

WATERS

CHAPTER 635

HOUSE BILL NO. 1393
(Lipsiea, Tweten)

REMOVAL OF OBSTRUCTIONS

AN ACT to amend and reenact section 61-01-23 of the North Dakota Century Code, relating to the removal of obstructions in the channel of a nonnavigable stream.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 61-01-23 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-01-23. REMOVAL OF OBSTRUCTIONS IN CHANNEL OF NONNAVIGABLE STREAMS.) In order to remove obstructions, such as logs, fallen trees and brush from the channel or bed of a nonnavigable river or stream and thus prevent ice from gorging therein and to prevent flooding or pollution of such stream or river, the state water commission, any water management district, any municipality, any board of county commissioners and any federal agency authorized to construct works for prevention of damage by floods or for abatement of stream pollution, may enter upon lands lying adjacent to such nonnavigable stream to remove, or cause to be removed from the bed, channel or banks of such stream obstructions which prevent or hinder the free flow of water or passage of ice therein. However, such entry upon adjacent lands shall be by the most accessible route and the entering agency shall be responsible to the landowner for any damage.

Approved March 7, 1979

CHAPTER 636

SENATE BILL NO. 2254
(Committee on Natural Resources)
(At the request of the Water Commission)

SPECIAL FUND FOR WATER USE FEES

AN ACT to create and enact chapter 61-02.1 of the North Dakota Century Code, relating to the establishment of a special fund for water use fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1.) Chapter 61-02.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

61-02.1-01. SPECIAL FUND.) All fees collected by the state engineer pursuant to sections 61-04-04.1 and 61-04-06.2 of the North Dakota Century Code shall be deposited in the state treasury in a special fund to be known as the water use fund, and shall be used only for planning, research, and administration required to properly regulate the allocation and appropriation of the waters of North Dakota.

61-02.1-02. PURPOSES OF FUND.) The water use fund may be expended subject to appropriation by the legislative assembly for the purpose of meeting the costs directly incurred in conducting the planning and administration required for the proper regulation of the allocation and appropriation of the waters of the state.

Approved March 28, 1979

* NOTE: The two sections created by this bill are consolidated and codified as North Dakota Century Code Section 61-03-05.1.

CHAPTER 637

HOUSE BILL NO. 1276
(Committee on Natural Resources)
(At the request of the Water Commission)

EMERGENCY OR TEMPORARY USE OF WATER

AN ACT to amend and reenact section 61-04-02.1 of the North Dakota Century Code, relating to emergency or temporary use of water.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 61-04-02.1 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-02.1. EMERGENCY OR TEMPORARY AUTHORIZATION.) The state engineer may authorize emergency or temporary use of water for periods not to exceed ~~six~~ twelve months if he determines such use will not be to the detriment of existing rights. The state engineer shall establish by regulation a separate procedure for the processing of applications for emergency or temporary use. No prescriptive or other rights to the use of water shall be acquired by use of water as authorized herein.

Approved March 3, 1979

CHAPTER 638

SENATE BILL NO. 2453
(Jacobson)

BENEFICIAL USE APPLICATION

AN ACT to amend and reenact section 61-04-14 of the North Dakota Century Code, relating to extending time for application to beneficial use.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 61-04-14 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-14. EXTENDING TIME FOR APPLICATION TO BENEFICIAL USE.) The state engineer may extend the time for the application of water to the beneficial use cited in the conditional water permit for good cause shown. Where such time has expired, the state engineer may renew and extend the same upon application; provided, however, a conditional water permit, or any portion thereof, shall be considered forfeited, abandoned, and void if no request for renewal is received by the state engineer within ~~thirty~~ sixty days after the date the permittee is informed by certified mail that the period for applying water to a the beneficial use cited in the conditional permit has expired. If a request to extend the time for application to beneficial use for any conditional permit, or portion thereof, is denied, such conditional permit, or portion thereof, shall be considered forfeited, abandoned, and void. Sections 61-04-23 through 61-04-25 of the North Dakota Century Code shall not apply to this section.

Approved March 8, 1979

CHAPTER 639

HOUSE BILL NO. 1391
(Hedstrom, Langley)

IRRIGATION DISTRICT BOARD COMPENSATION

AN ACT to amend and reenact section 61-06-22 of the North Dakota Century Code, relating to the compensation for board members of irrigation districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 61-06-22 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-06-22. DIRECTORS AND OFFICERS - SALARY, MILEAGE, AND EXPENSES.) Each director shall receive the sum of twenty-five dollars per day while performing his duties as a member of the board, and an allowance for actual meals and lodging ~~expense--in--an amount--not--to--exceed--twelve--dollars--per--day--for--each--day--spent--in--the--performance--of--his--duties--plus--mileage--expense--reimbursement--at--the--rate--provided--in--section--54-06-09~~ expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses shall be at the same rate as provided by section 11-10-15 and shall be evidenced by a subvoucher or receipt, in a manner determined by the board of directors. The salary of the secretary, assessor, and treasurer shall be determined by the board of directors.

