

WATERS

CHAPTER 491

SENATE BILL NO. 2282

(Senators Fischer, Wardner, Dotzenrod)
(Representatives Hofstad, Kreun, Onstad)

AN ACT to amend and reenact sections 61-02-12 and 61-04.1-07 of the North Dakota Century Code, relating to compensation of members of the state water commission and members of the North Dakota atmospheric resource board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-02-12 of the North Dakota Century Code is amended and reenacted as follows:

61-02-12. Compensation and expenses of appointive members of commission.

Each appointive member of the commission is entitled to receive ~~sixty-two dollars and fifty cents~~ compensation per day in the amount provided for members of the legislative management under section 54-35-10 and must be reimbursed for expenses in the amounts provided in sections 44-08-04 and 54-06-09 while attending meetings of the commission or, at the discretion of the member, may receive either per diem compensation or expenses in those amounts while otherwise engaged in official business of the commission, including time of travel between home and the place at which the member performs such duties.

SECTION 2. AMENDMENT. Section 61-04.1-07 of the North Dakota Century Code is amended and reenacted as follows:

61-04.1-07. Board officers - Compensation.

All members of the board, with the exception of the chairman, are voting members. The board shall elect annually from its membership a chairman, vice chairman, and secretary. A majority of the members constitute a quorum for the purpose of conducting the business of the board. Board members who are not full-time salaried employees of this state are entitled to receive compensation of ~~sixty-two dollars and fifty cents~~ per day in the amount provided for members of the legislative management under section 54-35-10 and must be reimbursed for their mileage and expenses in the amounts provided by sections 44-08-04 and 54-06-09. All other members of the board must be reimbursed for necessary travel and other expenses incurred in the performance of the business of the board in the amounts provided in sections 44-08-04 and 54-06-09.

Approved April 19, 2011
Filed April 19, 2011

CHAPTER 492

SENATE BILL NO. 2068

(Natural Resources Committee)
(At the request of the State Water Commission)

AN ACT to create and enact section 61-02-14.2 of the North Dakota Century Code, relating to the state engineer's authority to execute contracts on behalf of the state water commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 61-02-14.2 of the North Dakota Century Code is created and enacted as follows:

61-02-14.2. Commission contracts may be executed by state engineer.

The state engineer, or the state engineer's authorized designee, may execute contracts approved by the commission.

Approved April 19, 2011

Filed April 20, 2011

CHAPTER 493

HOUSE BILL NO. 1413

(Representatives Hofstad, D. Johnson)
(Senator Oehlke)

AN ACT to amend and reenact subsections 1 and 7 of section 61-03-21.3 of the North Dakota Century Code, relating to removal of dangers in or on the bed of navigable waters; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁸⁰ **SECTION 1. AMENDMENT.** Subsection 1 of section 61-03-21.3 of the North Dakota Century Code is amended and reenacted as follows:

1. If the state engineer finds that buildings, structures, boat docks, debris, or other manmade objects, except a fence or corral, situated in, on the bed of, or adjacent to waters that have been determined to be navigable by a court are, or are ~~imminently~~ likely to be, a menace to life or property or public health or safety, the state engineer ~~shall~~ may issue an order to the person responsible for the object. ~~The~~ If the state engineer issues an order, the order must specify the nature and extent of the conditions, the action necessary to alleviate, avert, or minimize the danger, and a date by which that action must be taken. If the state engineer determines that an object covered by flood insurance is ~~imminently~~ likely to be a menace to life or property or public health or safety, the date specified in the order for action to be taken may not precede the date on which the person is eligible to receive flood insurance proceeds. If a building, structure, boat dock, debris, or other manmade object, except a fence or corral, is partially or completely submerged due to the expansion of navigable waters, the person responsible is the person who owns or had control of the property on which the object is located or the person who owned or had control of the property immediately before it became submerged by water.

¹⁸¹ **SECTION 2. AMENDMENT.** Subsection 7 of section 61-03-21.3 of the North Dakota Century Code is amended and reenacted as follows:

7. If the state engineer has issued an order under this section with regard to a building, structure, boat dock, debris, or other manmade object that the state engineer has determined is ~~imminently~~ likely to be a menace to life or property or public health or safety, and it later becomes known that the object would not have become a menace, a person who has taken action required by the state engineer's order is entitled to compensation in an amount equal to the value of any property destroyed and reasonable costs incurred as a result of complying with the state engineer's notice.

¹⁸⁰ Section 61-03-21.3 was also amended by section 2 of House Bill No. 1413, chapter 493.

¹⁸¹ Section 61-03-21.3 was also amended by section 1 of House Bill No. 1413, chapter 493.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 19, 2011
Filed April 20, 2011

CHAPTER 494

HOUSE BILL NO. 1107

(Energy and Natural Resources Committee)
(At the request of the State Engineer)

AN ACT to amend and reenact section 61-04-01.1, subsection 5 of section 61-04-05, and section 61-04-05.1 of the North Dakota Century Code, relating to definitions and informational and adjudicative proceedings on a water permit application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-04-01.1 of the North Dakota Century Code is amended and reenacted as follows:

61-04-01.1. Definitions.

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

1. "Adjudicative proceeding" as defined under chapter 28-32 provides for an appeal of a recommended decision prepared by the state engineer for a water permit application.
2. "Beneficial use" means a use of water for a purpose consistent with the best interests of the people of the state.
- ~~2-3.~~ "Commission" means the state water commission.
- ~~3-4.~~ "Domestic use" means the use of water by an individual, or by a family unit, or household, for personal needs and for household purposes, including heating, drinking, washing, sanitary, and culinary uses; irrigation of land not exceeding five acres [2.0 hectares] in area for ~~noncommercial~~ gardens, orchards, lawns, trees, or shrubbery; and for household pets and domestic animals kept for household sustenance and not for sale or commercial use, when the water is supplied by the individual or family unit. Also included within this use are "domestic rural uses" which must be defined by the state engineer by rule.
- ~~4-5.~~ "Fish, wildlife, and recreation" means the use of water for the purposes of propagating and sustaining fish and wildlife resources and for the development and maintenance of water areas necessary for outdoor recreation activities.
- ~~5-6.~~ "Industrial use" means the use of water for the furtherance of a commercial enterprise wherever located, including manufacturing, mining, or processing.
- ~~6-7.~~ "Informational hearing" means an administrative proceeding, not an adjudicative proceeding, which provides all interested persons an opportunity to present oral or written comments on a water permit application.
8. "Irrigation use" means the use of water for application to more than five acres [2.0 hectares] of land to stimulate the growth of agricultural crops, including gardens, orchards, lawns, trees, or shrubbery, or the maintenance of

recreation areas such as athletic fields, golf courses, parks, and similar types of areas, except when the water for the facility is provided by a municipal water system.

- ~~7-9.~~ "Livestock use" means the use of water for drinking purposes by herds, flocks, or bands of animals kept for commercial purposes.
- ~~8-10.~~ "Municipal or public use" means the use of water by the state through its political subdivisions, institutions, facilities, and properties, and the inhabitants thereof, or by unincorporated communities, subdivision developments, rural water systems, and other entities, whether supplied by the government or by a privately owned public utility or other agency or entity, for primarily domestic purposes, as defined herein.
- ~~9-11.~~ "Person" includes political subdivisions, corporations, limited liability companies, partnerships, associations, the United States and its departments or agencies, the state of North Dakota and its departments or agencies, and any other legal entity.
- ~~10-12.~~ "Rural water system" means a water supply system designed to serve regional needs.
- ~~11-13.~~ "Water of the state" or "waters of the state" means those waters identified in section 61-01-01.

SECTION 2. AMENDMENT. Subsection 5 of section 61-04-05 of the North Dakota Century Code is amended and reenacted as follows:

5. The notice must give all essential facts as to the proposed appropriation, including the places of appropriation and of use, amount of water, the use, the name and address of the applicant, and the date by which written comments and requests for an informational hearing regarding the proposed appropriation must be filed with the state engineer. The notice must also state that anyone who files written comments with the state engineer will be mailed a copy of the state engineer's recommended decision on the application.

