the improvement;

21 b. The assessment must be uniform upon the same class of property; and

22 c. The assessment may not exceed the special benefit.

23 4. As used in this title, "special benefit" means an increase in the market value of the
24 parcel of land being assessed due to an improvement.

25 **SECTION 3. AMENDMENT.** Section 40-22-05 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **40-22-05. Condemnation of land and rights of way for special improvements - Taking**
28 **of possession - Trial - Appeal - Vacation of judgment.**

29 1. Whenever property required to make any improvement authorized by this chapter is to
30 be taken by condemnation proceedings, the court, upon request by resolution of the
31 governing body of the municipality making such improvement, shall call a special term

1 of court for the trial of the proceedings and may summon a jury for the trial whenever
2 necessary. The proceedings shall be instituted and prosecuted in accordance with the
3 provisions of chapter 32-15, except that when the interest sought to be acquired is a
4 right of way for the opening, laying out, widening, or enlargement of any street,
5 highway, avenue, boulevard, or alley in the municipality, or for the laying of any main,
6 pipe, ditch, canal, aqueduct, or flume for conducting water, storm water, or sewage,
7 whether within or without the municipality, the municipality may make an offer to
8 purchase the right of way and may deposit the amount of the offer with the clerk of the
9 district court of the county wherein the right of way is located, and may thereupon take
10 possession of the right of way forthwith. The offer shall be made by resolution of the
11 governing body of the municipality, a copy of which shall be attached to the complaint
12 filed with said clerk of court in accordance with section 32-15-18. The clerk shall
13 immediately notify the owner or owners of the land wherein the right of way is located
14 of the deposit, by causing a notice to be appended to the summons when served and
15 published in said proceedings as provided in the North Dakota Rules of Civil
16 Procedure, stating the amount deposited or agreed in the resolution to be deposited.
17 The owner may thereupon appeal to the court by filing an answer to the complaint in
18 the manner provided in the North Dakota Rules of Civil Procedure, and may have a
19 jury trial, unless a jury be waived, to determine the damages. However, upon due
20 proof of the service of said notice and summons and upon deposit of the aggregate
21 sum agreed in said resolution, the court may without further notice make and enter an
22 order determining the municipality to be entitled to take immediate possession of the
23 right of way.

- 24 2. If under laws of the United States proceedings for the acquisition of any right of way
25 are required to be instituted in or removed to a federal court, the proceedings may be
26 taken in that court in the same manner and with the same effect as provided in this
27 section and the clerk of the district court of the county in which the right of way is
28 located shall perform any and all of the duties set forth in this section, if directed to do
29 so by the federal court. The proceedings shall be determined as speedily as
30 practicable.

1 3. An appeal from a judgment in the condemnation proceedings shall be taken within
2 sixty days after the entry of the judgment, and the appeal shall be given preference by
3 the supreme court over all other civil cases except election contests.

4 4. No final judgment in the condemnation proceedings awarding damages to property
5 used by a municipality for street, sewer, or other purposes shall be vacated or set
6 aside if the municipality shall pay to the defendant, or shall pay into court for the
7 defendant, in cash, the amount so awarded. The municipality may levy special
8 assessments to pay all or any part of the judgment and at the time of the next annual
9 tax levy may levy a general tax for the payment of the part of the judgment as is not to
10 be paid by special assessment. For the purpose of providing funds for the payment of
11 the judgment, or for the deposit of the amount offered for purchase of a right of way as
12 provided above, the municipality may issue warrants on the fund of the improvement
13 district as provided in section 40-24-19, in anticipation of the levy and collection of
14 special assessments and of any taxes or revenues to be appropriated to the fund in
15 accordance with the provisions of this title. The warrants may be issued upon the
16 commencement of the condemnation proceedings or at any time thereafter. Upon the
17 failure of the municipality to make payment in accordance with this section, the
18 judgment in the condemnation proceedings may be vacated.

19 5. A special assessment that violates section 40-22-01 constitutes a taking under this
20 section. The assessment list is prima facie evidence the assessment does not exceed
21 the special benefit. The contesting party under this subsection has the burden of
22 introducing evidence to overcome the assessment list.

23 **SECTION 4. AMENDMENT.** Section 40-22-09 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **40-22-09. Size and form of improvement districts - Regulations governing.**

26 Any improvement district created by a municipality may embrace two or more separate
27 property areas. Each improvement district shall be of such size and form as to include all
28 properties which in the judgment of the governing body, after consultation with the engineer
29 planning the improvement, will be benefited by the construction of the improvement project
30 which is proposed to be made in or for such district, or by any portion or portions of such
31 project. A single district may be created for an improvement of the type specified in ~~any one of~~

