

Fifty-fifth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2265

Introduced by

Senators Nething, Klein

Representative DeKrey

1 A BILL for an Act to create and enact a new subsection to section 61-07-03 and two new
2 sections to chapter 61-08 of the North Dakota Century Code, relating to the issuance of
3 revenue bonds; to amend and reenact sections 61-07-07, 61-07-08, 61-08-01, 61-08-06,
4 61-08-07, 61-08-09, 61-08-12, 61-08-13, 61-08-14, 61-08-22, 61-08-23, 61-08-25, 61-08-26,
5 61-08-27, 61-08-28, 61-08-29, 61-08-34, 61-08-35, 61-08-39, 61-09-13, and 61-09-14 of the
6 North Dakota Century Code, relating to powers and bonds of irrigation districts; and to repeal
7 sections 61-08-10, 61-08-11, 61-08-16, 61-08-17, 61-08-18, 61-08-19, 61-08-20, 61-08-21,
8 61-08-33, 61-08-36, 61-08-37, and 61-08-38 of the North Dakota Century Code, relating to
9 registration of bonds, cancellation of bonds, issuance of warrants, and terms of refunding
10 bonds.

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

12 **SECTION 1.** A new subsection to section 61-07-03 of the North Dakota Century Code
13 is created and enacted as follows:

14 Acquire real property, buildings, improvements, and equipment used or useful in
15 connection with storing, warehousing, distributing, or selling agricultural products,
16 which may be located within or outside the district.

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

19 **61-07-07. Board to formulate general plan of operation - Contents.** As soon as
20 practicable after the organization of an irrigation district, the board of directors, by a resolution
21 entered on its records, shall formulate a general plan of its proposed operation in which it shall
22 must state:

- 1 1. What constructed works or other property are proposed to be purchased, the
2 purchase price ~~thereof~~, and what construction work is proposed to be done, and
3 the estimated cost of ~~such~~ the construction.
- 4 2. Whether funds to pay ~~such~~ the purchase price or cost of construction ~~shall~~ will be
5 raised by issuing bonds ~~or district improvement warrants~~ or by creating a fund
6 through the collection of ~~water~~ rentals ~~or~~, charges from water users, or by creating
7 a fund by levying assessments against the lands benefited, or whether it is
8 contemplated to raise funds by the use of all or a combination of ~~such~~ those
9 methods of raising funds.

10 **SECTION 3. AMENDMENT.** Section 61-07-08 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **61-07-08. Surveys, examinations, and plans made to determine cost of**
13 **construction in district - State engineer to prepare report.** For the purpose of ascertaining
14 the cost of any irrigation construction work in a district, the board shall cause such surveys,
15 examinations, and plans to be made as ~~shall~~ may demonstrate the practicability of ~~such~~ the
16 plan and furnish the proper basis for an estimate of the cost of carrying out the ~~same~~ plan. All
17 ~~such~~ surveys, examinations, maps, plans, and estimates ~~shall~~ must be made under the
18 direction of a registered professional engineer, who may be the state engineer, and ~~shall~~ must
19 be certified by the registered professional engineer. The board ~~then~~ shall submit a copy ~~of the~~
20 ~~same~~ to the state engineer who shall prepare a summary report ~~thereon~~ and file the ~~same~~
21 report with the board. ~~Such~~ The report ~~shall~~ must contain such matters as in the judgment of
22 the state engineer ~~may be~~ are desirable. Upon receiving ~~such~~ the report, the board of directors
23 shall ~~proceed to~~ determine the amount of money required to be raised.

24 **SECTION 4. AMENDMENT.** Section 61-08-01 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **61-08-01. Resolution to institute initial proceedings for bonds - Contents -**
27 **Adoption.** Proceedings for the issuance of bonds by an irrigation district ~~shall~~ must be
28 instituted by the adoption of an initial resolution ~~therefor~~ by the board of directors of the district.
29 ~~Such~~ The initial resolution ~~shall~~ must state:

- 30 1. The maximum principal amount of bonds proposed to be issued.
- 31 2. ~~The maximum interest rate they shall bear.~~

3. ~~Whether they will be of serial or single maturity.~~

4. ~~If a single maturity, the year thereof, or if serial maturities, the years of such maturities, but not the amount for each of such years.~~

5. The purpose for which ~~they~~ the bonds are proposed to be issued.

6. 3. The total amount of bonded indebtedness, if any, of the district.

7. 4. Any other statement of fact deemed advisable by the board.