SECTION 3. AMENDMENT. Section 61-04-05.1 of the North Dakota Century Code is amended and reenacted as follows:

61-04-05.1. Comments - Hearing.

1. Comments regarding a proposed appropriation must be in writing and filed by the date specified by the state engineer under subsection 5 of section 61-04-05. The comments must state the name and address of the person filing the comments.
2. A person filing written comments may also request an informational hearing on the application by the date specified by the state engineer under subsection 5 of section 61-04-05. If a request for an informational hearing is made and if the state engineer determines an informational hearing is necessary to obtain additional information to evaluate the application or to receive public input, the state engineer shall designate a time and place for the informational hearing and serve a copy of the notice of hearing upon the applicant and any person who filed written comments. Service must be made in the manner allowed for service under the North Dakota Rules of Civil Procedure at least twenty days before the hearing.

3. If two or more municipal or public use water facilities request the informational hearing to be held locally, the state engineer shall hold the hearing in the county seat of the county in which the proposed water appropriation site is located.
4. The state engineer shall consider all written comments received and testimony presented at an informational hearing, if held, and shall recommend in writing approval or disapproval of the application or that the application be held in abeyance. A copy of the recommended decision must be mailed to the applicant and any person who filed written comments.
- ~~3-5.~~ Within thirty days of service of the recommended decision, the applicant and any person who would be aggrieved by the decision and who filed written comments by the date specified under subsection 5 of section 61-04-05 may file additional written comments with the state engineer or request a hearingan adjudicative proceeding on the application, or both. A request for a hearingan adjudicative proceeding must be made in writing and must state with particularity how the person would be aggrieved by the decision and the issues and facts to be presented at the hearingproceeding. If a request for a hearingan adjudicative proceeding is not made, the state engineer shall consider the additional comments, if any are submitted, and issue a final decision. If a request for a hearingan adjudicative proceeding is made, ~~or and~~ if the state engineer determines a hearingan adjudicative proceeding is necessary ~~to obtain additional information to evaluate the application or to receive public input,~~ the state engineer shall designate a time and place for the hearingadjudicative proceeding and serve a copy of the notice of hearingadjudicative proceeding upon the applicant and any person who filed written comments. Service must be made in the manner allowed for service under the North Dakota Rules of Civil Procedure at least twenty days before the hearing.
4. ~~If two or more municipal or public use water facilities request the hearing to be held locally, the state engineer shall hold the hearing in the county seat of the county in which the proposed water appropriation site is located.~~

Approved March 14, 2011
Filed March 14, 2011

CHAPTER 495

SENATE BILL NO. 2283

(Senators Fischer, Dotzenrod)
(Representatives Hofstad, Kreun)

AN ACT to amend and reenact section 61-21-47 of the North Dakota Century Code, relating to drainage project expenditures in excess of the maximum levy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-21-47 of the North Dakota Century Code is amended and reenacted as follows:

61-21-47. Expenditures in excess of maximum levy.

If the cost of maintenance, cleaning out, and repairing any drain shall exceed the amount produced by the maximum levy of ~~one dollar and fifty cents~~ two dollars per acre [.40 hectare] in any year, with the amount accumulated in the drainage fund, the board may proceed with such cleaning out and make an additional levy only upon petition of at least sixty-one percent of the affected landowners. The percentage of the affected landowners signing such petition shall be determined in accordance with the weighted voting provisions in section 61-21-16.

Approved April 25, 2011
Filed April 25, 2011

CHAPTER 496

HOUSE BILL NO. 1318

(Representatives Pollert, Hofstad, Onstad)
(Senators Klein, Lyson, Wanzek)

AN ACT to create and enact chapter 61-24.8 of the North Dakota Century Code, relating to creation of special assessment districts for irrigation works by the Garrison Diversion Conservancy District; to amend and reenact section 54-35-02.7 of the North Dakota Century Code, relating to membership and duties of the water-related topics overview committee; to provide for reports to the state water commission; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-35-02.7 of the North Dakota Century Code is amended and reenacted as follows:

54-35-02.7. (Effective through November 30, 2013) Water-related topics overview committee - Duties.

The legislative management, during each interim, shall appoint a water-related topics overview committee in the same manner as the legislative management appoints other interim committees. The committee must meet quarterly and is responsible for legislative overview of water-related topics and related matters and for any necessary discussions with adjacent states on water-related topics. During the 2011-12 interim, the committee shall review the state's irrigation laws and rules and evaluate the process of the prioritization of water projects. The committee consists of ~~nineteen~~ thirteen members and the legislative management shall designate the chairman of the committee. The committee shall operate according to the statutes and procedure governing the operation of other legislative management interim committees.

(Effective after November 30, 2013) Garrison diversion overview. The legislative management is responsible for legislative overview of the Garrison diversion project and related matters and for any necessary discussions with adjacent states on water-related topics.

SECTION 2. Chapter 61-24.8 of the North Dakota Century Code is created and enacted as follows:

61-24.8-01. Definitions.

As used in this chapter:

1. "Auditor" means the county auditor.
2. "Board" means the board of directors of the Garrison Diversion Conservancy District.
3. "Bond" means any revenue bond, refunding bond, improvement bond, or other evidence of indebtedness of the district issued under this chapter.

4. "Direct benefit" means water is delivered to a tract of land.
5. "Director" means a member of the board of directors.
6. "District" means the Garrison Diversion Conservancy District.
7. "Federal agency" includes the United States, the president of the United States, or any agency, instrumentality, or corporation of the United States which has been or may be designated or created by or pursuant to any act or acts or joint resolutions of the Congress of the United States or which may be owned or controlled, directly or indirectly, by the United States.
8. "Holder of bonds" or "bondholder", or any similar term, means any person who is the registered owner of any outstanding revenue bond, improvement bond, or refunding bond.
9. "Law" means any statute of this state.
10. "Project" means any work, undertaking, enterprise, or any combination of two or more projects, which the district is authorized to construct. The term includes all irrigation improvements, betterments, extensions, and replacements of work, undertaking, or enterprises, and all appurtenances, facilities, easements, lands, rights in land, water rights, contract rights, approaches, dams, reservoirs, generating stations, trunk connections, other water mains, filtration works, pumping stations, equipment, franchises, and structures in connection with or incidental to any irrigation work, undertaking, or enterprise the district is authorized to construct.
11. "Refinancing" means funding, refunding, paying, or discharging by means of refunding bonds or the proceeds from the sale of refunding bonds, all or any part of any notes, bonds, or other obligations issued to finance or to aid in financing the acquisition, construction, or improvement of a project.
12. "Refunding bonds" means notes, bonds, certificates, or other obligations of the district issued under this chapter, the proceeds of which are to be used to pay the principal of or interest on any outstanding bonds or other obligations.
13. "Revenues" means all fees, tolls, rates, rentals, and charges levied and collected by the district in connection with, and all other income and receipts of whatever kind or character derived by the district from, the operation of any project.
14. "State engineer" has the same meaning as provided in chapter 61-03.
15. "Warrant" means an order drawn by the proper official of the district on its treasury, the warrant to be so drawn that when signed by the district treasurer in an appropriate place it becomes a check on the depository of the district, and a warrant upon the treasury may not be delivered or mailed to the payee or the payee's agent or representative until the warrant has been signed by the district treasurer and entered on the district's books as a check drawn on a bank depository.

61-24.8-02. Financing project through improvement bonds or special assessments - Apportionment of benefits.

The board may acquire needed interest in property and provide for the cost of construction, alteration, repair, operation, and maintenance of a project with funds raised by special assessments. The board may issue improvement bonds in anticipation of the levy and collection of special assessments. If the board decides to acquire property or interests in property to construct, operate, alter, repair, or maintain a project with funds raised in whole or in part through special assessments, the assessments must be apportioned to and spread in proportion to direct benefits accruing to lands or premises benefited by the project. The board shall assess the proportion of the cost of the project, or the part of the cost to be financed with funds raised through levy and collection of special assessments which any lot, piece, or parcel of land bears in proportion to the direct benefits accruing to the property that is benefited.

61-24.8-03. Resolution authorizing project and the issuance of revenue bonds.