Approved March 10, 1979

CHAPTER 640

HOUSE BILL NO. 1155
(Kingsbury, Gorder)

WATER MANAGEMENT DISTRICT BOARD MEMBERSHIP

AN ACT to amend and reenact section 61-16-08 of the North Dakota Century Code, relating to membership of water management district boards of commissioners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT.) Section 61-16-08 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-08. ELIGIBILITY FOR APPOINTMENT TO BOARD - TERM OF OFFICE - REMOVAL - FILLING VACANCIES - COMPENSATION OF COMMISSIONERS.) When a water management district has been created, any resident landowner in the district, except a county commissioner, shall be eligible, subject to the provisions of this section, for appointment to the board of commissioners thereof. The terms of office of commissioners appointed to the first district board shall be determined by lot and shall be as herein provided. If such district board shall consist of three commissioners, one commissioner shall hold office for a term of two years, one shall serve for a term of three years, and one shall serve for a term of five years from the first day of January next following the date of their appointment. After expiration of the first term to expire after January 1, 1980, at least one of the commissioners appointed to a three-member district board shall be from a flood prone area, if any, within the district. When a district board consists of five commissioners, two commissioners shall hold office for the term of two years, one for three years, one for four years, and one commissioner a term of five years from the first day of January next following the date of their appointment. After expiration of the first two terms to expire after January 1, 1980, at least two of the commissioners appointed to a five-member district board shall be from flood prone areas, if any, within the district. When a board shall consist of seven commissioners, two commissioners shall hold office for two years, two for three years, two for four years, and one for five years from the first day of January next following the date of their appointment. After expiration of the first three

* NOTE: Section 61-16-08 was also amended by section 1 of Senate Bill No. 2380, chapter 641.

terms to expire after January 1, 1980, at least three of the commissioners appointed to a seven-member district board shall be from flood prone areas, if any, within the district. For the purposes of this section, a flood prone area is a flood plain area of a river subject to periodic and reoccurring flooding. When the term of office of a district commissioner has expired, his successor shall hold office for five years from the first day of January next following the date of their appointment. The term of office of a commissioner shall not terminate until his successor in office is appointed and qualified. In case the office of any district commissioner shall become vacant, the commissioner appointed to fill the vacancy shall serve the unexpired term of the member of the board whose office became vacant.

Each member of the board of commissioners shall receive the sum of twenty dollars per day while performing his duties as a member of the board, and an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses shall be at the same rate as provided by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by section 21-05-01.

A commissioner may be removed from the board by the board of county commissioners after it appears to the board of county commissioners by competent evidence, and after a public hearing, if so requested by the commissioner subject to removal, at which hearing such commissioner must be apprised of and allowed ample opportunity to repudiate such evidence, that such commissioner has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, habitual drunkenness, gross incompetency, or inability to perform the duties of office for reasons of health.

Approved March 3, 1979

CHAPTER 641

SENATE BILL NO. 2380
(Sands, Farrington)

WATER BOARDS' COMPENSATION

AN ACT to amend and reenact sections 61-16-08 and 61-21-03 of the North Dakota Century Code, relating to the eligibility, term of office, and compensation for appointed members to a water management district board, and the appointment, term, removal, and compensation of the board of drainage commissioners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT.) Section 61-16-08 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-08. ELIGIBILITY FOR APPOINTMENT TO BOARD - TERM OF OFFICE - REMOVAL - FILLING VACANCIES - COMPENSATION OF COMMISSIONERS.) When a water management district has been created, any resident landowner in the district shall be eligible for appointment to the board of commissioners thereof. The terms of office of commissioners appointed to the first district board shall be determined by lot and shall be as herein provided. If such district board shall consist of three commissioners, one commissioner shall hold office for a term of two years, one shall serve for a term of three years, and one shall serve for a term of five years from the first day of January next following the date of their appointment. When a district board consists of five commissioners, two commissioners shall hold office for the term of two years, one for three years, one for four years, and one commissioner a term of five years from the first day of January next following the date of their appointment. When a board shall consist of seven commissioners, two commissioners shall hold office for two years, two for three years, two for four years, and one for five years from the first day of January next following the date of their appointment. When the term of office of a district commissioner has expired, his successor shall hold office for five years from the first day of January next following the date of their appointment. The term of office of a commissioner shall not terminate until his successor in office is appointed and qualified. In case the office of any district commissioner shall become vacant, the commissioner

* NOTE: Section 61-16-08 was also amended by section 1 of House Bill No. 1155, chapter 640.

appointed to fill the vacancy shall serve the unexpired term of the member of the board whose office became vacant. Each member of the board of commissioners shall receive the sum of twenty forty-five dollars per day while performing his duties as a member of the board, and an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses shall be at the same rate as provided by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by section 21-05-01. A commissioner may be removed from the board by the board of county commissioners after it appears to the board of county commissioners by competent evidence, and after a public hearing, if so requested by the commissioner subject to removal, at which hearing such commissioner must be apprised of and allowed ample opportunity to repudiate such evidence, that such commissioner has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, habitual drunkenness, gross incompetency, or inability to perform the duties of office for reasons of health.