1 the subsections of section 40-22-01, notwithstanding any lack of uniformity among the types,
2 items, or quantities of work and materials to be used at particular locations throughout the
3 district. The jurisdiction of a municipality to make, finance, and assess the cost of any
4 improvement project shall not be impaired by any lack of commonness, unity, or singleness of
5 the location, purpose, or character of the improvement, or by the fact that any one or more of
6 the properties included in the district is subsequently determined not to be benefited by the
7 improvement, or by a particular portion thereof, and is not assessed therefor. The assessment
8 must be uniformly applied to the same class of property within a single district. There may be
9 omitted from a water or sewer district, in the discretion of the governing body, properties within
10 the corporate limits which are benefited by the improvement therein but do not abut upon a
11 water or sewer main, without prejudice to the right and power of the municipality subsequently
12 to assess such properties to the extent and in the manner permitted by law. The governing body
13 may by resolution enlarge an improvement district in which an improvement is proposed or
14 under construction upon receipt of a petition therefor signed by the owners of three-fourths of
15 the area to be added to the district.

16 **SECTION 5. AMENDMENT.** Section 40-22-15 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **40-22-15. Resolution declaring improvements necessary - Exception for sewer and**
19 **water improvements - Contents of resolution - Publication of resolution.**

20 After the engineer's report required by section 40-22-10 has been filed and approved, the
21 governing body of the municipality, by resolution, shall declare that it is necessary to make the
22 improvements described therein. However, a resolution is not required if the improvement
23 constitutes a water or sewer improvement as described in subsection 1 of section 40-22-01, nor
24 if the governing body determines by resolution that a written petition for the improvement,
25 signed by the owners of a majority of the area of the property included within the district, has
26 been received. The resolution must refer intelligibly to the engineer's report and include a map
27 of the municipality showing the proposed improvement districts. The resolution must then be
28 published once each week for two consecutive weeks in the official newspaper of the
29 municipality.

30 **SECTION 6. AMENDMENT.** Section 40-22-17 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **40-22-17. Protest against resolution of necessity - Meeting to hear protest.**

2 If, within thirty days after the first publication of the resolution declaring the necessity of an
3 improvement project of the type specified in ~~any one of the subsections of~~ section 40-22-01, the
4 owners of any property within the improvement district file written protests describing the
5 property which is the subject of the protest with the city auditor protesting against the adoption
6 of said resolution, the governing body of the municipality, at its next meeting after the expiration
7 of the time for filing such protests, shall hear and determine the sufficiency thereof.

8 **SECTION 7. AMENDMENT.** Section 40-23-07 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **40-23-07. Determination of special assessments by commission - Political**
11 **subdivisions not exempt.**

12 Whenever the commission makes any special assessment, the commission shall determine
13 the particular lots and parcels of land which, in the opinion of the commission, will be especially
14 benefited by the construction of the work for which the assessment is to be made. The
15 commission shall determine the amount in which each of the lots and parcels of land will be
16 especially benefited by the construction of the work for which such special assessment is to be
17 made, and shall assess against each of such lots and parcels of land such sum, not exceeding
18 ~~the benefits, as is necessary to pay its just proportion of the total cost of such work, or of the~~
19 ~~part thereof which is to be paid by special assessment, including all expenses incurred in~~
20 ~~making such assessment and publishing necessary notices with reference thereto and the per-~~
21 ~~diem of the commission~~ special benefit as defined in section 40-22-01. However, as an
22 alternative to the procedure provided in this section, the special assessment commission may,
23 in its discretion, determine and allocate the cost of special assessments in accordance with the
24 method provided for in chapter 40-23.1. Property owned by a nonprofit entity and used
25 exclusively as a cemetery is exempt from collection of special assessments for benefits
26 conferred under this title and the city in which such property is located shall provide for the
27 payment of special assessments, installments, and interest against such property by the levy of
28 taxes according to law or by payment from other funds available to the city which are derived
29 from sources other than special assessments. Benefited property belonging to counties, cities,
30 school districts, park districts, and townships is not exempt from such assessment, and such
31 public corporations whose property is so assessed shall provide for the payment of such

1 assessments, installments thereof and interest thereon, by the levy of taxes according to law.
2 Nothing in this section may be deemed to amend other provisions of law with reference to the
3 levy of assessments on property sold for delinquent taxes.

4 **SECTION 8. AMENDMENT.** Section 40-23-11 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **40-23-11. Alteration of assessments at hearing - Limitations.**

7 At the hearing, the commission may make such alterations in the assessments as in its
8 opinion may be just or necessary to correct any error in the assessment list. ~~The commission~~
9 ~~may increase or diminish any assessment as may be just and necessary to make the aggregate~~
10 ~~of all assessments equal to the total amount required to pay the entire cost of the work for~~
11 ~~which such assessments are made or the part of such cost to be paid by special assessment.~~
12 ~~No~~An assessment shall may not exceed the ~~benefit~~special benefit as determined by the
13 ~~commission~~defined in section 40-22-01 to the parcel of land assessed.