The acquisition, construction, reconstruction, improvement, betterment, or extension of any project and the issuance of bonds in anticipation of the collection of special assessments or of the revenues of such project to provide funds to pay the associated costs may be authorized by a resolution of the board adopted after appropriate notice by the affirmative vote of a majority of the board. Unless otherwise provided in the resolution, the resolution under this section takes effect immediately and need not be laid over, published, or posted.

61-24.8-04. Construction.

Powers under this chapter are in addition and supplemental to and not in substitution for, and the limitations imposed by this chapter do not affect the powers conferred by, any other law. Bonds may be issued under this chapter without regard to any other laws of this state, except as provided in section 61-24-29. The project may be acquired, purchased, constructed, reconstructed, improved, bettered, and extended, and bonds may be issued under this chapter for those purposes, notwithstanding that any other law may provide for the acquisition, purchase, construction, reconstruction, improvement, betterment, and extension of a like project or for the issuance of bonds for like purposes, and without regard to the requirements, restrictions, debt, or other limitations or other provisions contained in any other law, including any requirement for any restriction or limitation on the incurring of indebtedness or the issuance of bonds. If this chapter is inconsistent with any other law of this state, the provisions of this chapter are controlling with reference to the issuance of bonds.

61-24.8-05. Power of district to defray expense of improvements by special assessments.

Upon complying with this chapter, the district may defray the expense of any or all of the improvements by special assessments, including the construction of all or part of an irrigation water supply works or any improvement, extension, or replacement of such works, including the construction and erection of wells, intakes, pumping stations, settling basins, filtration plants, standpipes, water towers, canals, ditches, aqueducts, reservoirs, water mains, and outlets, and all other appurtenances, contrivances, and structures used or useful for a central supply works. In planning an improvement project, the board may include in the plans any and all items of work

and materials, which in its judgment are necessary or reasonably incidental to the completion of an improvement project of that type.

61-24.8-06. Condemnation of land and rights of way for special improvements - Taking of possession - Trial - Appeal - Vacation of judgment.

When property required to make any improvement authorized by this chapter is to be taken by condemnation proceedings, the court, upon request by resolution of the board of the district making the improvement, shall call a special term of court for the trial of the proceedings and may summon a jury for the trial. The proceedings must be instituted and prosecuted in accordance with chapter 32-15, except that when the interest sought to be acquired is a right of way for the laying of any main, pipe, ditch, canal, aqueduct, or flume for conducting water, whether within or without the district, the district may make an offer to purchase the right of way and may deposit the amount of the offer with the clerk of the district court of the county in which the right of way is located, and may then take possession of the right of way. The offer must be made by resolution of the board of the district, and a copy of the resolution must be attached to the complaint filed with the clerk of court in accordance with section 32-15-18. The clerk shall immediately notify the owners of the land on which the right of way is located of the deposit by causing a notice to be appended to the summons when served and published in the proceedings as provided in the North Dakota Rules of Civil Procedure stating the amount deposited or agreed in the resolution to be deposited. The owner may then appeal to the court by filing an answer to the complaint in the manner provided in the North Dakota Rules of Civil Procedure and may have a jury trial, unless a jury is waived, to determine the damages. However, upon due proof of the service of the notice and summons and upon deposit of the aggregate sum agreed in the resolution, the court without further notice may make and enter an order as authorized by section 16 of article I of the Constitution of North Dakota. If under laws of the United States proceedings for the acquisition of any right of way are required to be instituted in or removed to a federal court, the proceedings may be taken in that court in the same manner and with the same effect as provided in this section and the clerk of the district court of the county in which the right of way is located shall perform any and all of the duties set forth in this section if the clerk is directed to do so by the federal court. The proceedings must be determined as speedily as practicable. An appeal from a judgment in the condemnation proceedings must be taken within sixty days after the entry of the judgment and appeal must be given preference by the supreme court over all other civil cases except election contests. No final judgment in the condemnation proceedings awarding damages to property used by the district for irrigation or other purposes may be vacated or set aside if the district pays to the defendant, or into court for the defendant, the amount awarded in cash. The district may levy special assessments within the district to pay all or part of the judgment. To provide funds for the payment of the judgment or for the deposit of the amount offered for purchase of a right of way, the district may issue bonds on the fund of the improvement district as provided in section 61-24.8-09 in anticipation of the levy and collection of special assessments or revenues to be appropriated to the fund in accordance with this chapter. The bonds may be issued upon or after the commencement of the condemnation proceedings. Upon the failure of the district to make payment in accordance with this section, the judgment in the condemnation proceedings may be vacated.

61-24.8-07. Improvement districts to be created.

For an improvement project under section 61-24.8-05 and defraying the cost of the project by special assessments, the district may create improvement districts, and may extend any such district when necessary. The special improvement district must be created by resolution. The special improvement district must be directly

designated by a name appropriate to the type of improvement for which it is created and by a number distinguishing it from other improvement districts. For examinations or surveys, the board or its employees, after written notice to each landowner, may enter upon any land on which the proposed project is located or any other lands necessary to gain access.

61-24.8-08. Size and form of improvement districts - Regulations governing.

Any improvement district created by the district may embrace two or more separate property areas. Each improvement district must be of such size and form as to include all properties, which in the judgment of the board, after consultation with the engineer planning the improvement, will be benefited by the construction of the improvement project which is proposed to be made in or for the district, or by any portion of the project. A single district may be created for an improvement of the type specified in section 61-24.8-07, notwithstanding any lack of uniformity among the types, items, or quantities of work and materials to be used at particular locations throughout the improvement district. The jurisdiction of the district to make, finance, and assess the cost of any improvement project may not be impaired by any lack of commonness, unity, or singleness of the location, purpose, or character of the improvement, or by the fact that any one or more of the properties included in the improvement district is subsequently determined not to be benefited by the improvement, or by a particular portion of the improvement project, and is not assessed for that purpose. The board may omit from an improvement district property within the improvement district limits. The board may by resolution enlarge an improvement district in which an improvement is proposed, under construction, or in existence upon receipt of a petition signed by the owners of all of the area to be added to the district.

61-24.8-09. Engineer's report required - Contents.

After a special improvement district has been created, the board, if the board determines it necessary to make any of the improvement set out in section 61-24.8-05 in the manner provided in this chapter, shall direct the engineer for the district, or some other competent engineer, to prepare a report as to the general nature, purpose, and feasibility of the proposed improvement. The engineer shall prepare profiles, plans, and specifications of the proposed project and estimates of the total cost. The estimate of costs prepared by the engineer must include acquisition of right of way and other costs specified in section 61-24.8-19 and must be in sufficient detail to allow the board to determine the probable share of the total costs that will be assessed against each of the affected landowners in the proposed assessment district.

61-24.8-10. Approval of plans, specifications, and estimates.

After receiving the engineer's report required by section 61-24.8-09, the board may direct the engineer to prepare detailed plans and specifications for construction of the improvement. The plans and specifications must be approved by a resolution of the board.

61-24.8-11. District engineer to retain copy of plans, specifications, and estimates - Sale of copies.

The engineer acting for the district shall retain a copy of the plans, specifications, and estimates that have been prepared for any improvement. The engineer shall furnish copies at the request of any person at a reasonable cost.

61-24.8-12. Plans, specifications, and estimates filed in office of district.

The plans, specifications, and estimates prepared as directed under section 61-24.8-10 are the property of the district, must be filed in the district office, and must remain on file subject to inspection by any interested person.

61-24.8-13. Hearing - Notice - Contents.