~~Such~~ The initial resolution may be adopted by a majority of the board at any regular meeting thereof or at any special meeting of which the prescribed notice has been given.

SECTION 5. AMENDMENT. Section 61-08-06 of the North Dakota Century Code is amended and reenacted as follows:

61-08-06. Maturity of bonds issued — When installment of principal falls due — Amount Bonds - Terms. Bonds issued by any irrigation district under the provisions of this chapter ~~shall~~ must be in the denominations and form, be subject to redemption with or without premium, and be subject to any other terms or conditions as the board of directors may determine, and must mature in not less than ten years ~~nor~~ more than forty years ~~after the date thereof~~ from the date of the bonds. If the maturities are serial, the first installment of principal ~~shall~~ must fall due not more than three years, and the last installment not more than forty years, from the date of the bonds. ~~No installment of principal shall be less than one third of the amount of the largest installment, except that the amounts of installments of principal may be such that the increase thereof from year to year approximately shall equal the decrease from year to year in the interest on the bonds remaining unpaid.~~

SECTION 6. AMENDMENT. Section 61-08-07 of the North Dakota Century Code is amended and reenacted as follows:

61-08-07. Bonds payable to whom — Interest coupons - Rate of interest - Numbering. Every bond provided for in this chapter ~~shall~~ must be a negotiable instrument payable to "bearer" or to the "bearer or registered owner", ~~with interest coupons attached, payable annually or semiannually, and must bear interest~~ at a rate or rates resulting in an average annual net interest ~~cost~~ rate which ~~shall~~ must not exceed twelve percent per annum ~~on these issues which~~ if the bonds are sold at private sale. There is no interest rate ceiling on ~~these issues~~ bonds sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. Each bond ~~shall~~ must specify the time and place of payment of the principal

1 ~~and shall be numbered consecutively with the other bonds of the same issue, which shall begin~~
2 ~~with number one, or with any other number, as the board may direct.~~

3 **SECTION 7. AMENDMENT.** Section 61-08-09 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **61-08-09. Execution of bonds and interest coupons - Validity of bonds not**
6 **impaired by change in officers.** The bonds issued under the provisions of this chapter shall
7 must be executed in the name of and for the district by the manual or facsimile signatures of
8 the chairman and secretary of the board. ~~The interest coupons attached to such bonds may be~~
9 ~~executed by the lithographed or engraved facsimile signature of such officers.~~ The validity of
10 every bond so executed ~~shall remain unimpaired~~ is not impaired by the fact that ~~one or more of~~
11 ~~the~~ a subscribing or attesting ~~officers have~~ officer has ceased to be ~~such an~~ an officer ~~or officers~~
12 of the district before delivery to the purchaser.

13 **SECTION 8. AMENDMENT.** Section 61-08-12 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **61-08-12. Advertising required before district sells issue** Sale of bonds -
16 **Contents of notice** ~~Who to receive notice.~~ No irrigation district shall enter into any contract
17 ~~for the sale of any issue of its bonds which exceeds the total sum of one hundred thousand~~
18 ~~dollars without first advertising for bids in the manner prescribed in this section.~~ A Bonds may
19 be sold at private sale without notice or at public sale after a notice calling for bids shall be has
20 been published at least once in the official newspaper of each county in which the district is
21 situated not less than fifteen days nor more than thirty days before the date specified ~~therein~~ for
22 receiving ~~such~~ bids. The notice may be in any form but shall must specify the amount of bonds
23 offered for sale and the date or dates of the maturity thereof, and the notice shall must specify
24 that the bids shall must be sealed and in writing and shall must state the time when and place
25 where bids will be received and will be opened. ~~A copy of the notice shall be mailed to the tax~~
26 ~~commissioner at Bismarek not less than ten days before the date specified for the opening of~~
27 ~~bids. Failure to publish the notice or to send a copy thereof to the tax commissioner shall not~~
28 ~~impair the validity of the bonds but shall render unenforceable any executory contract entered~~
29 ~~into for the sale thereof.~~

30 **SECTION 9. AMENDMENT.** Section 61-08-13 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **61-08-13. Opening bids for bond issues - Record of bids kept - Bids accompanied**
2 **by check.** At the time specified for opening the bids for bonds, the secretary of the board
3 publicly shall open the bids in the presence of the ~~directors~~ board, and after the bids have been
4 opened, the secretary shall enter in a permanent record the amount and rate of interest of each
5 bid and the name and address of the bidder. Each bid ~~shall~~ must be accompanied by a
6 certified check, cashier's check, surety bond, or bank draft in the amount of not less than ~~two~~
7 one percent of ~~such~~ the bid.

