

WATERS

CHAPTER 473

S. B. No. 235
(Hofstrand, Trenbeath)

POWERS OF BOARD OF COMMISSIONERS OF WATER MANAGEMENT DISTRICTS

AN ACT

To amend and reenact subsection 11 of section 61-16-11 of the 1965 Supplement to the North Dakota Century Code, relating to powers and duties of board of commissioners.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.)** Subsection 11 of section 61-16-11 of the 1965 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

11. To have, in addition to any powers provided in this chapter, all of the powers conferred by statutes upon a board of county drain commissioners;

Approved March 14, 1967.

CHAPTER 474

S. B. No. 295
(Trenbeath)

AUTHORITY OF BOARD OF COMMISSIONERS
OF WATER MANAGEMENT DISTRICT

AN ACT

To create and enact subsection 16 of section 61-16-11 and to amend and reenact subsection 10 of section 61-16-11 and sections 61-16-07 and 61-16-15 of the North Dakota Century Code, relating to the authority of the board of commissioners of a water management district to pledge security, the board members appointment, their authority to participate in outdoor recreation projects and the approval of such board prior to the construction of certain water impoundments.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.)** Subsection 10 of section 61-16-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10. To do all things reasonably necessary and proper to preserve the benefits to be derived from the conservation, control and regulation of the water resources of this state including, but not limited to, the construction, operation and maintenance of recreational facilities including, but not limited to, beaches, swimming areas, boat docking and landing facilities, toilets, wells, picnic tables, trash receptacles and parking areas and to establish and enforce rules and regulations for the use thereof;

§ 2.) Subsection 16 of section 61-16-11 of the North Dakota Century Code is hereby created and enacted to read as follows:

16. To borrow money within the limitations imposed by this chapter for projects herein authorized and to pledge security for the repayment of such money.

§ 3. **Amendment.)** Section 61-16-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-07. Board of Commissioners—Appointment and Number.) When an order of the state water commission, creating a water management district, has been filed in the office of the county auditor of a county in which such district or a part of such district is situated, a board of district commissioners shall

be appointed as provided herein. If the boundaries of such district are confined within one county the board of county commissioners thereof shall appoint a district board consisting of three commissioners. When a district includes territory within two counties, the board of commissioners shall consist of five members, three of whom shall be appointed by the board of commissioners of the county in which that part of the district lies which has the larger aggregate taxable valuation of property in the district and two members of the board shall be appointed by the board of county commissioners of the county in which the part of the district lies having the lesser aggregate taxable valuation. If a district includes territory in three counties, the board of commissioners shall consist of five members, one of whom shall be appointed by the board of county commissioners having the lowest aggregate taxable valuation of property in the district and two members of the board shall be appointed by the board of county commissioners of each of the other two counties. And when such district embraces territory in four counties, the board of commissioners shall consist of seven members, three of whom shall be appointed by the board of county commissioners of the county in which the part of the district lies which has the largest aggregate taxable valuation of property in the district, two members shall be appointed by the board of county commissioners of the county in which the part of the district lies which has the next highest aggregate taxable valuation of property, and one member shall be appointed by the county board of each of the other two counties.

§ 4. Amendment.) Section 61-16-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-15. Construction and Repair of Dam—Proposals for—Presented to Whom—Hearing Proposals.) No dams or other devices for water conservation, flood control regulation, watershed improvement or storage of water which are capable of retaining more than twelve and one-half acre feet of water shall be constructed within any water management district except in accordance with the provisions of this chapter. Any proposal for the construction of any dam or other facilities shall be presented first to the board of commissioners of the district within which the contemplated project is located. Such board shall consider the same, and if the proposal meets with its approval, it shall forward the proposal to the state water commission as soon as possible. After the receipt thereof, the state water commission shall consider the same in such detail as to it may seem necessary and proper, and shall make its recommendations and suggestions as to the propriety, ef-

ficiency, and feasibility of the proposal, and, within forty-five days of its receipt forward the same to the board of commissioners. The board thereupon shall require, or if the project is to be constructed at the expense of the district shall furnish, complete plans and specifications therefor, which shall be forwarded to the state water commission. The state water commission shall examine the same in detail and, within forty-five days of the receipt of such plans and specifications shall either refuse to allow the construction of any unsafe, improper, or dangerous dam or other device which would interfere with the orderly control of the water resources of the district, or order such changes or modifications thereof as in its judgment may be necessary for safety. Any person aggrieved by any such ruling of the state water commission shall have the right to a full hearing before such commission and a full consideration of all evidence available before a final order of the state water commission shall be entered. Such order of the state water commission shall be subject to appeal to the district court as provided in this chapter.