Upon the filing of the engineer's report provided for in section 61-24.8-09, and after satisfying the requirements of section 61-24.8-10, the board shall fix a date and place for public hearing on the proposed project. The place of hearing must be in the vicinity of the proposed project and must be convenient and accessible for the majority of the landowners subject to assessment for the project or whose property is subject to condemnation for the proposed project. The board may appoint a hearing officer or a committee of the board to conduct the hearing. The board shall cause a complete list of the benefits and assessments to be made, setting forth each lot, piece, or parcel of land assessed, the amount each is benefited by the improvement, and the amount assessed against each. At least fourteen days before the hearing, the board shall file with the county auditor of each county in which the project is or will be located the list showing the percentage assessment and approximate assessment in dollars against each parcel of land benefited by the proposed project. Notices of the hearing must contain the time and place where the board will conduct the hearing. The notice of hearing must specify when and where votes concerning the proposed project may be filed and contain an assessment list showing the percentage assessment and approximate assessment in dollars against each parcel of land benefited by the proposed project. The board shall cause the notice of hearing to be published once a week for two consecutive weeks in newspapers of general circulation in the area in which the affected landowners reside and in the official county newspaper of each county in which the benefited lands are located. The date set for the hearing may not be fewer than fourteen days after the first publication of the notice. A record of the hearing must be made by the board, including a list of affected landowners present in person or by agent, and the record must be preserved in the minutes of the meeting. Affected landowners to be assessed must be informed at the hearing of the probable total cost of the project and their individual share of the cost and the portion of their property, if any, to be condemned for the project.

61-24.8-14. Voting on proposed projects.

At the hearing, the affected landowners must be informed when and where votes concerning the proposed project may be filed. Affected landowners to be assessed have thirty days after the date of the hearing to file their votes with the secretary of the district. Once the deadline for filing votes has been reached, no more votes may be filed and no person may withdraw a vote. Any withdrawal of a vote concerning the proposed project before that time must be in writing. When the votes have been filed and the deadline for filing votes has passed, the board shall immediately determine whether the project is approved. If the board finds that one hundred percent of the total votes filed are for the proposed project, then the vote constitutes an affirmation of the project and the board shall issue an order establishing the proposed project and may proceed, after complying with the requirements of sections 61-24.8-17 and 61-24.8-18, to contract or provide for the construction or maintenance of the project in substantially the manner and according to the forms and procedure provided in section 61-24.8-41. The board may enter any agreement with any federal or state agency under the terms of which the contract for the project is to be let by the federal agency, the state agency, or a combination thereof. In projects where there is an agreement that a party other than the board will let the contract, the board may dispense with all of the requirements of section 61-24.8-41. Upon making an order

establishing or denying establishment of a project, the board shall publish notice of the order in a newspaper of general circulation in the area in which the affected landowners reside and in the official county newspaper of each county in which the benefited lands are located. Any right of appeal begins to run on the date of publication of the notice.

61-24.8-15. Voting right or powers of landowners.

In order that there may be a fair relationship between the amount of liability for assessments and the power of objecting to the establishment of a proposed project, the voting rights of affected landowners on the question of establishing the project are as provided in this section. The landowner of land affected by the project has one vote for each dollar of assessment to which the land is subject or one vote for each dollar of the assessed valuation of land for which fee title interest will be lost as a result of the project. There may be only one vote for each dollar of assessment, regardless of the number of owners of a tract of land. If more than one owner of a tract of land exists, the votes must be prorated among them in accordance with each owner's property interest. A written power of attorney authorizes an agent to protest a project on behalf of any affected landowner or landowners.

61-24.8-16. Assessment of cost of project.

When the board proposes to make any special assessment under this chapter, the board or its agent, before the hearing required under section 61-24.8-13, shall inspect any and all lots and parcels of land that may be subject to assessment and shall determine from the inspection the particular lots and parcels of lands which, in the opinion of the board, will be directly benefited by the construction of the work for which the assessment is made and shall assess the proportion of the total cost of acquiring right of way and constructing and maintaining such improvement in accordance with direct benefits received but not exceeding such benefits against any lot, piece, or parcel of land that is directly benefited by the improvement. Property belonging to the United States is exempt from assessment unless the United States has provided for the payment of any assessment that may be levied against its property for benefits received. There must be attached to the list of assessments a certificate signed by the chairman and certified by the secretary that it is a true and correct assessment of the benefit described to the best of their judgment and stating the several items of expense included in the assessment.

61-24.8-17. Assessment list to be published - Notice of hearing - Alteration of assessments - Confirmation of assessment list - Filing.

After entering an order establishing the project, the board shall cause the assessment list to be published once each week for two successive weeks in the official county newspaper of each county in which the benefited lands are located and in local newspapers of general circulation in the area of the affected lands. The publication must include a notice of the time and place the board will meet to hear objections to any assessment by any interested party or an agent or attorney for that party. The date set for the hearing must be not less than fourteen days after the first publication of the notice. At the hearing, the board may make such alterations in the assessments as in its opinion may be just and necessary to correct any error in the assessment but must make the aggregate of all assessments equal to the total amount required to pay the entire cost of the work for which the assessments are made or the part of the cost to be paid by special assessment. An assessment may not exceed the benefit as determined by the board to the parcel of land assessed. The board then shall confirm the assessment list and the secretary shall attach to the

list a certificate that it is correct as confirmed by the board. The list must be filed in the office of the district secretary.

61-24.8-18. Appeal to state engineer.

Within ten days after the hearing under section 61-24.8-17, affected landowners subject to assessment, who believe that the assessment has not been fairly or equitably made, or that the project is not properly located or designed, may petition the state engineer to review the assessments and examine the location and design of the proposed project. Upon receipt of a petition, the state engineer shall examine the lands assessed and the location and design of the proposed project. If it appears to the state engineer that the assessments have not been made equitably, the state engineer may proceed to correct the assessments. The state engineer's correction and adjustment of assessments is final. If it appears to the state engineer that the project has been improperly located or designed, the state engineer may order a relocation and redesign, which must be followed in the construction of the proposed project. Any landowner claiming to receive no direct benefit from the project may appeal to the state engineer the question of whether there is any direct benefit. The appeal must be filed with the state engineer within ten days after the hearing on assessments in section 61-24.8-17. The state engineer may not determine the specific amount of benefit upon an appeal by an individual landowner and may determine only if there is any direct benefit to the landowner. The determination of the state engineer upon the appeal is final.

61-24.8-19. When assessments may be made.

After the requirements of this chapter have been satisfied and a contract and bond for any work for which a special assessment is to be levied have been approved by the board, the board may direct special assessments to be levied for the payment of appropriate costs and the secretary shall certify to the board the items of total cost to be paid by special assessments so far as they have been ascertained. The certificate must include the estimated construction cost under the terms of any contract; a reasonable allowance for cost of extra work that may be authorized under the plans and specifications; acquisition of right of way; engineering, fiscal agents, and attorney's fees for any services in connection with the authorization and financing of the improvement; cost of publication of required notices; printing of improvement bonds; cost necessarily paid for damages caused by such improvement; interest during the construction period; and all expenses incurred in making the improvement and levy of assessments. A contract or contracts may not be awarded which exceed, by twenty percent or more, the estimated cost of the project as presented to and approved by the affected landowners.

61-24.8-20. Correction of errors and mistakes in special assessments - Requirements governing.

If mathematical errors or other mistakes occur in making any assessment resulting in a deficiency in that assessment, the board shall cause additional assessments to be made in a manner substantially complying with chapter 40-26 as it relates to special assessments.

61-24.8-21. Lien of special assessment.

A special assessment imposed by the district, with accrued interest and penalties, is a lien upon the property on which the assessment is levied from the time the assessment list is approved by the board until the assessment is fully paid. The liens have precedence over all other liens except general tax liens and may not be

divested by any judicial sale. Mistake in the description of the property covered by the special assessment lien or in the name of the owner of such property does not defeat the lien if the assessed property can be identified by the description in the assessment list. This chapter must be considered notice to all subsequent encumbrances of the priority of special assessments imposed under this chapter.

61-24.8-22. Irrigation improvements in districts - Paid by service charges.

