

Sixty-ninth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2106

Introduced by

Senator Beard

1 A BILL for an Act to create and enact a new section to chapter 61-01 of the North Dakota
2 Century Code, relating to weather modification operations in the state; to amend and reenact
3 subsection 1 of section 37-17.1-11, and sections 58-03-07, 61-02.1-02.1, and 61-16.1-09 of the
4 North Dakota Century Code, relating to weather modification; to repeal section 37-17.1-15 and
5 chapter 61-04.1 of the North Dakota Century Code, relating to weather modification; and to
6 provide a penalty.

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

8 **SECTION 1. AMENDMENT.** Subsection 1 of section 37-17.1-11 of the North Dakota
9 Century Code is amended and reenacted as follows:

10 1. In addition to disaster or emergency mitigation measures as included in the state and
11 local disaster or emergency operational plans, the governor shall consider, ~~on a~~
12 ~~continuing basis,~~ steps that ~~could~~may be taken to mitigate or reduce the harmful
13 consequences of disasters or emergencies. At the governor's direction, and pursuant
14 to any other authority and capability ~~they have~~of state agencies, state agencies
15 charged with responsibilities in connection with floodplain management, stream
16 encroachment and flow regulation, ~~weather modification~~, fire prevention and control,
17 air quality, public works, land use and land use planning, and construction standards,
18 shall make studies of disaster or emergency mitigation-related matters. The governor,
19 ~~from time to time,~~ periodically shall make recommendations to the legislative
20 assembly, local governments, and other appropriate public and private entities as may
21 facilitate measures for mitigation or reduction of the harmful consequences of
22 disasters or emergencies.

23 **SECTION 2. AMENDMENT.** Section 58-03-07 of the North Dakota Century Code is
24 amended and reenacted as follows:

1 **58-03-07. Powers of electors.**

2 The electors of each township have the power at the annual township meeting to:

- 3 1. ~~To establish~~Establish one or more pounds within the township, to determine the
4 location of the pounds, to determine the number of poundmasters and to choose the
5 poundmasters, and to discontinue pounds which have been established.
- 6 2. ~~To select~~Select the township officers required to be chosen.
- 7 3. ~~To direct~~Direct the institution or defense of actions in all controversies in which the
8 township is interested.
- 9 4. ~~To direct~~Direct the raising of ~~such~~the sums as ~~they may deem~~deemed necessary to
10 prosecute or defend actions in which the township is interested.
- 11 5. ~~To make~~Make all rules and regulations for the impounding of animals.
- 12 6. ~~To make such~~Make bylaws, rules, and regulations as ~~may be~~ deemed necessary to
13 carry into effect the powers granted to the township.
- 14 7. ~~To impose~~Impose penalties for each offense on persons offending against any rule or
15 regulation established by the township.
- 16 8. ~~To apply~~Apply penalties when collected in ~~such~~the manner as ~~they deem~~deemed most
17 conducive to the interests of the township.
- 18 9. ~~To ratify~~Ratify or reject recommendations offered by the board of township supervisors
19 for the expenditure of funds for the purpose of purchasing building sites and for the
20 purchase, location, erection, or removal of any building or erection for township
21 purposes. ~~No~~A recommendation ~~shall~~may not be adopted except by a two-thirds vote
22 of the electors present and voting at any annual township meeting.
- 23 10. ~~To authorize~~Authorize and empower the board of township supervisors to purchase
24 liquids, compounds, or other ingredients for the destruction of noxious weeds, and
25 sprinklers to be used in spraying ~~said~~the liquids or compounds. ~~No~~A township
26 ~~shall~~may not purchase more than two ~~such~~ sprinklers in any one year.
- 27 11. ~~To authorize~~Authorize aid to a district fair association within the limits provided in
28 title 4.
- 29 12. ~~To authorize~~Authorize the levy of township taxes for the repair and construction of
30 roads and bridges and for other township charges and expenses within the limits
31 prescribed in title 57.

- 1 13. ~~To direct~~Direct the expenditure of funds raised for the repair and construction of roads
2 within the limits provided in title 24.
- 3 14. ~~To authorize~~Authorize the dissolution of the township in the manner provided in this
4 title.
- 5 15. ~~To authorize the~~Authorize entering ~~into~~ a contract for fire protection as provided for in
6 section 18-06-10.
- 7 16. ~~To authorize~~Authorize the expenditure of funds for the eradication of gophers, prairie
8 dogs, crows, or magpies.
- 9 17. ~~To authorize the expenditure of township funds for weather modification activities.~~
- 10 18. ~~To authorize~~Authorize the expenditure of funds to pay membership fees in county,
11 state, and national associations of township governments. This subsection may not be
12 construed to authorize a mill levy.
- 13 19. ~~To support~~Support an airport or to support or create an airport authority and to levy a
14 tax for airport purposes within the limitations of section 2-06-15.
- 15 20. ~~To direct~~Direct the transfer of township funds to a rural fire protection district or rural
16 fire department for fire protection within the township.
- 17 21. ~~To direct~~Direct the transfer of township funds to a rural ambulance service district for
18 emergency medical service within the township.
- 19 22. ~~To establish~~Establish special assessment districts in accordance with chapter 58-18.

