

June 2007

TITLE 61

Waters

Summary of Bills Enacted by 2007 Legislative Assembly

This memorandum summarizes 2007 legislation primarily affecting North Dakota Century Code (NDCC) Title 61. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

The legislation relating to waters may be classified in these subject areas: State Water Commission; drains and drainage projects; water districts and the Lake Agassiz Water Authority; and prevention of pollution of surface waters.

STATE WATER COMMISSION

Senate Bill No. 2020 appropriates \$176,010,555 to the State Water Commission. Of this total, \$69,352,698 is from the resources trust fund and \$40,055,999 is from the water development trust fund. The bill provides that notwithstanding any other provision of law or policy, any existing caps may not be construed to limit access to total state funding of up to \$52 million for the Grand Forks flood control project. The bill also provides that notwithstanding any other provision of law, a drought disaster livestock water assistance program project commenced after application for funding is made but without prior approval of the State Engineer is eligible for funding from the program. The drought disaster livestock water assistance program provision became effective upon the bill's filing with the Secretary of State.

Senate Bill No. 2345 authorizes the State Water Commission to issue bonds in an amount not to exceed \$40 million plus the cost of issuance of the bonds, capitalized interest, and reasonably required reserves to fund the nonfederal share of funds necessary to construct the Red River Valley Water Supply Project. The bill provides that principal and interest on bonds issued for the Red River Valley Water Supply Project are payable from the water development trust fund from funds transferred from the tobacco settlement trust fund. The bill provides that the remaining \$60 million to comprise a total of \$100 million to meet the \$100 million state share of Phase 1 of the Red River Valley Water Supply Project is to be funded over three bienniums. The \$60 million is to be derived from \$30 million from general fund money and \$30 million from the resources trust fund. The bill also provides that the state is to provide an additional \$100 million of municipal, rural, and industrial water supply funds for Phase 2 of the Red River Valley Water Supply Project, to meet the \$200 million state share of the project.

House Bill No. 1513 authorizes the State Water Commission to establish an emergency municipal, tribal, and rural water assistance program for municipalities, tribes, and rural water systems, whose primary source of water is the Missouri River, Lake Sakakawea, or Lake Oahe. The purpose of the program is to provide emergency grant funds to municipalities, tribes, and rural water systems facing a critical need or health risk as a result of the inability of the water intake system for the municipal, tribal, or rural water system to supply an adequate quantity of quality water to the people served by the municipal, tribal, or rural water system.

House Bill No. 1215 expands the drought livestock water assistance program from a maximum of \$3,500 to a maximum of \$3,500 per project with a limit of three projects per applicant. The bill provides that a drought livestock water assistance program project located on Indian land is eligible for the program. The bill became effective upon its filing with the Secretary of State.

Senate Bill No. 2096 provides that for purposes of removing, modifying, or destroying dangers in, on the bed of, or adjacent to navigable waters that 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. The bill authorizes the State Engineer to enter agreements with the Game and Fish Department or other law enforcement entities to enforce laws and rules relating to sovereign lands management. The bill provides that a person who violates laws or rules governing sovereign lands management is guilty of a Class B misdemeanor unless a lesser penalty is indicated. In addition, a civil penalty may be imposed by a court in a civil proceeding or by the State Engineer through an adjudicative proceeding.

DRAINS AND DRAINAGE PROJECTS

Senate Bill No. 2214 provides that water and drainage projects involving eminent domain must be carried out in accordance with NDCC Chapter 32-15 governing eminent domain proceedings.

House Bill No. 1265 provides that as part of the design and construction of a proposed assessment drain or the maintenance or reconstruction of an existing assessment drain, a board of managers of a water resource district, upon approval of the appropriate road authority, may locate, relocate, size, and install culverts through roads which are not on the routes of assessment drains but which are within the assessment area and which are necessary for surface water to reach the assessment drain.

House Bill No. 1331 provides that if a drain obstruction is located in a road ditch, the timing and method of removal must be approved by the appropriate road authority before notice to the landowner is given and appropriate construction site protection standards must be followed.

House Bill No. 1266 increases the assessment for maintenance or construction of drains from \$1.50 per acre to \$2 per acre and extends the time period during which a water resource board may accumulate funds from four years to six years.

House Bill No. 1282 allows a water resource district board to undertake a project relating to maintenance of a federally constructed project that will benefit lands outside the water resource district's boundaries if the board of each district containing lands benefited by the project approves the project and assessment by a vote of two-thirds of its members. The bill provides that the board of county commissioners in each county that contains lands benefited by the project must approve and levy the assessment by a vote of two-thirds of its members. The bill allows a water resource board to undertake a project that may benefit lands outside the district's boundaries if the board finances the cost of the project and does not assess land outside the boundaries of the district.

WATER DISTRICTS AND LAKE AGASSIZ WATER AUTHORITY

Senate Bill No. 2369 increases the aggregate total of outstanding revenue bonds a water district may have from \$25 million to \$50 million.

House Bill No. 1268 changes the duties of the Lake Agassiz Water Authority relative to the issuance of bonds from operating a project financed by the authority in an efficient and economical manner, enforcing all water purchase and water sales contracts, and establishing, levying, maintaining, and collecting related necessary or proper fees, tolls, rentals, rates, and other charges to making certain any project financed by the authority is operated in an efficient and economical manner, that all water purchase and water sales contracts are enforced, and that all proper fees, tolls, rentals, rates, and other charges are established, levied, maintained, and collected.

PREVENTION OF POLLUTION OF SURFACE WATERS

House Bill No. 1501 provides that an appeal from the issuance, denial, modification, or revocation of a permit issued under NDCC Chapter 61-28 governing the control, prevention, and abatement of pollution of surface waters may be made by the person who filed the permit application, or by any person who is aggrieved by the permit application decision, provided that person participated in or provided comments during the hearing process for the permit application, modification, or revocation. The bill provides that except for a violation of Chapter 61-28 which occurs after the permit is issued, or any permit condition, rule, order, limitation, or other applicable requirement implementing the chapter which occurs after the permit is issued, any challenge to the State Department of Health's issuance, modification, or revocation

of the permit or permit conditions must be made in the permit hearing process and may not be raised in any collateral or subsequent legal proceeding, and that the applicant or any aggrieved person may raise on appeal only issues that were raised to the department in the permit hearing process.