The district constructing an irrigation improvement under the special assessment method may resolve in the resolution required by section 61-24.8-07 that a portion of the cost of the improvement must be raised by service charges for the use of the improvement and of the utility of which it forms a part. If the district so resolves, it may determine in its resolutions, and other proceedings relating to the levying of special assessments and the issuing of bonds to pay the cost of such improvement that a specified portion or all of such special assessments may be reduced each year by the amount of revenues on deposit in the fund required by section 61-24.8-36. All of the applicable provisions of this chapter relating to special assessments are applicable to such improvements except as to the portion of the cost of improvements resolved or ordained to be paid by service charges. The board of the district shall provide for the establishment, imposition, and collection of service charges for the services furnished by the improvement and the utility of which it forms a part, and in that connection it has all the rights and powers respecting such service charges as it would have with respect to like matters if the improvement were made in accordance with sections 61-24-22 through 61-24-32. The net revenues derived from the imposition and collection of the service charges or any portion of the service charges as are determined by the board in the resolutions and ordinances must be paid into the appropriate improvement district funds created under section 61-24.8-36. The revenues when collected must be used and applied in the same manner as moneys paid into such funds from the collection of special assessments. The board in issuing bonds to finance any such improvement in its resolutions may establish an assessment reserve in the fund of the improvement district, to which it may appropriate net revenues of the utility or system from time to time received in excess of amounts required, with special assessments then on hand, to meet the principal and interest next due on the bonds. Before November first of any year, the district may by resolution determine the proportion which the amount then on hand in the assessment reserve, and irrevocably appropriated to the payment of the bond, bears to the aggregate amount of the installment of the special assessments levied for the improvement which is payable in the following year, including interest. The district may direct the auditor to reduce, by not more than a proportionate amount, the total of that installment and interest which would otherwise be placed upon the tax list of the improvement district for the current year against each lot and tract of land assessed or taxed for improvement. If the installment of the special assessment on any property has been prepaid, the board may direct the district to refund, out of the assessment reserve, to the owner of the property at the time of the refund as indicated in the records of the recorder of the county a sum not exceeding a similar proportion of the principal amount of such installment excluding interest.

61-24.8-23. Abbreviations, letters, or figures.

In all proceedings for the levy and collection of special assessments, abbreviations, letters, and figures may be used to denote all or parts of additions, lots, lands, blocks, sections, townships, ranges, years, days of the month, and amounts of money.

61-24.8-24. Record of improvements - Record as evidence.

The district office shall keep a complete record of all the proceedings taken in the matter of making any improvements under this chapter. The record must include all reports and confirmations, all petitions, orders, notices and proofs of publication, and resolutions of the board. The record, a certified transcript of the record, or the original papers, proofs of publications, orders, or resolutions on file in the office must be admitted in evidence in any court or place in this state without further proof as evidence of the facts in those documents.

61-24.8-25. Defects and irregularities in improvement proceedings.

Defects and irregularities in any proceedings had or to be had under this chapter relating to district improvements by the special assessment method, if the proceedings are for a lawful purpose and are unaffected by fraud and do not violate any constitutional limitation or restriction, do not invalidate the proceedings. No action may be commenced or maintained and no defense or counterclaim in any action may be recognized in the courts of this state founded on any such defects or irregularities in the proceedings unless commenced within thirty days of the adoption of the resolution of the board awarding the sale of bonds to finance the improvement.

61-24.8-26. Payment of special assessments - Interest.

All special assessments levied under this chapter may be paid without interest within ten days after they have been approved by the board and thereafter bear interest at an annual rate not exceeding one and one-half percentage points above the average net annual interest rate on any bonds for the payment of which they are pledged on the total amount remaining unpaid.

61-24.8-27. Lien between vendor and vendee of special assessments.

As between a vendor and vendee of real property, unless the purchase contract otherwise provides, the installment of all special assessments for local improvements which are required to be certified and returned to the county auditor in each year become a lien upon the real property upon which they are assessed from and after the first day of December in that year.

61-24.8-28. Irrigation special assessments extended over a period of not more than thirty years.

Special assessments for the payment of the cost of constructing any irrigation works are payable in equal annual amounts, or in such annual amounts as will permit the annual increase in payment of principal to approximate the annual decrease in the interest on amounts remaining unpaid, extending over a period of not exceeding thirty years as the board may fix by resolution.

61-24.8-29. Payments in full of assessments - Payments to county treasurer or district treasurer - Receipts.

The owner of any property against which an assessment has been made under this chapter for the cost of any improvement may pay in full or in part the amount remaining unpaid and the unpaid accumulated interest. The payment in full discharges the lien of the assessment upon that property. The payment may be made to the county treasurer upon all installments of the assessments which have been certified to the county auditor, and may be made to the district treasurer upon all portions of the assessment which have not been certified. Any person desiring to pay

any portion of the assessment to the district treasurer shall obtain from the district treasurer a certificate of the amount due upon the assessment which has not been certified to the county auditor and shall present the certificate to the district treasurer. The district treasurer shall receive and collect that amount and issue a receipt to the person paying the assessment. The district treasurer shall note upon the treasurer's records the payment of the assessment.

61-24.8-30. Certification of assessments to county auditor.

When the board, by resolution, has caused special assessments to be levied to cover the cost of constructing a project the board shall determine the rate of interest unpaid special assessments are to bear, which rate may not exceed one and one-half percent above the bond rate. Interest on unpaid special assessments commences on the date the assessments are finally confirmed by the board. Special assessments may be certified and made payable in equal annual installments, the last of which must be due and payable not more than thirty years after the date of the bonds to be paid. The secretary of the district shall certify to the county auditor of the county in which the improvement district is situated, or if the improvement district embraces more than one county to the county auditor of each county in which improvement district lands subject to such special assessments are situated, the total amount assessed against each piece, parcel, lot, or tract of land. The secretary of the district also shall file with the county auditor of each county in which district lands lie a statement showing the cost of the project and the part of the project to be financed by special assessments. Funds needed to pay the cost of maintaining a project may be raised in the same manner as funds were raised to meet construction costs. If the project was financed in whole or in part through the use of special assessments, the board shall prorate the cost of construction. The district treasurer annually shall certify to the county auditor all uncertified installments of assessments which are to be extended upon the tax lists of the improvement district for the current year, in the manner provided in this section. The annual certification must continue until the amount of moneys on deposit in the fund established under section 61-24.8-36 is sufficient to cover outstanding principal of and interest on any obligations issued to fund the projects, and in addition, to repay the district for any payments made by the district to fund deficiencies in the fund established under section 61-24.8-36.

61-24.8-31. District treasurer to insert amount of improvements in county real estate book or other forms - Regulations governing.

The district treasurer shall notify the county auditor not later than August twentieth in each year of any special assessments that were made in the improvement district in addition to those reported in the previous year. The county auditor shall make and deliver to the district treasurer on or before September twentieth each year a copy of the real estate assessment book or other forms for the current year covering all additions in which any special assessments have existed and where any will appear for the current year as advised by the district treasurer. The district treasurer shall insert in the proper columns under the appropriate headings the amount of each of the installments of the assessments on the lots or subdivisions of lots or tracts of land which are to be extended upon the tax lists of the improvement district for the current year. The district treasurer shall show the total amount of special assessments certified to the county auditor for the current year. If a division of property has been made since the original assessment, the district treasurer shall make or cause to be made the proper division of the special assessments on the lots or tracts of land in the same manner as general taxes are divided and assessed as furnished by the county auditor. The district treasurer shall certify the special assessments to the county auditor by November first of each year.

61-24.8-32. Extension of special assessments on tax lists - Collection - Payment over to district.

The county auditor shall extend the special assessments upon the improvement tax lists of the district for the current year and the assessments with interest and penalties must be collected as general taxes are collected and paid over to the district treasurer and shall be placed by the district treasurer in the respective funds for which they were collected.

61-24.8-33. Special assessment record book kept by county auditor - Assessments certified for more than one year.

The county auditor shall keep a special assessment record. When the improvement district causes the installments of special assessments for a period of more than one year to be certified, the county auditor shall cause the certified special assessments to be recorded for the respective years and in the amounts shown in the certificate of the district treasurer. The certificate of the district treasurer must include a list of all lots and tracts of land upon which such assessments are levied, designating the purpose of the assessment, the fund to which it belongs, and the installment of such assessment for each year against each lot or tract, including interest.

61-24.8-34. County treasurer to certify and receipt for amount of special assessments collected - Contents of certificate - Procedure for abatement.

