

Sixty-third  
Legislative Assembly  
of North Dakota

ENGROSSED HOUSE BILL NO. 1025

Introduced by

Legislative Management

(Advisory Commission on Intergovernmental Relations)

1 A BILL for an Act to amend and reenact ~~subsection 3 of section 37-17.1-12 and sections~~  
2 37-17.1-12, 37-17.1-16 ~~and~~, 37-17.1-17, and 40-22-01.1 of the North Dakota Century Code,  
3 relating to liability and immunity during disaster responses and financing of repairs.

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

5 ~~SECTION 1. AMENDMENT. Subsection 3 of section 37-17.1-12 of the North Dakota~~  
6 ~~Century Code is amended and reenacted as follows:~~

7 ~~3. Compensation for property must be only paid if the property was commandeered~~  
8 ~~or otherwise used in management of a disaster or emergency declared by the~~  
9 ~~governor and its use or destruction was ordered by the governor by a jurisdiction~~  
10 ~~having proper authority. Compensation for property or damage to property is the~~  
11 ~~responsibility of the jurisdiction that commandeered or otherwise used the property to~~  
12 ~~the extent the responsibility was not otherwise mitigated by agreement before the use~~  
13 ~~of the property.~~

14 **SECTION 1. AMENDMENT.** Section 37-17.1-12 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16 **37-17.1-12. Compensation - Entitlement - Time - Amount.**

- 17 1. Persons within this state shall conduct themselves and keep and manage their affairs  
18 and property in ways that will reasonably assist and will not unreasonably detract from  
19 the ability of the state and the public to effectively prevent, mitigate, prepare for,  
20 respond to, and recover from a disaster or emergency. This obligation includes  
21 appropriate personal service and use or restriction on the use of property in time of  
22 disaster or emergency. This chapter neither increases nor decreases these obligations  
23 but recognizes their existence under the Constitution of North Dakota and statutes of  
24 this state and the common law. Compensation for services or for the taking or use of

1 property must be only to the extent that obligations recognized herein are exceeded in  
2 a particular case and then only to the extent that the claimant may not be deemed to  
3 have volunteered that person's services or property without compensation.

4 2. Personal services may not be compensated by the state or any county or city thereof,  
5 except pursuant to statute or local law or ordinance.

6 3. Compensation for property ~~must~~ may be ~~only~~ paid if the property was commandeered  
7 or otherwise used in management of a disaster or emergency declared ~~by the~~  
8 ~~governor and its use or destruction was ordered by the governor~~ under proper authority  
9 to the extent not otherwise waived or agreed upon before the use of property.

10 4. A claim made against a county or city must be made in writing to the appropriate  
11 governing body within two years after the use, damage, loss, or destruction of the  
12 property under proper authority is discovered or reasonably should have been  
13 discovered, may only be for actual damages not recovered from claimants' property or  
14 other applicable insurance, and may be paid from any combination of funds provided  
15 under section 40-22-01.1, disaster relief funds made available to a county or city for  
16 this purpose, or other funds at the discretion of the governing body. A city or county  
17 may establish reasonable provisions for the payment of compensation.

18 5. Any person claiming compensation for the use, damage, loss, or destruction of  
19 property by the state under this chapter shall file a written claim therefor with the office  
20 of management and budget in the form and manner required by the office. The claim  
21 for compensation must be received by the office of management and budget within  
22 ~~one year~~ two years after the use, damage, loss, or destruction of the property pursuant  
23 to the governor's order under section 37-17.1-05 is discovered or reasonably should  
24 have been discovered or compensation under this chapter is waived.

25 ~~5.6.~~ Unless the amount of compensation on account of property damaged, lost, or  
26 destroyed is agreed between the claimant and the office of management and budget,  
27 the amount of compensation must be calculated in the same manner as compensation  
28 due for a taking of property pursuant to the condemnation laws of this state.

