

**Sixty-third Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 8, 2013**

HOUSE BILL NO. 1025
(Legislative Management)
(Advisory Commission on Intergovernmental Relations)

AN ACT to amend and reenact sections 37-17.1-12, 37-17.1-16, 37-17.1-17, and 40-22-01.1 of the North Dakota Century Code, relating to liability and immunity during disaster responses and financing of repairs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. Persons within this state shall conduct themselves and keep and manage their affairs and property in ways that will reasonably assist and will not unreasonably detract from the ability of the state and the public to effectively prevent, mitigate, prepare for, respond to, and recover from a disaster or emergency. This obligation includes appropriate personal service and use or restriction on the use of property in time of disaster or emergency. This chapter neither increases nor decreases these obligations but recognizes their existence under the Constitution of North Dakota and statutes of this state and the common law. Compensation for services or for the taking or use of property must be only to the extent that obligations recognized herein are exceeded in a particular case and then only to the extent that the claimant may not be deemed to have volunteered that person's services or property without compensation.
2. Personal services may not be compensated by the state or any county or city thereof, except pursuant to statute or local law or ordinance.
3. Compensation for property ~~must~~may be ~~only~~paid if the property was commandeered or otherwise used in management of a disaster or emergency declared ~~by the governor and its use or destruction was ordered by the governor~~under proper authority to the extent not otherwise waived or agreed upon before the use of property.
4. A claim made against a county or city must be made in writing to the appropriate governing body within two years after the use, damage, loss, or destruction of the property under proper authority is discovered or reasonably should have been discovered, may only be for actual damages not recovered from claimants' property or other applicable insurance, and may be paid from any combination of funds provided under section 40-22-01.1, disaster relief funds made available to a county or city for this purpose, or other funds at the discretion of the governing body. A city or county may establish reasonable provisions for the payment of compensation.
5. Any person claiming compensation for the use, damage, loss, or destruction of property by the state under this chapter shall file a written claim therefor with the office of management and budget in the form and manner required by the office. The claim for compensation must be received by the office of management and budget within ~~one year~~two years after the use, damage, loss, or destruction of the property pursuant to the governor's order under section 37-17.1-05 is discovered or reasonably should have been discovered or compensation under this chapter is waived.
- 5.6. Unless the amount of compensation on account of property damaged, lost, or destroyed is agreed between the claimant and the office of management and budget, the amount of

compensation must be calculated in the same manner as compensation due for a taking of property pursuant to the condemnation laws of this state.

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

37-17.1-16. Immunity and exemption.

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

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

37-17.1-17. No private liability.

Any person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege, or otherwise permits the designation or use of the whole or any part or parts of such real estate or premises for the purpose of emergency management activities during an actual, impending, mock or practice disaster or emergency, is, together with their successors in interest, if any, not civilly liable, except in the case of gross negligence or willful and malicious failure to guard or warn against a dangerous condition, use, structure, or activity, for negligently causing the death of, or injury to, any person on or about such real estate or premises or for loss of, or damage to, the property of such person.

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

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

When any city shall have has constructed any temporary emergency flood control protection devices or works to protect property located within a portion of a city from flood damage or expended funds for the protection of the city from flood or other peril under chapter 37-17.1 or otherwise, the city may cause the removal of maintain and remove material used in the construction of such the temporary emergency flood control protection devices or works and the repair of damages to land, buildings, or personal property caused by the operation of its equipment upon the property while in the process of

installing or removing ~~such~~the temporary emergency flood protection systems. ~~Such~~The city may create by resolution of its governing board a special assessment district encompassing the protected area. Special assessments against the property within the district ~~shall~~must be imposed to cover the costs incurred by the city in constructing and maintaining the emergency flood protection devices or works and in removing the material used and in repairing the damages caused by the operation of equipment while installing or removing ~~such~~the temporary emergency flood protection systems. The amount to be assessed must be established by a resolution adopted by the governing board. Special assessments against any property in the district ~~shall~~must be determined and made in the same manner as is provided for improvements by special assessments to the extent consistent herewith, and the certification and collection, including lien provisions, applicable to other special assessments ~~shall~~be applicable hereto. Provided, however, that the provisions of sections 40-22-15, 40-22-17, and 40-22-18, relating to a resolution of necessity and protests against special assessments, ~~shall~~sections 40-22-10, 40-22-11, and 40-22-29, relating to engineers' reports, plans, and estimates, and section 40-22-19, relating to contract proposals, do not apply to special assessment districts created pursuant ~~to~~under this section.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-third Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1025.

House Vote: Yeas 91 Nays 2 Absent 1

Senate Vote: Yeas 44 Nays 0 Absent 3

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2013.

Approved at _____ M. on _____, 2013.

Governor

Filed in this office this _____ day of _____, 2013,

at _____ o'clock _____ M.

Secretary of State