Special assessments of any kind certified to the county auditor by the district treasurer must be paid to the county treasurer and included in the receipt required by section 57-20-08. If the county treasurer receives less than the full amount of taxes and special assessments due at any time on any lot or tract of real estate, the county treasurer shall allocate the amount of such payment between taxes and special assessments in proportion to the respective amounts of taxes and special assessments which are then due. When prorating any tax payment received before October fifteenth, the term "due", as it pertains to real estate taxes, includes only the first installment of real estate taxes. Special assessments are not subject to abatement or refund by proceedings under chapter 57-32 but may be reviewed and corrected only in the manner and upon the conditions provided in chapter 40-26. The county treasurer, at the time set by law for the payment to the district treasurer of all the taxes and special assessments collected during the preceding month, shall certify the amounts of special assessments collected. The certificate must state specifically the lot or known subdivision as it appears on the tax books of the county treasurer; the block, addition, amount collected, and amount credited to each lot or known subdivision; and the year for which the sum was collected. The certificate must be furnished to the district treasurer.

61-24.8-35. Interest and penalties added to special assessments - County treasurer to collect and pay over.

The county treasurer shall add to all special assessments the same interest and penalties that are added in the case of general taxes and at the same time. The county treasurer shall collect the interest and penalties with the special assessments and shall pay all such interest and penalties collected over to the district treasurer.

61-24.8-36. Special improvement moneys to be kept separate - Designation and numbering of funds - Diversion of moneys prohibited.

All special assessments and taxes levied and other revenues pledged under the provisions of this chapter to pay the cost of an improvement constitute a fund for the payment of that cost, including all principal of and interest on bonds and other obligations issued by the district to finance the improvement, and may be diverted to no other purpose. The district treasurer shall hold all moneys received for any such fund as a special fund to be applied to payment for the improvement. Each fund must be designated by the name and number of the improvement district in or for which the special assessments, taxes, and revenues are collected. When all principal and interest on bonds and other obligations of the fund have been fully paid, all moneys remaining in a fund may be transferred into the general fund of the district. Any deficiency in any fund created for the payment of district bonds payable in whole or in part out of collections of special assessment taxes must be the general obligation of the district.

61-24.8-37. Bonds - When payable - Amounts - Interest.

At any time after entering a contract for a project to be financed in whole or in part by special assessments, the district may issue temporary and definitive bonds on the project fund created for that purpose in the manner and subject to the limitations prescribed in section 40-24-19. If the bonds are issued to finance an irrigation project, the net revenues derived from the imposition of service charges to be imposed and collected with respect to the project as provided in section 61-24.8-22 may be pledged to payment of those bonds. Bonds issued under this section must be in amounts as in the judgment of the board will be necessary for the project. The bonds must bear interest at a rate or rates and be sold at a price resulting in an average net interest cost not exceeding twelve percent per annum if sold at private sale. There is no interest rate ceiling on bond issues sold at public sale or to the state or any of its agencies or instrumentalities. The bonds must state upon their face the purpose for which they are issued and the project fund from which they are payable and must be signed by the manual or facsimile signature of the chairman of the district board and countersigned by the manual or facsimile signature of the secretary of the district. The bonds must be payable in such amounts as the board determines, extending over a period of not more than thirty years.

61-24.8-38. Bonds may be used in making payments on contract - Bonds payable out of fund on which drawn - May be used to pay special assessments.

Improvement bonds may be sold for cash at not less than ninety-eight percent of par and accrued interest, and the proceeds, less accrued interest, must be credited to the construction account of the fund and must be used exclusively to pay those contracts and construction costs. Any balance remaining in any construction account after completion of any project must be transferred to the sinking fund account of the assessment fund. The treasurer of the district shall pay special assessment bonds as they mature and are presented for payment out of the fund on which they are drawn and shall cancel the bonds when paid.

61-24.8-39. Refunding special assessment bonds - Purposes for which such bonds may be issued - Payment of bonds.

Any district having outstanding special assessment bonds, payable in whole or in part out of collections from special assessments, which are past-due or which are redeemable, either at the option of the district or with the consent of the bondholders, may issue refunding special assessment bonds if there is not sufficient money in the

project fund against which such bonds are drawn to pay the same. The issuance of refunding bonds must be authorized by resolution of the board. The resolution must describe the bonds to be refunded and their amount and maturity. Refunding bonds may be issued to extend the maturities of bonds payable in whole or in part by special assessments or to reduce the interest on the bonds. Refunding bonds must bear such date, be in such date, be in such denominations, and mature serially within such time, not exceeding thirty years from date of issuance, as the board determines. The treasurer of the district shall pay special assessment bonds as they mature and are presented for payment out of the fund against which they are drawn and shall cancel the bonds when paid.

61-24.8-40. Foreclosure of tax lien on property when general and special assessment taxes are delinquent.

Special assessments imposed under this chapter become due and delinquent and are subject to penalties for nonpayment at the same date and rates as first installments of real estate taxes at the same time and in the same manner as provided in title 57. If there is no delinquent general property tax against a tract or parcel of land and it is foreclosed for special assessments alone, the notice of foreclosure of tax lien must state that the foreclosure is for special assessments and a tax deed in such case must be issued in the usual course of procedure.

61-24.8-41. Contracts for construction or maintenance of project.

If the cost of construction or maintenance of a project does not exceed the amount provided for construction of a public improvement under section 48-01.2-02, the work may be done on a day work basis or a contract may be let without being advertised. If the costs of the construction or maintenance exceed the amount provided for construction of a public improvement under section 48-01.2-02, the board must let a contract in accordance with chapter 48-01.2.

SECTION 3. REPORT TO STATE WATER COMMISSION. The Garrison Diversion Conservancy District shall report periodically to the state water commission on the development and status of irrigation projects constructed under this Act.

SECTION 4. EXPIRATION DATE. This Act is effective through July 31, 2013, and after that date is ineffective except for projects for which all steps up to and including approval as described in section 61-24.8-14 are completed before August 1, 2013.

Approved April 25, 2011
Filed April 25, 2011

CHAPTER 497

HOUSE BILL NO. 1335

(Representatives Hofstad, D. Johnson, Holman)
(Senators Oehlke, Heckaman)

AN ACT to create and enact a new section to chapter 61-28 of the North Dakota Century Code, relating to exemptions from enforcement actions for water transfers used to control flooding; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 61-28 of the North Dakota Century Code is created and enacted as follows:

Water transfers used to control flooding exempt.

1. An action may not be brought under either chapter 32-40 or 61-28 against an owner or operator of a water transfer used to control flooding for violation of the state's water pollution control laws if the water transfer:
 - a. Does not require a national pollutant discharge elimination system permit; and
 - b. Complies with the conditions in the state's water quality standards established to protect aquatic life.
2. For purposes of this section, "water transfer" means an activity that conveys or connects waters of the state without subjecting the transferred water to intervening industrial, municipal, or commercial use.
3. The exemption in subsection 1 does not apply to pollutants introduced by the water transfer activity itself to the water being transferred.
4. The owner or operator of a water transfer falling within this exemption must notify the department before beginning operations.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 19, 2011
Filed April 19, 2011

CHAPTER 498

HOUSE BILL NO. 1459

(Representatives Belter, Headland, Schmidt)
(Senators Luick, Wanzek, Dotzenrod)

AN ACT to create and enact a new subsection to section 61-21-02 and a new section to chapter 61-32 of the North Dakota Century Code, relating to subsurface drainage of water; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁸² **SECTION 1.** A new subsection to section 61-21-02 of the North Dakota Century Code is created and enacted as follows:

The installation of artificial subsurface drainage systems.

¹⁸³ **SECTION 2.** A new section to chapter 61-32 of the North Dakota Century Code is created and enacted as follows:

Permit to drain subsurface waters - Permit form - Penalty.