Approved March 14, 1967.

CHAPTER 475

S. B. No. 389
(Trenbeath)

LEVY FOR CLEANING AND REPAIRING DRAINS

AN ACT

To amend and reenact section 61-21-46 of the North Dakota Century Code, relating to the maximum levy and accumulation thereof for cleaning and repairing drains.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Section 61-21-46 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-46. Maximum Levy — Accumulation of Fund.) The levy in any year for cleaning out and repairing a drain shall not exceed fifty cents per acre on any agricultural lands in the drainage district. Agricultural lands which carried the highest assessment when the drain was originally established, or received the most benefits under a reassessment of benefits, may be assessed the maximum amount of fifty cents per acre. The assessment of other agricultural lands in the district shall

be based upon the proportion that the assessment of benefits at the time of construction or at the time of any reassessment of benefits bears to the assessment of the benefits of the agricultural land assessed the full fifty cents per acre. Nonagricultural property shall be assessed such sum in any one year as the ratio of the benefits under the original assessment or any reassessment bears to the assessment of agricultural lands bearing the highest assessment. In case the maximum levy of fifty cents per acre for any year will not produce an amount sufficient to cover the cost of cleaning out and repairing such drain, the board may accumulate a fund in an amount not exceeding the sum produced by such maximum permissible levy for two years. If the cost of, or obligations for, the cleaning and repair of any drain shall exceed the total amount which can be levied by the board in any two year period, the board shall obtain an affirmative vote of the majority of the landowners as determined by section 61-21-16 prior to obligating the district for such costs.

Approved March 10, 1967.

CHAPTER 476

H. B. No. 635

(Jones, Tollefson, Hoghaug, Bier, Mueller, Boyum)

ISLANDS AND LANDS IN NAVIGABLE STREAMS

AN ACT

To amend and reenact section 47-06-08 and subsections 11 and 12 of section 61-24-08 and to create and enact subsection 13 of section 61-24-08 of the North Dakota Century Code, relating to the Garrison diversion conservancy district and to islands and lands in navigable streams.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Section 47-06-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

§ 47-06-08. Islands and Relicted Lands in Navigable Streams Belong to State.) Islands and accumulations of land formed in the beds of streams which are navigable belong to the state, if there is no title or prescription to the contrary. The control and management, including the power to execute mineral leases, of islands, relictions and accumulations of land owned

by the state of North Dakota in navigable streams and waters and the beds thereof, shall be in the bank of North Dakota. All income and proceeds derived from such lands shall be deposited in the general fund for the purpose of defraying the general expenses of the state government. This section shall not be construed as affecting or changing the provisions of any contract already executed by or on behalf of the state of North Dakota or any department or agency thereof concerning such lands and shall not apply to lands within the Garrison diversion conservancy district.

§ 2. Amendment.) Subsections 11 and 12 of section 61-24-08 of the 1965 Supplement to the North Dakota Century Code are hereby amended and reenacted and section 61-24-08 of the 1965 Supplement to the North Dakota Century Code is hereby amended by the creation of subsection 13, all to read as follows:

11. To operate and maintain or to contract for the operation and maintenance of water supply and irrigation works serving lands and uses within the district, and in connection therewith, to maintain a reserve fund to meet major unforeseen costs of operation and maintenance;
12. To accept, on behalf of the district, appointment of the district as fiscal agent of the United States and authorization to make collections of money for and on behalf of the United States in connection with the Garrison diversion unit;
13. To exercise the control and management, including the power to dedicate to public use or to donate and convey to the United States for authorized purposes of the Garrison diversion unit, lands owned by the state of North Dakota in navigable streams and waters, including the bed thereof, where such lands lie within the district, as now constituted or may hereafter be modified west of the ninety-eighth meridian.

Approved March 10, 1967.

CHAPTER 477

S. B. No. 329
(Holand, Morgan)

GARRISON DIVERSION RIGHT-OF-WAY

AN ACT

To grant to the bureau of reclamation right-of-way necessary for the construction and development of Garrison diversion within the right-of-way of roads in the state upon approval of the state highway commissioner, board of county commissioners, or board of township supervisors, and declaring an emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. State and Political Subdivisions Contracting with the Bureau of Reclamation—Roads.) In connection with the construction and development of the Garrison diversion unit of the Missouri river basin project, the highway authorities of the state, or any county or organized township or municipality, are authorized to enter into agreements with each other or with the federal government, respecting the financing, planning, establishment, relocation, improvement, maintenance, use, regulation, vacation, or abandonment of public ways in their respective jurisdictions. Where any such contracts require the relocation, vacation, or abandonment of particular public ways, the contracting state agency, county, organized township, or municipality shall be vested with and authorized to exercise the powers of the state in the relocation, vacation, or abandonment of existing public ways.