SECTION 2. AMENDMENT.) Section 61-21-03 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-03. BOARD OF DRAINAGE COMMISSIONERS - APPOINTMENT - TERM - REMOVAL - COMPENSATION.) The board of county commissioners of any county in this state, at any meeting of ~~such~~ the board, by majority vote of all the members upon its own motion, or on the petition of any interested person, may appoint three residents of the county to the board of drainage commissioners of ~~such~~ the county. The members of the board shall be appointed for terms of three years each and their terms shall be so arranged that the term of one member shall expire each year. Each member of the board shall hold his office until his successor is appointed and qualified. The board of county commissioners may remove any or all of ~~such~~ the drain commissioners and shall appoint successors to fill any vacancies that occur. Each member of the board may be allowed the sum of fifteen forty-five dollars per day while performing his duties as a member of the board of drainage commissioners, and an allowance for actual meals and lodging expenses in an amount of ~~not to exceed twelve dollars per day for each day actually employed in the performance of his duties as a drainage board commissioner. Compensation for expenses incurred in the performance of these duties shall be made in the manner provided in chapter 44-08~~ expense at the rates provided in section 44-08-04, and shall receive mileage expense reimbursement at the same rate as provided in section 11-10-15, with expense claims stated as provided in section 21-05-01.

Approved March 23, 1979

CHAPTER 642

HOUSE BILL NO. 1274
(Committee on Natural Resources)
(At the request of the Water Commission)

AUTHORIZATION OF DIKES AND DAMS

AN ACT to amend and reenact section 61-16-15 of the North Dakota Century Code, relating to the authorization of dikes and dams.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 61-16-15 of the 1977 Supplement to 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 dikes, 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 An application for the construction of any dike, dam or other facilities, along with complete plans and specifications therefor, 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 state engineer. After the receipt thereof, the state water commission engineer 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, efficiency, and feasibility of the proposal application, and, within forty-five days of its receipt forward the same to the board of commissioners of the district within which the contemplated project is located. 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 consider the same, and if the proposal and recommendations shall meet with its approval, it shall return the same within forty-five days to the state engineer. The state

engineer shall either refuse to allow the construction of any unsafe, improper, or dangerous dike, 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~~ his judgment may be necessary for safety or the protection of property. Any person aggrieved by any such ruling of the state ~~water--commission~~ engineer shall have the right to a full hearing before ~~such--commission~~ the state engineer and a full consideration of all evidence available before a final order of the state ~~water~~ commission engineer shall be entered. Such order of the state ~~water~~ commission engineer shall be subject to appeal to the district court as provided in this chapter.

Approved March 10, 1979

CHAPTER 643

HOUSE BILL NO. 1128
(Berg)

OBSTRUCTION TO A DRAIN DEFINED

AN ACT to amend and reenact section 61-16-28.1 of the North Dakota Century Code, relating to removal of obstructions to a drain, and providing a definition of "obstruction to a drain".

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 61-16-28.1 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-28.1. REMOVAL OF OBSTRUCTIONS TO DRAIN - NOTICE AND HEARING - APPEAL - INJUNCTION - DEFINITION.) If the board shall determine that an obstruction to a drain has been caused by the negligent act or omission of a landowner or his tenant, the board shall notify such landowner by registered or certified mail at his post office of record. A copy of such notice shall also be sent to the tenant, if any. Such notice shall specify the nature and extent of the obstruction, the opinion of the board as to its cause, and shall state that if such obstruction is not removed within such period as the board shall determine, but not less than thirty days, the board shall procure removal of said obstruction and assess the cost thereof, or such portion as the board shall determine, against the property of the landowner responsible. The notice shall also state that the affected landowner may, within fifteen days of the date the notice is mailed, demand in writing a hearing upon the matter. Upon receipt of such demand the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency the board may immediately apply to a court of proper jurisdiction for an injunction prohibiting such a landowner or his tenant from maintaining such an obstruction. Any assessments levied under the provisions of this section shall be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in accordance with the proportionate responsibility of the landowners. Any landowner aggrieved by action of the board under the provisions of this section may appeal the decision of the

board to the district court of the county in which the land is located in accordance with the procedure provided for by sections 61-16-36 through 61-16-39. A hearing as provided for in this section shall not be a prerequisite to such appeal.

An "obstruction to a drain" is defined, for the purposes of this section, as any barrier to the free flow of water in any watercourse, as defined by section 61-01-06 of the North Dakota Century Code, or any artificial drain, which materially affects the free flow of waters in such watercourse or drain.