Installation of an artificial subsurface drainage system comprising eighty acres [32.37 hectares] of land area or more requires a permit. The state engineer shall develop an application form for a permit for subsurface drainage of water. A person seeking to construct an artificial subsurface drainage system must submit an application to the water resource district within which is found a majority of the land area for consideration and approval. Water resource districts may attach any necessary conditions to an approved permit, but may not deny an application unless the water resource district determines the application is of statewide significance or the proposed drainage will flood or adversely affect downstream landowners within one mile [1.61 kilometers] of the proposed subsurface drainage. Water resource districts must forward copies of all approved permits to the state engineer. Water resource districts shall determine if the application proposes drainage of statewide significance. If so, the application must be referred to the state engineer for consideration and approval, and the state engineer shall make a determination within thirty days. The permit applicant shall provide a thirty-day notice to downstream property owners within one mile [1.61 kilometers] of the proposed subsurface drainage. If an investigation by a water resource district or a downstream landowner within one mile [1.61 kilometers] shows that the proposed drainage will flood or adversely affect downstream landowners within one mile [1.61 kilometers], the water resource district may require flowage easements before issuing a permit. If an artificial subsurface drainage system drains into an assessment drain, natural watercourse, or pond, slough, or lake, a flowage easement is not required. Flowage easements must be filed for record in the office of the recorder of the county or counties in which the lands are situated. A person that installs an artificial subsurface

¹⁸² Section 61-21-02 was also amended by section 1 of Senate Bill No. 2280, chapter 499.

¹⁸³ Section 61-32-03.1 was also created by section 2 of Senate Bill No. 2280, chapter 499.

drainage system without first securing a permit to do so, as provided in this section, is liable for all damage sustained by a person caused by the draining, and is guilty of an infraction.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 20, 2011

Filed April 20, 2011

CHAPTER 499

SENATE BILL NO. 2280

(Senators Luick, Miller, Uglem, Wanzek)
(Representatives Schmidt, Wall)

AN ACT to create and enact a new subsection to section 61-21-02 and a new section to chapter 61-32 of the North Dakota Century Code, relating to subsurface drainage of water; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁸⁴ **SECTION 1.** A new subsection to section 61-21-02 of the North Dakota Century Code is created and enacted as follows:

The installation of artificial subsurface drainage systems.

¹⁸⁵ **SECTION 2.** A new section to chapter 61-32 of the North Dakota Century Code is created and enacted as follows:

Permit to drain subsurface waters required - Permit form - Penalty.

Installation of an artificial subsurface drainage system comprising eighty acres [32.37 hectares] of land area or more requires a permit. The state engineer shall develop an application form for a permit for subsurface drainage of water. A person seeking to construct an artificial subsurface drainage system must submit an application to the water resource district within which is found a majority of the land area for consideration and approval. Water resource districts may attach any necessary conditions to an approved permit, but may not deny an application unless the water resource district determines the application is of statewide significance or the proposed drainage will flood or adversely affect downstream landowners within one mile [1.61 kilometers] of the proposed subsurface drainage. Water resource districts must forward copies of all approved permits to the state engineer. Water resource districts shall determine if the application proposes drainage of statewide significance. If so, the application must be referred to the state engineer for consideration and approval, and the state engineer shall make a determination within thirty days. The permit applicant shall provide a thirty-day notice to downstream property owners within one mile [1.61 kilometers] of the proposed subsurface drainage. If an investigation by a water resource district or a downstream landowner within one mile [1.61 kilometers] shows that the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers], the water resource district may require flowage easements before issuing a permit. If an artificial subsurface drainage system drains into an assessment drain, natural watercourse, or pond, slough, or lake, a flowage easement is not required. Flowage easements must be filed for record in the office of the recorder of the county or counties in which the lands are situated. A person that installs an artificial subsurface

¹⁸⁴ Section 61-21-02 was also amended by section 1 of House Bill No. 1459, chapter 498.

¹⁸⁵ Section 61-32-03.1 was also created by section 2 of House Bill No. 1459, chapter 498.

drainage system without first securing a permit to do so, as provided in this section, is liable for all damage sustained by a person caused by the draining, and is guilty of an infraction.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 19, 2011

Filed April 20, 2011

CHAPTER 500

HOUSE BILL NO. 1206

(Representatives Skarphol, Keiser, Kreun)
(Senators Fischer, Lyson, O'Connell)

AN ACT to create and enact chapter 61-40 of the North Dakota Century Code, relating to a western area water supply authority; to provide appropriations; to provide for loans and loan repayment; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

61-40-01. Legislative declarations - Authority of western area water supply authority.

The legislative assembly declares that many areas and localities in western North Dakota do not enjoy adequate quantities of high-quality drinking water; that other areas and localities in western North Dakota do not have sufficient quantities of water to ensure a dependable, long-term domestic or industrial water supply; that greater economic security and the protection of health and property benefits the land, natural resources, and water resources of this state; and that the promotion of the prosperity and general welfare of all of the people of this state depend on the effective development and utilization of the land and water resources of this state and necessitates and requires the exercise of the sovereign powers of this state and concern a public purpose. To accomplish this public purpose, it is declared necessary that a water authority to treat, store, and distribute water to western North Dakota be established to provide for the supply and distribution of water to the people of western North Dakota for purposes, including domestic, rural water, municipal, livestock, industrial, oil and gas development, and other uses, and provide for the future economic welfare and prosperity of the people of this state, and particularly the people of western North Dakota, by the creation and development of a western area water supply project for beneficial and public uses. The western area water supply authority may acquire, construct, improve, develop, and own water supply infrastructure and may enter water supply contracts with member cities, water districts, and private users, such as oil and gas producers, for the sale of water for use within or outside the authority boundaries or the state. The western area water supply authority shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers.

61-40-02. Western area water supply authority.

The western area water supply authority consists of participating political subdivisions located within McKenzie, Williams, Burke, Divide, and Mountrail Counties which enter a water supply contract with the authority. Other cities and water systems, within or outside the authority counties' boundaries, including cities or water systems in Montana, may contract with the authority for a bulk water supply. The authority is a political subdivision of the state, a governmental agency, body politic and corporate, with the authority to exercise the powers specified in this chapter, or which may be reasonably implied. Participating member entities may be required to

pay dues or water sale income to the authority, as determined by the bylaws and future resolutions of the authority. Participating member entities may not withdraw from the authority or fail or refuse to pay any water sale income to the authority if the twenty-five million dollar zero interest loan from the state water commission has not been repaid.

61-40-03. Western area water supply authority - Board of directors.

1. The initial board of directors of the western area water supply authority consists of two representatives from each of the following entities: Williams rural water district, McKenzie County water resource district, the city of Williston, BDW water system association, and R&T water supply association. The governing body of each member entity shall select two representatives to the authority board who are water users of the member entity. If a vacancy arises for a member entity, the governing body of the member entity shall select a new representative to act on its behalf on the authority board. In addition, the state engineer or designee is a voting member on the authority's board of directors. Directors have a term of one year and may be reappointed.
2. Additional political subdivisions or water systems may be given membership on the board upon two-thirds majority vote of the existing board. To be eligible for membership on the board, the member entity must first contract with the authority for financial participation in the project.
3. A member entity may designate an alternate representative to attend meetings and to act on the member's behalf. The board may designate associate members who are nonvoting members of the board. Notwithstanding this section, except for the state engineer or designee, initial board members must be removed if they have not entered a contract with the authority, before August 1, 2013, for financial participation in the project.

61-40-04. Board of directors - Officers - Meetings.

1. The board of directors shall adopt such rules and bylaws for the conduct of the business affairs of the authority as it determines necessary, including the time and place of regular meetings of the board, financial participation structure for membership in the authority, and membership appointment and changes. Bylaws need to be approved by member entity boards.
2. The board shall elect from its members a chairman and a vice chairman. The board shall elect a secretary and a treasurer, which offices may be held by the same individual, and either or both offices may be held by an individual who is not a member of the board. Special meetings of the board may be called by the secretary on order of the chairman or upon written request of a majority of the qualified members of the board. Notice of a special meeting must be mailed to each member of the board at least six days before the meeting, provided that a special meeting may be held at any time when all members of the board are present or consent in writing.
3. Board members are entitled to receive as compensation an amount determined by the board not to exceed the amount per day provided members of the legislative management under section 54-35-10 and must be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09.

4. The initial board bylaws must direct board voting protocol. A weighted voting structure for board members is acceptable if the voting is based upon the volume of water purchased, the financial contributions of the stakeholder entities, or any other formula agreed by a majority of the board.
5. Before the bylaws become effective, the bylaws must be reviewed and approved by the attorney general.

61-40-05. Authority of the western area water supply authority.