20 **SECTION 3. AMENDMENT.** Section 61-02.1-02.1 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **61-02.1-02.1. Funding - Statewide water development projects - Bond issuance**
23 **amount.**

- 24 1. The priorities for the statewide water development program must be authorized and
25 declared in the public interest. These priorities include ~~municipal~~;
26 a. Municipal, rural, and industrial projects; ~~irrigation~~
27 b. Irrigation projects; ~~general~~
28 c. General water management projects, including rural flood control, snagging and
29 clearing, channel improvement, recreation, and planning studies; ~~flood and~~
30 d. Flood control projects; ~~and weather modification projects, which are authorized~~
31 ~~and declared to be in the public interest.~~

1 2. The state water commission may provide the funds necessary to construct ~~thesethe~~
2 projects authorized under subsection 1 from money appropriated to the state water
3 commission from the resources trust fund or by issuing bonds in an amount not to
4 exceed sixty million dollars plus the costs of issuance of the bonds, capitalized
5 interest, and reasonably required reserves. The proceeds of any bonds issued under
6 the authority provided in this section are appropriated to the state water commission
7 for the purposes set forth in this section.

8 2-3. If the state water commission determines it is appropriate to do so, it may, in lieu of
9 issuing or in combination with the issuance of bonds pursuant to this section or section
10 61-02.1-01, for all or part of the state's cost share for the projects set forth in those
11 provisions, use funds appropriated to it from the resources trust fund.

12 **SECTION 4. AMENDMENT.** Section 61-16.1-09 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **61-16.1-09. Powers of water resource board.**

15 Each water resource board shall have the power and authority to:

- 16 1. Sue and be sued in the name of the district.
- 17 2. Exercise the power of eminent domain as follows:
 - 18 a. Except as permitted under subdivision b, the board shall comply with title 32 for
19 the purpose of acquiring and securing by eminent domain any rights, titles,
20 interests, estates, or easements necessary or proper to carry out the duties
21 imposed by this chapter, and particularly to acquire the necessary rights in land
22 for the construction of dams, flood control projects, and other water conservation,
23 distribution, and supply works of any nature and to permit the flooding of lands,
24 and to secure the right of access to ~~sue~~the dams and other devices and the
25 right of public access to any waters impounded thereby.
 - 26 b. (1) If the interest sought to be acquired is an easement for a right of way for any
27 project authorized in this chapter for which federal or state funds have been
28 made available, the district may acquire the right of way by quick take
29 eminent domain as authorized by section 16 of article I of the Constitution of
30 North Dakota, after the district attempts to purchase the easement for the
31 right of way by:

- 1 (a) Conducting informal negotiations for not less than sixty days; or
2 (b) If informal negotiations fail, ~~the district shall engage~~engaging in formal
3 negotiations by:
- 4 [1] Sending the landowner an appraisal and written offer for just
5 compensation, which includes a specific description of the exact
6 location of the right of way, by certified mail or commercial
7 delivery requiring a signed receipt, and receiving the signed
8 receipt or documentation of constructive notice.
- 9 [2] Sending the landowner a written request for a meeting by
10 certified mail or commercial delivery requiring a signed receipt if
11 there is no agreement regarding compensation or no response to
12 the written offer within fifteen days of receipt, and receiving the
13 signed receipt or documentation of constructive notice.
- 14 [3] Sending the landowner a written notice, by certified mail or
15 commercial delivery requiring a signed receipt, of intent to take
16 possession of the right of way if there is no agreement regarding
17 compensation or no response to the written request for a
18 meeting within thirty days of receipt, and receiving the signed
19 receipt or documentation of constructive notice.
- 20 (2) Any written communication to the landowner must include contact
21 information for responding to the board and a description of the required
22 negotiation timeline.
- 23 (3) A district may not include or utilizeuse any reference to quick take eminent
24 domain during negotiations to acquire the necessary easement for a right of
25 way. If formal negotiation efforts fail, the district shall request approval from
26 the board of county commissioners of the county in which the right of way is
27 located to take possession of the right of way by quick take eminent domain.
28 After receiving the request, the county commissioners shall hold a public
29 meeting and give the landowner thirty days' notice of the meeting to allow
30 the landowner to attend. After receiving verification from the district that
31 there has been no reference or threat of quick take eminent domain by the

1 district during negotiations, the commissioners shall vote on whether to
2 approve the taking of the easement for a right of way using quick take
3 eminent domain. If the county commissioners approve the use of quick take
4 eminent domain by a majority vote, the district may take immediate
5 possession of the right of way, but not a blanket easement, if the district files
6 an affidavit by the chairman of the water resource board which states the
7 district has fulfilled the required negotiation steps and deposits the amount
8 of the written offer with the clerk of the district court of the county in which
9 the right of way is located.