8 **SECTION 10. AMENDMENT.** Section 61-08-14 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **61-08-14. Awarding sale of bond issue - Rejecting bids -~~Purchasing irrigation~~**
11 **~~works already constructed.~~** The board of directors shall award the sale of bonds to the
12 bidder who agrees to purchase them upon the terms most favorable to the district, except that
13 the board may reject any and all bids. No sale ~~shall~~ may be for less than ninety-eight percent
14 of the par value and accrued interest on such the bonds. ~~If the board has determined to~~
15 ~~purchase irrigation works already constructed, the bonds may be issued and delivered at their~~
16 ~~par value in payment thereof.~~

17 **SECTION 11. AMENDMENT.** Section 61-08-22 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **61-08-22. Bonds and district improvement warrants may be secured by trust**
20 **indenture - Powers vested in trustee.** In the discretion of the board, bonds and district
21 ~~improvement warrants~~ may be secured by a trust indenture by and between the district and a
22 corporate trustee, which may be any trust company or bank having the powers of a trust
23 company within or outside this state. The board may vest in ~~such the~~ the trustee the right to
24 enforce any covenant made to secure or to pay ~~such the~~ the bonds ~~or improvement warrants.~~

25 **SECTION 12. AMENDMENT.** Section 61-08-23 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **61-08-23. Where money received from bond issue ~~or improvement warrants~~**
28 **~~placed - Lien on money.~~** All money received from any bond issue ~~or from the sale of district~~
29 ~~improvement warrants shall~~ must be placed in a fund and applied solely ~~to the payment of the~~
30 ~~cost of the works~~ for the purpose for which it was borrowed and for no other purpose except
31 that the money may be temporarily invested in securities approved by the board. A lien is

1 granted upon ~~such the~~ money until so applied, in favor of the owners or holders of ~~such the~~
2 bonds ~~or improvement warrants~~ or in favor of the trustee ~~created~~ appointed in connection with
3 ~~such the~~ bonds ~~or improvement warrants~~.

4 **SECTION 13. AMENDMENT.** Section 61-08-25 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **61-08-25. Bonds, ~~improvement warrants~~, and contracts payable from**
7 **assessments of real property and from water charges.** Bonds ~~or improvement warrants~~
8 issued by any irrigation district, and the interest thereon, and contracts not payable in bonds ~~or~~
9 ~~improvement warrants~~, made and entered into by the district for the acquisition of irrigation
10 works already constructed, or for the establishment and construction of irrigation works, or any
11 part thereof, ~~shall~~ must be paid from the revenue obtained from special assessments upon the
12 real property of the district or from any other revenue available for that purpose obtained from
13 charges to water users or from the sale of water to any person, firm, corporation, limited liability
14 company, municipality, or other irrigation district, or by a combination of special assessments
15 and water charges.

16 **SECTION 14. AMENDMENT.** Section 61-08-26 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **61-08-26. County treasurer to be custodian of funds.** The county treasurer shall act
19 as the custodian of sinking funds, or funds created for the payment of bonds ~~or improvement~~
20 ~~warrants~~, except that in case an irrigation district is located in more than one county the board
21 ~~of directors of the district~~, by recorded resolution, shall designate the county treasurer who shall
22 act as the custodian of ~~such the~~ funds. Upon the adoption of ~~such the~~ resolution, the county
23 treasurer so designated shall act as ~~such the~~ custodian. A copy of ~~such the~~ resolution and a
24 copy of each and every contract, trust agreement, or trust indenture relating to the issuance
25 and payment of bonds, ~~or improvement warrants~~, ~~shall~~ must be filed with ~~such the~~ county
26 treasurer.

27 **SECTION 15. AMENDMENT.** Section 61-08-27 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **61-08-27. District treasurer to remit moneys to county treasurer - Crediting**
30 **proper fund.** The district treasurer shall remit to the county treasurer all moneys received by
31 the treasurer in payment of assessments levied for sinking funds or for the payment of bonds

1 ~~and improvement warrants.~~ The district treasurer also shall remit to the county treasurer
2 moneys raised from water rentals or water charges, when directed to do so by the board, and
3 the district treasurer shall designate the fund or funds to which ~~such~~ the moneys belong, except
4 that all moneys, from whatever source derived, obligated under the terms of any contract, or
5 agreement made and entered into by the district, to meet payments as they become due
6 ~~thereunder~~, shall be paid and remitted to ~~such~~ the county treasurer and shall be credited by the
7 county treasurer to the proper fund.