In addition to authority declared under section 61-40-01, the board of directors of the western area water supply authority may:

1. Sue and be sued in the name of the authority.
2. Exercise the power of eminent domain in the manner provided by title 32 or as described in this chapter for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of an entire part of any pipeline, reservoir, connection, valve, pumping installation, or other facility for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority. However, if the interest sought to be acquired is a right of way for any project authorized in this chapter, the authority, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county in which the right of way is located, may take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.
3. Accept funds, property, services, pledges of security, or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority. The authority may cooperate and contract with the state or federal government, or any department or agency of state or federal government, or any city, water district, or water system within the authority, in furnishing assurances and meeting local cooperation requirements of any project involving treatment, control, conservation, distribution, and use of water.
4. Cooperate and contract with the agencies or political subdivisions of this state or other states, in research and investigation or other activities promoting the establishment, construction, development, or operation of the authority.
5. Appoint and fix the compensation and reimbursement of expenses of employees as the board determines necessary to conduct the business and affairs of the authority and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.

6. Operate and manage the authority to distribute water to authority members and others within or outside the territorial boundaries of the authority and this state.
7. Hold, own, sell, or exchange any and all property purchased or acquired by the authority. All money received from any sale or exchange of property must be deposited to the credit of the authority and may be used to pay expenses of the authority.
8. Enter contracts to obtain a supply of bulk water through the purchase of infrastructure, bulk water sale or lease, which contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water supply or infrastructure.
9. Acquire, construct, improve, and own water supply infrastructure, office and maintenance space in phases, in any location, and at any time.
10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority. The contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water system projects, as well as the authority's costs of operating and maintaining one or more projects, whether the acquisition, construction, or reconstruction of any water supply project actually is completed and whether water actually is delivered pursuant to the contracts. The contracts the cities, water districts, and other entities that are members of the western area water supply authority are authorized to execute are without limitation on the term of years.
11. Borrow money as provided in this chapter.
12. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its obligations, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any contract or instrument.
13. Accept from any authorized state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and enter agreements with the agency respecting the loans or grants.
14. Contract debts and borrow money, pledge property of the authority for repayment of indebtedness, and provide for payment of debts and expenses of the authority.
15. Operate and manage the authority to distribute water to any out-of-state cities or water systems that contract with the authority.
16. Accept, apply for, and hold water allocation permits.
17. Adopt rules concerning the planning, management, operation, maintenance, sale, and ratesetting regarding water sold by the authority. The authority may adopt a rate structure with elevated rates set for project industrial water supplies in recognition that a large component of the project expense is being incurred to meet the demands of industrial users.

18. Develop water supply systems; store and transport water; and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes; milling, manufacturing, mining, industrial, metallurgical, and any and all other beneficial uses; and fix the terms and rates therefore. The authority may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all treatment plants, works, facilities, improvements, and property necessary the same without any required public vote before taking action.
19. Contract to purchase or improve water supply infrastructure or to obtain bulk water supplies without requiring any vote of the public on the projects or contracts. In relation to the initial construction of the system and for the purposes of entering a contract with the authority, municipalities are exempt from the public voting requirements or water contract duration limitations otherwise imposed by section 40-33-16.
20. Accept assignment by member entities of contracts that obligate member entities to provide a water supply, contracts that relate to construction of water system infrastructure, or other member entity contracts that relate to authorities transferred to the authority under this chapter.

61-40-06. Oversight of authority projects.

The authority shall comply with the policy of the state water commission as the policy relates to bidding, planning, and construction of the project. The policy must include provisions for insurance, including general liability insurance, in adequate amounts. The authority shall report to and consult with the state water commission regarding the operation and financial status of the project, as requested by the state water commission. In relation to initial construction of the system and debt repayment, the authority shall present the overall plan and contract plans and specifications for the project to the state water commission for approval. The attorney general shall assist the authority at the request of the state water commission. If the twenty-five million dollar zero interest loan from the state water commission has not been repaid, without the written consent of the state water commission the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of property used in a water system of the authority if the property is used to provide revenue.

61-40-07. Easement granted for pipelines and appurtenant facilities on any public lands.

In connection with the construction and development of the project, there is granted over all the lands belonging to the state, including lands owned or acquired for highway right-of-way purposes, a right of way for pipelines, connections, valves, and all other appurtenant facilities constructed as part of the project. However, the director of the department of transportation and the state engineer must approve the plans of the authority with respect to the use of right of way of roads before the grant becomes effective.

61-40-08. Proceedings to judicially confirm contracts and other acts.

The authority, before making any contract or taking any special action, may commence a special proceeding in district court by which the proceeding leading up to the making of such contract or leading up to any other special action must be examined, approved, and confirmed. The judicial proceedings must comply substantially with the procedure required in the case of judicial confirmation of proceedings, acts, and contracts of an irrigation district.

61-40-09. Default.

If the authority is in default in the payment of the principal of or interest on any of the obligations of the authority under this chapter and if the budget section determines that the authority is unable to reimburse the state in the time period required by the budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority and the liabilities of the authority. In addition, the state assumes the powers of the authority. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due. Upon written notice, the members of the governing board of the authority are immediately removed, and the state water commission is the governing board from the date of notice. If the state water commission determines that governance, possession, and ownership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the state water commission may develop a plan to return governance, possession, and ownership to the authority, subject to approval of the plan by the budget section.

SECTION 2. LOANS FROM BANK OF NORTH DAKOTA AND STATE WATER COMMISSION. The Bank of North Dakota shall provide a loan of \$50,000,000 to the western area water supply authority for construction of the project. The terms and conditions of the loan must be negotiated by the western area water supply authority and the Bank of North Dakota. However, the term of the loan is a maximum of seven years after June 30, 2014. The state water commission shall make available from funding appropriated to the commission for the 2011-13 biennium \$25,000,000 as a zero interest loan to the western area water supply authority, and the Bank of North Dakota shall manage this loan. The maximum term of this loan is five years from the completion of the \$10,000,000 loan from the resources trust fund.

SECTION 3. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$25,000,000 or so much of the sum as may be necessary, to the Bank of North Dakota for the purpose of providing a loan to the western area water supply authority for a maximum term of eight years from the completion of the \$50,000,000 loan from the Bank of North Dakota and at five percent interest per year, for the biennium beginning July 1, 2011, and ending June 30, 2013.

SECTION 4. APPROPRIATION. There is appropriated out of any moneys in the resources trust fund in the state treasury, not otherwise appropriated, the sum of \$10,000,000, or so much of the sum as may be necessary, to the Bank of North Dakota for the purpose of providing a loan to the western area water supply authority for a maximum term of two years from the completion of the \$25,000,000 loan from the general fund and at five percent interest per year, for the biennium beginning July 1, 2011, and ending June 30, 2013.

SECTION 5. LOAN FUNDING AND REPAYMENT PRIORITY. Funding from sections 2, 3, and 4 of this Act must be structured so that funding is provided, as needed, first from the \$25,000,000 zero interest loan from the state water commission, second from the \$50,000,000 loan from the Bank of North Dakota, third from the \$25,000,000 loan from the general fund, and last from the \$10,000,000 loan from the resources trust fund. Repayment of loans must be structured so that repayment is first of the \$50,000,000 loan from the Bank of North Dakota, second of the \$25,000,000 loan from the general fund for deposit of the principal in the general fund and interest in the resources trust fund, third from the \$10,000,000 loan from the

resources trust fund for deposit in the resources trust fund, and last of the \$25,000,000 zero interest loan from the state water commission for deposit in the resources trust fund. The western area water supply authority shall repay the loans for the project from revenues from the project, and the authority may prepay loans within the priority without penalty. Upon repayment of the state water commission zero interest loan, the authority shall provide five percent of the net profits to the state water commission for deposit by the state treasurer in the resources trust fund until June 30, 2040.

SECTION 6. SECOND PHASE ANTICIPATED FUNDING. At the request of the western area water supply authority, the state water commission shall consider a loan of \$40,000,000 from the resources trust fund for inclusion within the state water commission's budget. The state water commission shall consult and work cooperatively with the water-related topics overview committee in setting the priority of the loan within the budget.

SECTION 7. EMERGENCY. This Act is declared to be an emergency measure.

Approved May 3, 2011

Filed May 5, 2011