10 (4) Within thirty days after notice has been given in writing to the landowner by
11 the clerk of the district court that a deposit has been made for the taking of a
12 right of way as authorized in this subsection, the owner of the property taken
13 may appeal to the district court by serving a notice of appeal upon the
14 acquiring agency, and the matter must be tried at the next regular or special
15 term of court with a jury unless a jury ~~beis~~ waived, in the manner prescribed
16 for trials under chapter 32-15.

17 (5) If ownership of a right of way has not terminated, ownership of a right of way
18 acquired under this subdivision terminates automatically when the district no
19 longer needs the right of way for the purpose for which it was acquired.

20 3. Accept funds and property or other assistance, financial or otherwise, from federal,
21 state, and other public or private sources for the purposes of aiding the construction or
22 maintenance of water conservation, distribution, and flood control projects; and
23 cooperate and contract with the state or federal government, or any department or
24 agency thereof, or any municipality within the district, in furnishing assurances and
25 meeting local cooperation requirements of any project involving control, conservation,
26 distribution, and use of water.

27 4. Procure the services of engineers and other technical experts, and employ an attorney
28 to assist, advise, and act for it in its proceedings.

29 5. Plan, locate, relocate, construct, reconstruct, modify, maintain, repair, and control all
30 dams and water conservation and management devices of every nature and water

- 1 channels, and to control and regulate the same and all reservoirs, artificial lakes, and
2 other water storage devices within the district.
- 3 6. Maintain and control the water levels and the flow of water in the bodies of water and
4 streams involved in water conservation and flood control projects within the district and
5 regulate streams, channels, drains, or watercourses and the flow of water in them by
6 changing, widening, deepening, straightening, or otherwise improving them; or by
7 cleaning out and repairing a drain.
- 8 7. Regulate and control water for the prevention of floods and flood damages by
9 deepening, widening, straightening, or diking the channels or floodplains of any stream
10 or watercourse within the district, and construct reservoirs or other structures to
11 impound and regulate ~~such~~the waters.
- 12 8. Make rules and regulations concerning the management, control, regulation, and
13 conservation of waters and prevent the pollution, contamination, or other misuse of the
14 water resources, streams, or bodies of water included within the district.
- 15 9. Do all things reasonably necessary and proper to preserve the benefits to be derived
16 from the conservation, control, and regulation of the water resources of this state.
- 17 10. Construct, operate, and maintain recreational facilities, including beaches, swimming
18 areas, boat docking and landing facilities, toilets, wells, picnic tables, trash
19 receptacles, and parking areas, and to establish and enforce rules and regulations for
20 the use ~~thereof~~of the recreational facilities.
- 21 11. Have, in addition to any powers provided in this chapter, the authority to construct an
22 assessment drain in accordance with the requirements of this chapter.
- 23 12. Acquire by lease, purchase, gift, condemnation, or other lawful means and to hold in
24 its corporate name for its use and control both real and personal property and
25 easements and rights of way within or without the limits of the district for all purposes
26 authorized by law or necessary to the exercise of any other stated power.
- 27 13. Convey, sell, dispose of, or lease personal and real property of the district as provided
28 by this chapter.
- 29 14. Authorize and issue warrants to finance construction of water conservation and flood
30 control projects, assess benefited property for part or all of the cost of ~~such~~the

projects, and require appropriations and tax levies to maintain sinking funds for construction warrants on a cash basis at all times.

15. Borrow money within the limitations imposed by this chapter for projects ~~herein-~~ authorized under this chapter and pledge security for the repayment of ~~such~~the loans.

16. Order or initiate appropriate legal action to compel the entity responsible for the maintenance and repair of any bridge or culvert to remove from under, within, and around ~~such~~the bridge or culvert all dirt, rocks, weeds, brush, shrubbery, other debris, and any artificial block ~~which~~that hinders or decreases the flow of water through ~~such~~the bridge or culvert.