8 **SECTION 16. AMENDMENT.** Section 61-08-28 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **61-08-28. Payment of bonds and warrants due—Redemption of bonds and**
11 **warrants—Notice of redemption—Contents—Bids—Opening interest.** Upon the
12 presentation to the The county treasurer of bonds or improvement warrants or the coupons of
13 either, then due and payable, the county treasurer shall pay the same shall pay the principal of,
14 premium, if any, and interest on the bonds upon maturity, redemption, or purchase in the open
15 market from any moneys in the fund created for the payment thereof. ~~Whenever the fund~~
16 ~~created for the payment of any series of bonds or improvement warrants shall amount to ten~~
17 ~~thousand dollars, the board shall direct the county treasurer to pay such an amount of such~~
18 ~~bonds, or improvement warrants, not due, at the lowest value at which they may be offered for~~
19 ~~redemption, except that no bond or improvement warrant shall be redeemed at a rate above~~
20 ~~par. Notice of such proposed redemption shall be advertised at least once in the official~~
21 ~~newspaper of the county in which the custodian of sinking funds is county treasurer, and in any~~
22 ~~other newspaper which the board of directors may designate. Such notice shall state that~~
23 ~~sealed proposals will be received for the redemption of such bonds or improvement warrants at~~
24 ~~the time and place therein stated. Such proposals shall be opened by the board in open~~
25 ~~meeting and the lowest bid must be accepted. In case the bids are equal, the lowest numbered~~
26 ~~bonds or improvement warrants, as the case may be, shall have the preference. If no bonds,~~
27 ~~or improvement warrants, are presented for redemption, the county treasurer, with the approval~~
28 ~~and consent of the board of directors, shall invest such money in bonds of the United States or~~
29 ~~in bonds or warrants of the state of North Dakota. The county treasurer may disburse moneys~~
30 in the fund to the fiscal agent or trustee appointed by the board for the purpose of paying the

1 principal of, premium, if any, and interest on the bonds for which the fund was created, without
2 any authorization from the board.

3 **SECTION 17. AMENDMENT.** Section 61-08-29 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **61-08-29. Claims paid by district treasurer - Insufficient funds - Verification of**
6 **claims.** No claim, other than payments of principal of, premium, if any, or interest on bonds,
7 shall be paid by the district treasurer until the ~~same shall have~~ claim has been allowed by the
8 board, and only upon warrants signed by the president and countersigned by the secretary. If
9 ~~such the~~ the treasurer ~~has not~~ does not have sufficient money on hand to pay ~~such a~~ a warrant when
10 it is presented for payment, the treasurer shall endorse thereon "Not paid for want of funds" and
11 ~~endorse thereon~~ the date when so presented, over the treasurer's signature. All claims against
12 the district ~~shall~~ must be certified the same as claims filed against a county. The board may
13 require any claim to be verified. The secretary of the district may administer ~~eaths~~ an oath to
14 the person verifying ~~such a~~ a claim.

15 **SECTION 18. AMENDMENT.** Section 61-08-34 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **61-08-34. Refunding irrigation district bonds - Negotiating new bonds.** Each
18 irrigation district in this state that has ~~heretofore~~ issued or shall ~~hereafter~~ issue bonds or
19 improvement warrants purporting to have been issued for any purpose authorized by law,
20 which bonds or improvement warrants have been ~~actually~~ sold and delivered to purchasers for
21 value and constitute an existing indebtedness, may at any time after ~~maturity~~ or before
22 maturity, ~~with the consent of the holder,~~ refund the same and issue and ~~negotiate new~~ sell
23 refunding bonds for the amount of such indebtedness or any part thereof in amounts, bearing
24 interest at rates, and maturing on dates as determined by the board.

25 **SECTION 19. AMENDMENT.** Section 61-08-35 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **61-08-35. Procedure used in issuing refunding bonds.** When in the judgment of the
28 board of directors of an irrigation district it ~~shall be to~~ is in the best interests of ~~such the~~
29 irrigation district to issue its ~~negotiable~~ bonds ~~in the name of such irrigation district~~ for the
30 purpose of refunding or paying outstanding ~~bonded~~ indebtedness, ~~or any issue of bonded~~
31 ~~indebtedness of such irrigation district,~~ as enumerated provided in section 61-08-34, refunding

bonds may be issued pursuant to resolutions duly passed at a regular or special meeting of ~~such the~~ board of directors. ~~Such~~ The refunding bonds may be sold at public or private sale and must be signed in the same manner as the bonds to be refunded or by ~~such the~~ officers of the irrigation district ~~issuing the same~~ as may be designated in the resolutions providing for their issuance.