29 **SECTION 2. AMENDMENT.** Section 37-17.1-16 of the North Dakota Century Code is  
30 amended and reenacted as follows:

1       **37-17.1-16. Immunity and exemption.**

- 2       1. All functions hereunder and all other activities relating to emergency management are  
3       hereby declared to be governmental functions. ~~The state, a county or city, any~~  
4       disaster or emergency worker, an employee of a federal agency on loan or leave to  
5       the state in support of emergency service response whether the emergency is  
6       declared or undeclared, or any other ~~person~~individual providing goods or services  
7       during an emergency if the ~~person~~individual is working in coordination with and under  
8       the direction of an appropriate governmental emergency or disaster response entity,  
9       complying with or reasonably attempting to comply with this chapter, or any executive  
10      order or disaster or emergency operational plan pursuant to this chapter, or pursuant  
11      to any ordinance relating to any precautionary measures enacted by any county or city  
12      of the state, except in case of willful misconduct, gross negligence, or bad faith, is not  
13      liable for the death of or injury to persons, or for damage to property except as  
14      compensation may be provided in section 37-17.1-12, as a result of any such activity.  
15      This section does not affect the right of any person to receive benefits to which that  
16      person would otherwise be entitled under this chapter, or under workforce safety and  
17      insurance law, or under any pension law, nor the right of any such person to receive  
18      any benefits or compensation under any Act of Congress.
- 19      2. Any requirement for a license to practice any professional, mechanical, or other skill  
20      does not apply to any authorized disaster or emergency worker who, in the course of  
21      performing the worker's duties, practices the professional, mechanical, or other skill  
22      during a disaster or emergency.
- 23      3. This section does not affect any other provision of law that may provide immunity to a  
24      person that is providing volunteer assistance.

25      **SECTION 3. AMENDMENT.** Section 37-17.1-17 of the North Dakota Century Code is  
26      amended and reenacted as follows:

27      **37-17.1-17. No private liability.**

28      Any person owning or controlling real estate or other premises who voluntarily and without  
29      compensation grants a license or privilege, or otherwise permits the designation or use of the  
30      whole or any part or parts of such real estate or premises for the purpose of emergency  
31      management activities during an actual, impending, mock or practice disaster or emergency, is,

1 together with their successors in interest, if any, not civilly liable, except in the case of gross  
2 negligence or willful and malicious failure to guard or warn against a dangerous condition, use,  
3 structure, or activity, for negligently causing the death of, or injury to, any person on or about  
4 such real estate or premises or for loss of, or damage to, the property of such person.

5 **SECTION 4. AMENDMENT.** Section 40-22-01.1 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **40-22-01.1. Restoration of ~~certain~~ property damaged in flood control or during a**  
8 **declared disaster or emergency - Special assessments for costs.**

9 When any city ~~shall have~~has constructed any temporary emergency flood control protection  
10 devices or works to protect property located within a portion of a city from flood damage or  
11 expended funds for the protection of the city from flood or other peril under chapter 37-17.1 or  
12 otherwise, the city may ~~cause the removal of~~maintain and remove material used in the  
13 construction of ~~such~~the temporary emergency flood control protection devices or works and the  
14 repair ~~of~~ damages to land, buildings, or personal property caused by the operation of its  
15 equipment upon the property while in the process of installing or removing ~~such~~the temporary  
16 emergency flood protection systems. ~~Such~~The city may create by resolution of its governing  
17 board a special assessment district encompassing the protected area. Special assessments  
18 against the property within the district ~~shall~~must be imposed to cover the costs incurred by the  
19 city in constructing and maintaining the emergency flood protection devices or works and in  
20 removing the material used and in repairing the damages caused by the operation of equipment  
21 while installing or removing ~~such~~the temporary emergency flood protection systems. The22 amount to be assessed must be established by a resolution adopted by the governing board.  
23 Special assessments against any property in the district ~~shall~~must be determined and made in  
24 the same manner as is provided for improvements by special assessments to the extent  
25 consistent herewith, and the certification and collection, including lien provisions, applicable to  
26 other special assessments ~~shall be~~are applicable hereto. Provided, however, that the provisions  
27 of sections 40-22-15, 40-22-17, and 40-22-18, relating to a resolution of necessity and protests  
28 against special assessments, ~~shall~~sections 40-22-10, 40-22-11, and 40-22-29, relating to  
29 engineers' reports, plans, and estimates, and section 40-22-19, relating to contract proposals,  
30 do not apply to special assessment districts created ~~pursuant to~~under this section.