Approved March 3, 1979

CHAPTER 644

HOUSE BILL NO. 1479
(F. Larson)

WATER DISTRICT WARRANT REFUNDING

AN ACT to create and enact section 61-16-34.1 of the North Dakota Century Code, relating to the terms and conditions for refunding special assessments warrants of water management districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1.) Section 61-16-34.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

61-16-34.1. REFUNDING OUTSTANDING REFUNDING WARRANTS - TERMS AND CONDITIONS.) Any district having valid outstanding refunding warrants or bonds issued pursuant to the provisions of this chapter may issue refunding bonds to refund the outstanding warrants or bonds, if there is not sufficient money in the project fund or funds against which the outstanding refunding warrants or bonds are drawn to pay the same. The new bonds may be issued for the purpose of extending the maturities of the outstanding refunding warrants or bonds, or reducing the interest cost thereon, or equalizing the general tax which the county or counties may be, or may become, obligated to levy to discharge deficiencies in the project fund or funds against which they are drawn. The new bonds shall be issued according to the procedure set forth in this chapter for the issuance of the original refunding warrants or bonds. In any case where refunding bonds are issued and sold six months or more before the date on which all outstanding refunding warrants or bonds of the issue to be refunded thereby mature or are to be prepaid in accordance with their terms, the proceeds of the new bonds, including any premium, shall be deposited in escrow with a suitable bank or trust company, having its principal place of business within or without the state, and shall be invested in the amount and in securities maturing on the dates and bearing interest at rates required to provide funds sufficient to pay when due the interest to accrue on each warrant or bond refunded to its maturity or, if it is prepayable, to the earliest prior date for redemption, and to pay and redeem the principal amount of each warrant or bond at maturity or, if prepayable, at the earliest redemption date, and any premium

required for redemption on that date. The resolution authorizing the new bonds shall irrevocably appropriate for these purposes the escrow fund and all investments thereof, which shall be held in safekeeping by the escrow agent, and all income therefrom, and shall provide for the call for redemption of prepayable bonds in accordance with their terms. The securities to be purchased with the escrow fund shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: banks for cooperatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association. Such securities shall be purchased simultaneously with the delivery of the new bonds. Moneys on hand in the fund maintained for the payment of the outstanding bonds, and not immediately needed for the payment of interest or principal due, may likewise be deposited in the escrow fund and invested in the same manner as the proceeds of the new bonds, to the extent consistent with the provisions of resolutions authorizing the outstanding bonds.

Approved March 18, 1979

CHAPTER 645

SENATE BILL NO. 2417
(Senator Jones)
(Representative Berg)

REMOVAL OF ILLEGAL DIKES AND DAMS

AN ACT relating to the removal of illegal dikes and dams by water management districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1.) CLOSING A NONCOMPLYING DIKE OR DAM - NOTICE AND HEARING - APPEAL - INJUNCTION.) Upon receipt of a complaint of unauthorized construction of a dike, dam or other device for water conservation, flood control, regulation, watershed improvement or storage of water, the board shall promptly investigate and make a determination thereon. If the board shall determine that a dam or other device, capable of retaining more than twelve and one-half acre-feet of water, has been established or constructed by a landowner or tenant contrary to the provisions of title 61 or any rules or regulations promulgated by the board, the board shall notify the landowner by registered or certified mail at the landowner's post office of record. A copy of the notice shall also be sent to the tenant, if any. The notice shall specify the nature and extent of the noncompliance and shall state that if the dike, dam, or other device is not removed within such period as the board shall determine, but not less than thirty days, the board shall procure the removal of the dike, dam, or other device and assess the cost thereof, or such portion as the board shall determine, against the property of the landowner responsible. The notice shall also state that the affected landowner may, within fifteen days of the date the notice is mailed, demand in writing a hearing upon the matter. Upon receipt of such demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from constructing or maintaining the dike, dam, or other device. Any assessments levied under the provisions of this section shall be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in accordance with the proportionate responsibility of the landowners. Any landowner

aggrieved by action of the board under the provisions of this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided for by sections 61-16-36 through 61-16-39. A hearing as provided for in this section shall not be prerequisite to such appeal.

Approved April 7, 1979

CHAPTER 646

SENATE BILL NO. 2398
(Shablow, Jones)

DRAIN PETITIONER BOND LIABILITY

AN ACT to amend and reenact sections 61-21-11 and 61-21-15 of the North Dakota Century Code, relating to the bond required of petitioners wishing to construct a drain and allocation of costs when a petition to drain is denied.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 61-21-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-11. BOND REQUIRED FROM PETITIONERS.) The board shall may require the petitioners referred to in section 61-21-10 to file a bond with the petition in a sum sufficient to pay all expenses of surveys and of the drainage commissioners should the petition be later denied.

SECTION 2. AMENDMENT.) Section 61-21-15 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-15. DENYING OR MAKING ORDER ESTABLISHING DRAIN - COSTS WHEN PETITION DENIED.) If, upon the examination by the board before the survey has been made, or, if upon the hearing upon the petition or upon the trial in the district court, it shall appear that there was not sufficient cause for making such petition, or that the proposed drain would cost more than the amount of the benefits to be derived therefrom or that fifty percent or more of the votes of affected landowners as determined by section 61-21-16, which were filed with the board, are opposed to such drain, the board shall deny the petition. An objection in writing filed with the board shall, as provided in section 61-21-13, be considered the same as a vote by ballot. ~~The petitioners shall be liable jointly and severally to the board for all costs and expenses incurred in the proceedings, to be recovered by the board by action against the petitioners or upon their bond.~~ The board may bring an action against the petitioners or upon their bond for all costs and expenses incurred in the proceedings, in which case the petitioners

shall be jointly and severally liable, or the board may pay the costs and expenses out of any moneys available. If it shall appear, after due hearing as provided in sections 61-21-13 and 61-21-14, that the proposed drain will not cost more than the amount of the benefits to be derived therefrom and is approved by more than fifty percent of the votes of the affected landowners filed with the board as determined by section 61-21-16, the board shall make an order establishing the drain, accurately describing it, and giving the same a name under which it shall be recorded and indexed.