SECTION 20. AMENDMENT. Section 61-08-39 of the North Dakota Century Code is amended and reenacted as follows:

61-08-39. Assessments - Proceeds - Levy. All assessments made by an irrigation district for the payment of the bonds or improvement warrants to be refunded ~~shall~~ must inure to the benefit of the holders of the refunding bonds and the proceeds of ~~such the~~ assessments ~~shall~~ must be utilized for the purpose of paying the interest and principal of ~~said the~~ refunding bonds, and the board of directors of the irrigation district shall levy an assessment against the lands of the district, as provided by law for levying assessments, sufficient to pay the interest on ~~such the~~ refunding bonds and to create a sinking fund to retire ~~such the~~ refunding bonds at maturity.

SECTION 21. Two new sections to chapter 61-08 of the North Dakota Century Code are created and enacted as follows:

Issuance of revenue bonds. The acquisition, construction, reconstruction, improvement, betterment, or extension of any revenue producing facility, and the issuance of revenue bonds in anticipation of the collection of the revenues of the facility, may be authorized by resolution adopted by the affirmative vote of a majority of the board of directors. The amount of the bonds authorized may not exceed the amount authorized by the electors of the district as provided in this chapter.

Payment and security for revenue bonds. Revenue bonds issued under this chapter may not be payable from nor charged upon any funds other than the revenue pledged to the payment of the bonds, nor is the district issuing the bonds subject to any pecuniary liability on the bonds. A holder of the bonds does not have the right to compel the levy of special assessments to pay the bonds or the interest, or to enforce payment of the bonds against any property of the district other than property pledged as security for the bonds. Each revenue bond issued under this chapter must recite in substance that the bond, including interest on the bond, is payable solely from the revenue pledged to the payment of the bond, and that the

1 bond does not constitute a debt of the district within the meaning of any constitutional or
2 statutory limitation.

3 **SECTION 22. AMENDMENT.** Section 61-09-13 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **61-09-13. Board may borrow additional funds if levy of annual assessment is**
6 **insufficient for district - Limitations.** If after the levy of the annual assessment for the current
7 year the board finds that because of some unusual or unforeseen cause funds raised through
8 the collection of ~~such the~~ assessment, and from other sources, will not be sufficient for the
9 proper maintenance and operation of the district, and the irrigation works ~~therein~~ of the district,
10 the board may borrow additional funds needed to an amount not to exceed ~~one dollar~~ twenty
11 dollars per acre [.40 hectare] for the irrigable lands within the district and may pledge the credit
12 of the district for the payment of the ~~same loan~~, or the board may issue ~~and register warrants~~
13 bonds in anticipation of further collections. The board shall include in the levy for the ensuing
14 year the amount required to pay ~~such the~~ loan or to retire ~~such warrants~~ the bonds.

15 **SECTION 23. AMENDMENT.** Section 61-09-14 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **61-09-14. Warrants Borrowing in excess of ninety percent of levy prohibited -**
18 **Additional levy permissible - Transfer of balance in fund.** ~~No~~ An irrigation district, on
19 account of expenses of operation and maintenance and to pay the current expenses of the
20 district, in any year ~~shall issue warrants~~ may not borrow in excess of ninety percent of the levy
21 of assessments for ~~such that~~ that year. In case of due and outstanding obligations of the district on
22 account of current expenses and expenses of operation and maintenance contracted ~~prior to~~
23 before the year in which the levy is made, the district board ~~shall have power to~~ may make an
24 additional levy, not to exceed ~~one dollar~~ twenty dollars per acre [.40 hectare], upon all irrigable
25 lands within the district, to create a special fund for the payment of ~~such the~~ the past due
26 obligations. Whenever the claims or obligations against any fund for any year are fully paid, the
27 board ~~shall have the power to~~ may transfer any unused balance to any fund for any preceding
28 or succeeding year.

29 **SECTION 24. REPEAL.** Sections 61-08-10, 61-08-11, 61-08-16, 61-08-17, 61-08-18,
30 61-08-19, 61-08-20, 61-08-21, 61-08-33, 61-08-36, 61-08-37, and 61-08-38 of the North Dakota
31 Century Code are repealed.