§ 2. Easement Granted for Ditches, Canals, Tramways, and Transmission Lines on Any Public Lands.) In connection with the construction and development of the Garrison diversion unit of the Missouri river basin 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 ditches or canals and for tunnels, tramways, and telephone and electric transmission lines constructed as part of the Garrison diversion unit, provided, however, that the state highway commissioner, the board of county commissioners or the board of township supervisors must approve the plans of the bureau of reclamation with respect to the use of any and all right-of-way of roads under their respective control prior to such grant becoming effective.

§ 3. **Emergency.)** This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 10, 1967.

CHAPTER 478

S. B. No. 66
(Trenbeath, Christensen)

IDENTIFICATION AND LICENSING OF BOATS

AN ACT

To amend and reenact section 61-27-02 and subsections 1, 2, 3, 5, 7, 8, 9, 10 and 11 of section 61-27-03 of the North Dakota Century Code, relating to the identification number and license of motorboats.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.)** Section 61-27-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-27-02. Operation of Unnumbered and Unlicensed Motorboats Prohibited.) Every motorboat propelled by a motor having ten horsepower or more on the waters of this state shall be numbered and licensed as prescribed in this chapter. No person shall operate or give permission for the operation of any motorboat on such waters unless the motorboat is numbered and licensed in accordance with this chapter, or in accordance with applicable federal law, or in accordance with a federally approved numbering system of another state, and unless (1) the certificate of number awarded to such motorboat is in full force and effect, and (2) the identifying number set forth in the certificate of number is displayed on each side of the bow of such motorboat.

§ 2. **Amendment.)** Subsections 1, 2, 3, 5, 7, 8, 9, 10 and 11 of section 61-27-03 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

61-27-03. Identification Number and License.) 1. The owner of each motorboat requiring numbering and licensing by this state shall file an application for number and license with the department on forms approved by it. The application shall be signed by the owner of the motorboat and shall be accompanied by a fee of three dollars. Upon receipt of the application in

approved form, the department shall enter the same upon the records of its office and issue to the applicant a certificate of number and license stating the number awarded to the motorboat and the name and address of the owner. In instances where an identification number has previously been issued by the department, the same application procedure and fee shall apply for the issuance of a current license. The game and fish department shall pay all funds collected hereunder to the state treasurer who shall credit such funds thereof to the state game and fish fund to pay for the costs of administering this chapter. The owner shall attach to each side of the bow of the motorboat the identification number and current license in such manner as may be prescribed by rules and regulations of the department in order that it may be clearly visible. The number and license shall be maintained in legible condition. The certificate of number shall be available at all times for inspection on the motorboat for which issued, whenever such motorboat is in operation.

2. The owner of any motorboat already covered by a number in full force and effect which has been awarded to it pursuant to then operative federal law or a federally approved numbering system of another state may operate the motorboat on the waters of this state for the ninety-day reciprocity period provided for in section 61-27-05. After the ninety-day reciprocity period has expired, such motorboats shall be subject to the numbering and licensing provisions of subsection 1 of this section.

3. Should the ownership of a motorboat change, a new application form with the license fee prorated on a yearly basis shall be filed with the department and a new certificate of number and license shall be awarded in the same manner as provided for in an original award of number and license.

5. The department may award any certificate of number or license directly or may authorize any person to act as agent for the awarding thereof. In the event that a person accepts such authorization, he may be assigned a block of numbers, certificates, and licenses which upon award, in conformity with this chapter and with any rules and regulations of the department, shall be valid as if awarded directly by the department.

7. Every certificate of number and license awarded pursuant to this chapter shall continue in full force and effect for a period of three years unless sooner terminated or discontinued in accordance with the provisions of this chapter. Certificates of number and licenses may be renewed by the owner in the same manner provided for in the initial securing of the same.

8. The department shall fix a day and month of the year on which certificates of number and licenses due to expire during the calendar year shall lapse and no longer be of any force and effect unless renewed pursuant to this chapter.

9. The owner shall furnish the department notice of the transfer of all or any part of his interest other than the creation of a security interest in a motorboat numbered and licensed in this state pursuant to subsections 1 and 2 of this section or of the destruction or abandonment of such motorboat, within fifteen days thereof. Such transfer, destruction, or abandonment, shall terminate the certificate of number and license for such motorboat except, that in the case of a transfer of a part interest which does not affect the owner's right to operate such motorboat, such transfer shall not terminate the certificate of number and license.