17. Order or initiate appropriate legal action to compel the cessation of the destruction of native woodland bordering within two hundred feet [60.96 meters] of that portion of a riverbank subject to overflow flooding that will cause extensive property damage, or in the alternative, order, that, if ~~such~~the destruction is permitted, the party or parties responsible for the destruction must, when the board has determined ~~that such~~the destruction will cause excessive property damage from overflow flooding due to the erosion or blocking of the river channel, plant a shelterbelt which meets the specifications of the board. In the event the native woodland within ~~such~~the area has already been destroyed, the board may, in its discretion, order the planting of a shelterbelt which, in the judgment of the board, will curtail the erosion or blocking of ~~such~~the river channel where overflow flooding has caused extensive property damage. For purposes of this subsection, the words "riverbank" and "river channel" relate to rivers as defined in the United States geological survey base map of North Dakota, edition of 1963. The provisions of this subsection ~~shall~~may not be construed to limit, impair, or abrogate the rights, powers, duties, or functions of any federal, state, or local entity to construct and maintain any flood control, irrigation, recreational, or municipal or industrial water supply project.

18. Petition any zoning authority established pursuant to chapter 11-33, 11-35, or 40-47 or section 58-03-13 to assume jurisdiction over a floodplain for zoning purposes when ~~such~~the zoning is required to regulate and enforce the placement, erection, construction, reconstruction, repair, and use of buildings and structures to protect and promote the health, safety, and general welfare of the public within a floodplain area.

1 In the event ~~such~~the zoning authority fails to act or does not exist, the board may
2 request the state water commission to assist ~~it~~the board in a study to determine and
3 delineate the floodplain area. Upon completion of ~~such~~the study, the board shall make
4 suitable recommendations for the establishment of a floodplain zone to all zoning
5 authorities and the governing bodies of all political subdivisions having jurisdiction
6 within the floodplain area.

7 19. Plan, locate, relocate, construct, reconstruct, modify, extend, improve, operate,
8 maintain, and repair sanitary and storm sewer systems, or combinations thereof,
9 including sewage and water treatment plants, and regulate the quantity of sewage
10 effluent discharged from municipal lagoons; and contract with the United States
11 government, or any department or agency ~~thereof~~of the United States government, or
12 any private or public corporation or limited liability company, the government of this
13 state, or any department, agency, or political subdivision thereof, or any municipality or
14 person with respect to any such systems.

15 20. Develop water supply systems, store and transport water, and provide, contract for,
16 and furnish water service for domestic, municipal, and rural water purposes, irrigation,
17 milling, manufacturing, mining, metallurgical, and any and all other beneficial uses,
18 and fix the terms and rates therefor. Each district may acquire, construct, operate, and
19 maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines,
20 tunnels, and any and all works, facilities, improvements, and property necessary
21 therefor.

22 21. Coordinate proposals for installation, modification, or construction of culverts and
23 bridges in an effort to achieve appropriate sizing and maximum consistency of road
24 openings. The department of transportation, railroads, counties, and townships shall
25 cooperate with the districts in this effort. Each district ~~shall~~ also shall consider the
26 possibility of incorporating appropriate water control structures, where appropriate, as
27 a part of ~~such~~the road openings.

28 22. Plug abandoned water wells and participate in cost-sharing arrangements with water
29 well owners to plug water wells to protect aquifers from pollution or depletion, maintain
30 pressure, and prevent damage to surrounding property.

- 1 23. ~~Have, in addition to any powers provided in this chapter, the authority to conduct~~
2 ~~weather modification operations in accordance with the procedures and provisions of~~
3 ~~chapter 61-04.1.~~
- 4 24. Establish, deepen, widen, and improve drains; and extend drains as necessary to
5 provide a suitable outlet or reasonably drain lands within a practical drainage area.
- 6 ~~25.24.~~ Install artificial subsurface drainage systems.

7 **SECTION 5.** A new section to chapter 61-01 of the North Dakota Century Code is created
8 and enacted as follows:

9 **Weather modification prohibited - Penalty.**

- 10 1. It is a class B misdemeanor for a person to perform or contract for the performance of
11 weather modification in the state.
- 12 2. As used in this section "weather modification" means and extends to the control,
13 alteration, and amelioration of weather elements, including human-caused changes in
14 the natural precipitation process, hail suppression or modification, and alteration of
15 other weather phenomena, including clouds, temperature, wind direction, and velocity,
16 and the initiating, increasing, decreasing, and otherwise modifying by artificial methods
17 of precipitation in the form of rain, snow, hail, mist, or fog through cloud seeding,
18 electrification, or by other means to provide immediate practical benefits.

19 **SECTION 6. REPEAL.** Section 37-17.1-15 and Chapter 61-04.1 of the North Dakota
20 Century Code are repealed.