Approved March 23, 1979

CHAPTER 647

SENATE BILL NO. 2064
(Legislative Council)

(At the request of the Garrison Diversion Overview Committee)

GARRISON DIVERSION IRRIGATION PRACTICES

AN ACT relating to "best management practices", for farming land to be irrigated by water from the Garrison Diversion Unit of the Pick-Sloan Missouri River basin project.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. DIRECTOR OF AGRICULTURAL EXPERIMENT STATION TO DETERMINE BEST MANAGEMENT PRACTICES - REPORTS TO THE GARRISON DIVERSION CONSERVANCY DISTRICT - MONITORING OF GROUND WATER QUALITY.)

1. The director of the agricultural experiment station, with respect to all land to be irrigated by water from the Garrison Diversion Unit of the Pick-Sloan Missouri River basin project, shall promulgate rules and regulations for the determination of best management practices on the affected land. The rules and regulations may be amended from time to time. For the purposes of this Act, "best management practices" means the application of water, fertilizers, pesticides, and herbicides in amounts that maximize crop production and economically efficient farming, while, at the same time, minimizing chemical or other pollution and degradation of ground or surface water supplies in areas irrigated with water from the Garrison Diversion Unit. Upon determining the best management practices for all land in question, the director of the agricultural experiment station shall file the information with the headquarters office of the Garrison Diversion Conservancy District.
2. The Garrison Diversion Conservancy District in cooperation with other state agencies shall monitor the ground and surface water quality in all areas irrigated with water from the Garrison Diversion Unit, to determine compliance with the regulations concerning best management practices for farming of that land. If violations of best management practices are discovered, the Garrison

Diversion Conservancy District shall determine the location of all irrigators causing the violation and shall reduce the amount of water which may be distributed to the violating irrigator consistent with best management practices.

SECTION 2. DISTRICT TO ALLOCATE WATER IN ACCORDANCE WITH BEST MANAGEMENT PRACTICES.) The Garrison Diversion Conservancy District shall distribute water to irrigators purchasing water from the district in amounts that are consistent with the determinations of the director of the agricultural experiment station for best management practices in the farming of the applicable land.

Approved March 19, 1979

CHAPTER 648

SENATE BILL NO. 2485
(Committee on Delayed Bills)
(At the request of Senator Nething)

GARRISON DIVERSION MITIGATION AND ENHANCEMENT LANDS COMMISSION

AN ACT to create and enact chapter 61-24.1 of the North Dakota Century Code, creating the Garrison diversion mitigation and enhancement lands commission and setting forth the powers and duties thereof.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1.) Chapter 61-24.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

61-24.1-01. FINDINGS OF FACT AND DECLARATION OF POLICY.) The legislative assembly finds and declares that the construction of the Garrison Diversion Unit project is of utmost importance to the economy of the state of North Dakota and the health and welfare of its citizens. The legislative assembly also recognizes and declares that the Garrison Diversion Unit project will necessarily require the mitigation of damages to fish and wildlife habitat and the enhancement of recreation, fish and wildlife. The legislative assembly recognizes and declares that it is in the reasoned best interests of both the state and the United States to provide a mechanism whereby compensation may be made to landowners for property acquired for the required mitigation and enhancement to recreation and fish and wildlife in a manner acceptable to both the state and the United States, consistent with both the best recreation, fish and wildlife management practices and the efficient and beneficial use of the agricultural resources of this state. Therefore, the legislative assembly finds and declares it to be in the best interests of the state and the United States and it is the purpose of this Act to seek a balanced method of determining and establishing recreation and fish and wildlife mitigation and enhancement areas in conjunction with the construction of the Garrison Diversion Unit project.

61-24.1-02. DEFINITIONS.) In this chapter, unless the context or subject matter otherwise requires:

1. "Commission" means the Garrison diversion mitigation and enhancement lands commission.
2. "District" means the Garrison Diversion Conservancy District, created pursuant to chapter 61-24.
3. "Plan" means the fish and wildlife mitigation and enhancement plan proposed by the United States pursuant to the provisions of the Act of August 5, 1965 [Pub. L. 89-108].
4. "United States" includes all appropriate departments and agencies of the United States, including the United States fish and wildlife service and the United States bureau of reclamation, designated by federal law as being the appropriate agencies to carry out the responsibilities referred to in this chapter.