10. Any holder of a certificate of number and license shall notify the department within fifteen days, if his address no longer conforms to the address appearing on the certificate and shall, as a part of such notification, furnish the department with his new address. The department may provide in its rules and regulations for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or for the alteration of an outstanding certificate to show the new address of the holder.

11. No number other than the number and license awarded to a motorboat or granted reciprocity pursuant to this chapter shall be painted, attached, or otherwise displayed on either side of the bow of such motorboat.

Approved March 14, 1967.

CHAPTER 479

H. B. No. 822

(Dick, Williamson, Sanstead, Burke, Haugland, Sandness,
(Lillehaugen, Dahlen)

POLLUTION OF SURFACE WATERS

AN ACT

To authorize the control, prevention, and abatement of pollution of the surface waters of the state, and providing a penalty.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Statement of Policy.**) It is hereby declared to be the policy of the state of North Dakota to act in the public interest to protect, maintain and improve the quality of the waters in the state for continued use as public and private water supplies, propagation of wildlife, fish and aquatic life, and for domestic, agricultural, industrial, recreational and other legitimate beneficial uses, to require necessary and reasonable treatment of sewage, industrial, or other wastes and to cooperate with other agencies in the state, agencies of other states and the federal government in carrying out these objectives.

§ 2. **Definitions.**) For the purposes of this Act, the following words and phrases shall have the meanings ascribed to them in this section:

1. "Pollution" means such contamination, or other alteration of the physical, chemical or biological properties, of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life;
2. "Wastes" means sewage, industrial wastes, and all other liquid, gaseous, solid, radioactive, or other substances which may pollute or tend to pollute any waters of the state;
3. "Sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other structures,

devices, appurtenances, and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal;

4. "Treatment works" means any plant or other works used for the purpose of treating, stabilizing or holding wastes;
5. "Disposal system" means a system for disposing of wastes, either by surface or underground methods, and includes sewerage systems, treatment works, disposal wells and other systems;
6. "Waters of the state" means all waters within the jurisdiction of this state including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, and all other bodies or accumulations of surface water, natural or artificial, public or private, situated wholly or partly within or bordering upon the state, except those private waters which do not combine or effect a junction with natural surface or underground waters just defined;
7. "Person" means the state or any agency or institution thereof, any municipality, political subdivision, public or private corporation, individual, partnership, association, or other entity, and includes any officer or governing or managing body of any municipality, political subdivision, or public or private corporation;
8. "Department" shall mean the state department of health in the state of North Dakota; and
9. "Board" shall mean the state water pollution control board.

§ 3. State Water Pollution Prevention Agency — Board.)

There is hereby created and established a state water pollution control board. The board shall consist of eight persons. It shall include the heads of the departments of health, water conservation, game and fish, and state geologist, and four citizen members appointed by the governor. Citizen members shall represent municipal, industrial, wildlife and agricultural interests. The executive secretary of the board shall be the chief sanitary engineer of the department.

Of the four members appointed by the governor, each shall serve six-year terms, except that of those first appointed two shall be appointed for three years, and two shall be for six years. The governor may fill any vacancy in the appointed membership of the board, and may remove any appointed member for cause.

The heads of departments on the board may, by official order filed with the executive secretary of the board, designate a representative of his department to perform the duties of the member making the designation. Such person, if any, designated pursuant to this section, shall have the powers and be subject to the duties and responsibilities of the appointing office.

All members of the board shall serve without compensation for their duties, but shall be reimbursed for necessary travel and other expenses incurred in the performance of their official duties. Reimbursement shall be paid out of funds allocated to the department for water pollution control.

The department shall provide the board with copies of maps, plans, documents, studies, surveys, and all other necessary information in order that the board may be fully cognizant of the current status of water pollution and its control in the state and to enable the board to advise and direct the department in development of programs for the prevention and control of pollution of the waters in the state and to direct actions to abate any existing pollution problems that may be brought to its attention.