14 **SECTION 9. AMENDMENT.** Section 40-23-15 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **40-23-15. Governing body to hear and determine appeals and objections to**
17 **assessments - Altering assessments - Limitations.**

18 At the regular or special meeting of the governing body at which the assessment list is to be
19 acted upon, any person aggrieved by the determination of the special assessment commission
20 in regard to any assessment who has appealed therefrom as provided in section 40-23-14 may
21 appear before the governing body and present the person's reasons why the action of the
22 commission should not be confirmed. The governing body shall hear and determine the appeals
23 and objections and may increase or diminish any of such assessments as it may deem just,
24 except that the aggregate amount of all the assessments returned by the commission shall not
25 be changed and no assessments as adjusted shall exceed the ~~benefit~~special benefit as
26 defined in section 40-22-01 to the parcel of land on which it is assessed ~~as determined by the~~
27 ~~assessment commission.~~

28 **SECTION 10. AMENDMENT.** Section 40-23-19 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **40-23-19. Assessments on annexed property for previous benefits.**

2 Any property that was outside the corporate limits of the municipality at the time of
3 contracting for an improvement, which is ~~benefited by~~received a special benefit as defined in
4 section 40-22-01 from the improvement and is subsequently annexed to the municipality, may
5 be assessed for the improvement subject to the same conditions and by the same procedure as
6 provided in section 40-23-18. The property that is ~~benefited~~receives a special benefit may also
7 be assessed for any improvement, within or outside the corporate limits, which is determined by
8 the governing body and the special assessment commission to benefit property that was
9 outside the corporate limits at the time of contracting for the improvement, whether or not an
10 improvement district was previously created for the improvement. For this purpose, the
11 governing body may create one or more improvement districts comprising all or part of the
12 annexed territory. The governing body may provide for the levy of special assessments upon
13 such property in the manner provided in this title, but may dispense with the requirements of
14 this title as to the adoption of a resolution of necessity and the advertisement and award of a
15 contract for the improvement. Assessment proceedings under this section are valid
16 notwithstanding any failure of the previous proceedings to comply with the provisions of law
17 regarding improvements to be financed by special assessments. The governing body may use a
18 reasonable depreciation schedule for the improvement in determining the amount of any special
19 assessment subsequently levied under this section.

20 **SECTION 11. AMENDMENT.** Section 40-23.1-09 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **40-23.1-09. Alteration of assessments at hearing - Limitations.**

23 At the hearing, the city auditor may make such alterations in the assessments as in the city
24 auditor's opinion may be just or necessary to correct any error in the assessment list. The city
25 auditor may increase or diminish any assessment as may be just and necessary ~~to make the~~
26 ~~aggregate of all assessments equal to the total amount required to pay the entire cost of the~~
27 ~~work for which such assessments are made or the part of such cost to be paid by special~~
28 ~~assessment. No.~~ An assessment shall~~may not~~ exceed the ~~benefit~~special benefit as defined in
29 section 40-22-01 to the parcel of land assessed.

30 **SECTION 12. AMENDMENT.** Section 40-23.1-13 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **40-23.1-13. Governing body to hear and determine appeals and objections to**
2 **assessments - Altering assessments - Limitations.**

3 At the regular meeting of the governing body at which the assessment list is to be acted
4 upon, any person aggrieved by the determination of the city auditor in regard to any
5 assessment, who has appealed ~~therefrom~~ as provided in section 40-23.1-12, may appear
6 before the governing body and present that person's reasons why the action of the city auditor
7 should not be confirmed. The governing body shall hear and determine the appeals and
8 objections and may increase or diminish any of such assessments as the governing body may
9 deem just, in the event that the formula provided for in sections 40-23.1-02 and 40-23.1-03
10 proves to be inapplicable. The governing body may increase or diminish any assessment as
11 may be just and necessary ~~to make the aggregate of all assessments equal to the total amount~~
12 ~~required to pay the entire cost of the work for which such assessments are made or the part of~~
13 ~~such cost to be paid by special assessment.~~ No assessment may exceed the benefitsspecial
14 benefit as determined, ~~in accordance with this chapter by the city auditor, defined in section~~
15 40-22-01 to the parcel of land assessed.

16 **SECTION 13. AMENDMENT.** Section 40-26-02 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **40-26-02. Correcting errors, mistakes, and deficiencies in special assessments.**

19 If errors or mistakes occur in making an assessment in respect to the total cost of the
20 improvement or otherwise, or if there was a deficiency in any assessment, the governing body
21 shall cause additional assessments to be made in the manner provided in section 40-26-03 to
22 supply such deficiencies or correct such errors or mistakes. The total of all special assessments
23 for an improvement ~~shall~~may not exceed the benefitsspecial benefits as defined in section
24 40-22-01 to the property derived from ~~such~~the improvement. An additional assessment
25 ~~shall~~must be a lien upon the lots and lands on which it is levied, ~~shall~~ be payable in the same
26 manner and in the same installments, ~~shall~~ draw interest at the same rate, and ~~shall~~ be
27 enforced through the same procedure as the original assessment.