61-24.1-03. COMMISSION CREATED - MEMBERSHIP - OFFICERS.) There is hereby created the Garrison diversion mitigation and enhancement lands commission. The commission shall be composed of five commissioners, one commissioner to be selected and appointed by each of the following: the director of the United States fish and wildlife service; the commissioner of the United States bureau of reclamation; the governor of the state of North Dakota; the chairman of the board of directors of the district, which appointed commissioner shall reside within the district; and the North Dakota commissioner of agriculture, which appointed commissioner shall own agricultural land within the state of North Dakota. Each commissioner selected and appointed pursuant to this section shall serve at the pleasure of the appointing state or federal official. At the first meeting of the commission, and annually thereafter, the commission members shall elect a chairman.

61-24.1-04. COMMISSION MEETINGS - QUORUM - BYLAWS.) All the business of the commission as such, except those duties delegated to the staff of the commission, shall be conducted by public meetings, held upon a minimum of fifteen days' public notice and otherwise in accordance with the provisions of this chapter. A majority of the appointed members shall constitute a quorum for the purpose of conducting the business of the commission. The commission may adopt such bylaws and regulations governing its manner of proceedings as it shall deem necessary or desirable.

61-24.1-05. COMPENSATION AND EXPENSES OF COMMISSIONERS.) Any commissioner not in the regular employment of this state or a political subdivision thereof, or the United States, and who would otherwise not receive a salary during such time as is necessary to conduct the business of the commission, shall receive compensation at the rate of fifty dollars per day for time actually and necessarily spent on the work of the commission. All commissioners not otherwise reimbursed from state or federal funds shall receive their actual expenses, at the rate normally allowed for employees of

this state, which are necessarily incurred to conduct the business of the commission.

61-24.1-06. ADMINISTRATION.) The commission shall receive all administrative support and assistance deemed necessary for the purpose of carrying out its responsibilities under this chapter from the administrative staff of the Garrison Diversion Conservancy District. However, such staff support shall not relieve the commission members themselves from any duty to be fully and completely informed on all issues and facts necessary for the fulfillment of responsibilities required by this chapter. The commission and the district are empowered to enter into any contracts between them necessary to receive and provide such administrative support. The district is hereby appointed fiscal agent for the commission, and as such is authorized to receive and expend gifts, donations, grants, and other financial aids and funds received for the benefit of the commission.

61-24.1-07. COMMISSION TO INVESTIGATE AND ENDORSE PLAN.) It shall be the duty of the commission to make an investigation of any plan proposed by the United States for the purposes of mitigation and enhancement of recreation and fish and wildlife resources as may be required by the construction of the Garrison Diversion Unit project. Upon completion of such investigation as the commission deems necessary, it shall by majority vote endorse or refuse to endorse any such plan. If no such plan is proposed by the United States, or if the commission shall refuse to endorse any such plan, the duty of the commission shall be declared at an end and the commission shall be dissolved, except for the purposes of paying such expenses as may have been lawfully incurred prior to the date of dissolution.

61-24.1-08. COMMISSION TO INVESTIGATE AND RECOMMEND PURCHASE OF MITIGATION AND ENHANCEMENT LANDS - HEARINGS.)

1. It shall be the duty of the commission, following endorsement of any plan, to make an investigation of any property or interest in property proposed pursuant to such plan for acquisition by either the United States or the district, and to recommend the purchase or refusal of such property or property interests to the United States or the district. If the commission recommends that the property proposed to be acquired be purchased, a purchase price shall also be recommended. In making its recommendation, the commission shall consider, without limitation to, the following factors:
 - a. The agricultural productivity of such property.
 - b. The contribution made by such property to the establishment or maintenance of recreation, fish and wildlife resources.
 - c. Alternatives to the proposed purchase.

- d. The direct and indirect economic impacts of the proposed purchase.
 - e. Any potential adverse environmental or aesthetic impacts of the proposed purchase.
2. Before any recommendation shall be made by the commission, it shall hold at least one public hearing in each county in which the property or properties proposed for purchase are located, such hearing to be held on at least fifteen days' notice in the official newspaper of the county. All testimony, data, plans, maps, and other information upon which the commission shall base its decision shall be presented orally at the hearing, or by writing at or before the hearing.

61-24.1-09. ACTION BY COMMISSION - ACQUISITION BY CONDEMNATION DELAYED.) When the commission has received the information it deems necessary to make the determination required under section 61-24.1-07, it shall within ten days of the last public hearing in any county, make its recommendation in writing to the agency seeking to acquire the property, and three days thereafter shall make its recommendation public. The district and any agency of the United States seeking to acquire property or an interest in property for the purpose of complying with any plan proposed pursuant to the provisions of the Act of August 5, 1965, [Pub. L. 89-108] shall be without authority to acquire such property by the sovereign power of eminent domain until the endorsement of, or the refusal to endorse, any plan by the commission, and until the recommendation of the commission has been made public in accordance with this section.

61-24.1-10. LIMITATION.) The provisions of this chapter shall not in any way diminish or otherwise affect the existing powers and duties of the district, or other agencies or political subdivisions of this state, except as provided for in section 61-24.1-09.