§ 4. Powers and Duties.) The state department of health, under the direction of said board, shall have and may exercise the following powers and duties:

1. To exercise general supervision of the administration and enforcement of this Act and all rules and regulations and orders promulgated thereunder;
2. To develop comprehensive programs for the prevention, control and abatement of new or existing pollution of the waters of the state;
3. To advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, and with affected groups, political subdivisions, and industries in furtherance of the purposes of this Act;
4. To accept and administer loans and grants from the federal government and from other sources, public or private, for carrying out any of its functions, which loans and grants shall not be expended for other than the purposes for which provided;
5. To encourage, participate in, or conduct studies, investigations, research and demonstrations relating to water pollution and causes, prevention, control, and abatement thereof as it may deem advisable and necessary for the discharge of its duties under this Act;

6. To collect and disseminate information relating to water pollution and the prevention, control and abatement thereof;
7. To issue, modify, or revoke orders:
 - a. Prohibiting or abating discharges of wastes into the waters of the state;
 - b. Requiring the construction of new disposal systems or any parts thereof or the modification, extension or alteration of existing disposal systems or any parts thereof, or the adoption of other remedial measures to prevent, control or abate pollution;
8. To hold such hearings, to issue notices of hearings and subpoenas requiring the attendance of such witnesses and the production of such evidence, to administer such oaths, and to take such testimony as the department deems necessary, and any of these powers may be exercised on behalf of the department by any members thereof or a hearing officer designated by it;
9. To require the prior submission of plans, specifications, and other data relative to, and to inspect the construction of, disposal systems or any part thereof in connection with the issuance of approvals as are required by this Act;
10. To require proper maintenance and operation of disposal systems;
11. To exercise all incidental powers necessary to carry out the purposes of this Act;
12. The state department of health is hereby designated as the state water pollution control agency for all purposes of the Federal Water Pollution Control Act, as amended (33 U.S.C. 466), and is hereby authorized to take all action necessary or appropriate to secure to this state the benefits of that Act and similar federal acts.
13. In the administration of standards of water quality the department shall allow a reasonable time for persons discharging wastes into the waters of the state to comply with such standards.

§ 5. Rules, Regulations and Standards.) The state water pollution control board, jointly with the state health council, shall hold a public hearing to consider the adoption, amendment or repeal of rules, regulations, and standards of quality of the waters of the state as provided in this Act, and notice of such public hearing or hearings shall be given by publication

of a notice of such hearings or hearing in each of the official county newspapers within the state of North Dakota by at least two publications, one week apart, the last publication being at least ten days prior to said hearing and which hearing shall be held in the state capitol in Bismarck, at which hearings interested parties may present witnesses and other evidence pertinent and relevant to proposed rules, regulations, and standards, and the state water pollution control board shall consider any other matters related to the purposes of this Act and shall direct the department concerning the administration of this Act.

§ 6. Prohibitions.)

1. It shall be unlawful for any person:
 - a. To cause pollution of any waters of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any waters of the state; and
 - b. To discharge any wastes into any waters of the state which reduce the quality of such waters below the water quality standards established therefor by the department.
2. It shall be unlawful for any person to carry on any of the following activities without plans and specifications previously approved by the department and the state water commission:
 - a. The construction, installation, modification or operation of any disposal system or part thereof or any extension or addition thereto;
 - b. Cause a material increase in volume or strength of any wastes in excess of the permissive discharges specified under existing approved plans;
 - c. The construction, installation, or operation of any industrial, commercial, or other establishment or any extension or modification or addition thereof, the operation of which would cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, or biological properties of any waters of the state in any manner not already lawfully authorized;
 - d. The construction or use of any new outlet for the discharge of any wastes into the waters of the state.

§ 7. Proceedings.) Any proceeding under this Act for:

1. Issuance or modification of rules and regulations including emergency orders relating to control of water pollution; or
2. Determining compliance or violation with the provisions of this Act, or any rule, regulation, or order issued thereunder by the department shall be conducted in accordance with the provisions of chapter 28-32 entitled "Administrative Agencies Practice Act" of the North Dakota Century Code and appeals may be taken as provided. Where an emergency exists requiring immediate action to protect the quality of water for legitimate uses and the public health and welfare, the department may, without further notice or hearing, issue an order reciting the existence of such emergency and requiring that such immediate action be taken as is necessary to meet this emergency. Notwithstanding any provision of this Act, such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately, but on application to the department shall be afforded a hearing before the state health council and the state water pollution control board within ten days. On the basis of such hearing, the emergency order shall be continued, modified or revoked within thirty days after such hearing.

§ 8. Penalties—Injunctions.)

1. Any person violating any provision of this Act or failing, neglecting, or refusing to comply with any rules, regulation or order issued thereunder shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided by law.
2. The department may, in accordance with the laws of this state governing injunctions or other process, maintain an action in the name of the state against any person violating any provision of this Act or any rule, regulation or order issued thereunder.

§ 9. Conflicting Laws.) This Act shall not be construed as repealing any laws of the state relating to the pollution of waters thereof or any conservation laws, but shall be held and construed as auxiliary and supplementary thereto.

Approved March 16, 1967.