Approved March 27, 1979

CHAPTER 649

SENATE BILL NO. 2310
(Senators Krauter, Olin)
(Representatives Meyer, Thompson)

WEST RIVER WATER SUPPLY DISTRICT

AN ACT to create the west river water supply district in order to coordinate and facilitate the development and implementation of a plan for the supplementation of the water resources of Dickinson and other North Dakota counties and governmental entities with water from the Missouri River; and providing an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. FINDINGS AND DECLARATION OF POLICY.) It is hereby found and declared by the legislative assembly that many areas and localities do not enjoy safe drinking water, and that in many such areas and localities the water contains iron, sulfates, alkali, salt, nitrates, and other hazardous and discoloring substances, and that other areas and localities do not have sufficient quantities of water to ensure a dependable, long-term supply. It is further found and declared that supplementation of the water resources of the city of Dickinson and other governmental entities with water supplies from the Missouri River, utilizing a pipeline transmission and delivery system, is a potentially feasible approach to provide the city of Dickinson and other governmental entities with a safe and dependable source of water. It is therefore declared to be in the best interest of the people of the city of Dickinson and other governmental entities to exercise the sovereign power of the state by providing a means for the establishment of the west river water supply district to further investigate and develop a pipeline transmission and delivery system for purposes including, but not limited to, domestic, rural water districts, municipal, livestock, irrigation, light industrial, mining, recreational, fish and wildlife, and pollution abatement uses which will result in the best use of such waters and related land resources, with primary emphasis on domestic, rural water district, and municipal uses.

SECTION 2. DEFINITIONS.) In this chapter, unless the context or subject matter requires otherwise:

1. "Board" means the board of directors of the west river water supply district.
2. "District" means the west river water supply district.
3. "Works" shall include:
 - a. All property rights, easements, and franchises relating thereto and deemed necessary or convenient for their operation.
 - b. All water rights acquired and exercised by the district in connection with such works.
 - c. All means of delivering and distributing water through the utilization of a pipeline transmission and delivery system.
4. "Person" includes any state agency, natural person, municipality, political subdivision, public or private corporation, partnership, or association.
5. "Governmental entity" means any city, county, portion of any county, organized township, or other political subdivision.

SECTION 3. CREATION OF DISTRICT BY ELECTION - SECRETARY OF STATE TO CERTIFY RESULT - DISTRICT TO BE CORPORATE AGENCY OF STATE.) A vote upon the question of the creation of the district and authorization of a mill levy may be held in the first election in the city of Dickinson and any other governmental entity, following the effective date of this Act. The election results shall be determined in the manner provided by section 40-21-12, and shall also be certified to the secretary of state. The secretary of state shall receive, record, and maintain the certification of the result of the election in the manner provided by section 16-13-26. The district shall be established by a sixty percent majority of the votes cast in any governmental entity in favor of the creation of the district. Upon the determination of the secretary of state that the district has been created in accordance with law, he shall certify that fact to the governmental entities within the district. If so created, the district shall be a corporate agency of this state, a body politic and corporate with the authority to exercise the powers specified in this Act, including the power to certify a mill levy as provided by section 8 of this Act, and an administrative agency within the meaning of chapter 28-32.

Laws applicable to elections generally and not inconsistent with this section shall govern the elections required by this section.

SECTION 4. BOARD OF DIRECTORS - OFFICERS - MEETINGS - COMPENSATION.) The district shall be governed by a board of directors who shall be chosen in accordance with the provisions of

this Act. The board shall elect annually from its membership a chairman, vice chairman, and secretary. A majority of the members shall constitute a quorum for the purpose of conducting the business of the board. The board shall meet at the time and place designated by the secretary. Board members shall receive compensation in the amount provided for by subsection 1 of section 54-35-10, and shall be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09.

SECTION 5. APPOINTMENT OF DIRECTORS - TERM OF OFFICE.)

Within thirty days of the creation of the district, the governing bodies of the governmental entities within the district shall each appoint a director who shall be a resident and elector of the governmental entity from which he is appointed. Each governmental entity shall be represented by one director, provided that in no case shall any county within the district have more than one representative on the board of directors of the district, except for Stark County whose representation shall include two directors from the city of Dickinson and one director representing Stark County, provided that Dickinson and Stark County are members of the district. An appointee from the state water commission shall serve as a board member temporarily until the time that the board shall be comprised of no less than three directors as defined in section 5 of this Act. The first governmental entity of any county within the district electing to be a part of the district shall be entitled to a representative on the board of directors until such time as the county elects to become a part of the district. If a county elects to become a part of the district, the other governmental entity representative of that county shall serve until the end of that term as director, at which time the county shall be entitled to elect a single member on the board of directors to represent that county and all governmental entities within that county which are members of the district, except that Stark County shall be represented as set out above. Directors so appointed shall serve in the manner provided by section 3 of this Act and shall hold office until a successor has been duly elected and qualified.

SECTION 6. ELECTION OF DIRECTORS - TERM OF OFFICE - VACANCY.)

In 1980, and thereafter, a director of the district shall be nominated and elected in each governmental entity within the district in the same manner as city or county officers are nominated and elected.

One-half of the members of the board of directors elected in 1980 shall hold office for a term of two years, and one-half of the members of the board of directors elected in 1980 shall hold office for a term of four years.

Directors elected after 1980 shall each serve for a term of four years. In the event the office of any district director shall become vacant by reason of removal from a governmental entity, death, resignation, or otherwise, the vacancy shall be filled by appointment of the governing body of the governmental entity in which the vacancy occurs. A director so appointed shall be an

elector and a resident of the governmental entity from which he is appointed and shall serve only for the unexpired term.

SECTION 7. POWERS AND DUTIES OF THE BOARD.) The district board of directors may exercise the following powers and shall have the following duties:

1. To sue and be sued in the name of the district.
2. To accept funds, property, and services 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 west river water supply district, or any part thereof.
3. To cooperate and contract with the state of North Dakota, its agencies and political subdivisions, and any agency of the United States, in investigation and the establishment, construction, development, of operation of the west river water supply district, or any part thereof.
4. To construct either separately or in cooperation with agencies of the United States, the state of North Dakota or any agency thereof, and equip, maintain, and operate an office and principal place of business for the district and other buildings and facilities necessary to carry out activities authorized by this Act, and to acquire and dispose of any interest in real and personal property.
5. To appoint and, within the limits of legislative appropriations, fix the compensation of, such employees as the board shall deem necessary to conduct the business and affairs of the district.
6. To contract for supplies of water from the United States, any department or agency thereof, the state of North Dakota, any department or agency thereof, or any rural water association; and to sell, lease, and otherwise to furnish any such water for beneficial use.
7. To levy a tax, in 1980 and thereafter, of not to exceed one mill annually on each dollar of taxable property in those governmental entities creating a district pursuant to section 3 of this Act, for the payment of the expenses of the district, including but not limited to per diem, mileage, and other expenses of directors; technical, administrative, clerical, operating, and other expenses of the district office, and for the cumulation of a continuing fund through such levy for the performance of obligations entered into with the United States of America, the state of North Dakota, or any political subdivision or other person. All moneys collected pursuant to such levy shall be deposited in the Bank of

North Dakota to the credit of the district and shall be disbursed only as provided herein.

8. To exercise all powers for, or incidental to, the achievement of the purposes and objectives of this Act.

SECTION 8. DISTRICT BUDGET - CERTIFICATION OF MILL LEVY - LIMITATIONS.) The board of directors of the district shall, upon the organization of the board in 1980, and in July of each year thereafter, estimate the expenses and obligations of the district, including, but not limited to, expenses of the directors, expenses of operating and maintaining the offices of the district, and other administrative expenses. The board of directors may include in the budget estimates of funds deemed necessary to create a reserve fund to meet future payments of obligations incurred by the district. Upon the completion and adoption of the budget, the board shall determine a mill levy for each governmental entity within the district in an amount sufficient to meet the expenses of the budget. The mill levy may be in differing amounts for each governmental entity and shall be based upon the benefit to be gained by such governmental entities from the project for which the assessment is made, but in no event shall the mill levy for any governmental entity exceed one mill. The determination of the mill levy shall be in the form of a resolution adopted by a majority vote of the members of the board.

SECTION 9. BOARD TO CERTIFY MILL LEVY TO CITY AUDITORS, COUNTY AUDITORS, AND STATE TAX COMMISSIONER.) Upon the adoption of the annual mill levy by the board of directors, but no later than October first, the secretary of the board shall send one certified copy of the appropriate mill levy to the city auditor of every member city within the district, and shall send to the county auditor one copy of the mill levy for each governmental entity within the county which is a member of the district. Copies of all such documents shall be sent to the state tax commissioner.

SECTION 10. CITY AUDITORS AND COUNTY AUDITORS TO EXTEND TAX LEVY.) The city auditor of each member city and county auditor of each county within the district, to whom a mill levy is certified in accordance with this chapter, shall extend the levy upon the tax lists for the current year against each description of real property and all personal property within the governmental entities, as defined for the purposes of this Act, in the same manner and with the same effect as other taxes are extended.

SECTION 11. COUNTY OR CITY TREASURER TO COLLECT AND REMIT DISTRICT TAXES - DISTRICT FUND ESTABLISHED - NONREVERTER - DISBURSEMENTS.) The treasurer of each city or county within the district to which a mill levy has been certified shall collect the district taxes, together with interest and penalty thereon, if any, in the same manner as the general taxes are collected, and shall pay over to the treasurer of the district, on demand, all taxes, interest, and penalties so collected, and shall forthwith notify the secretary of the district of such payment. Expenditures shall be

made by the board of directors upon vouchers signed by the chairman of the board.

SECTION 12. PROCEEDINGS TO CONFIRM CONTRACT.) The board of directors of the district, after entering into a contract with the United States government, the state of North Dakota, or with any public corporation of the state of North Dakota, may commence a special proceeding in and by which the proceedings of the board and the making of such contract, or contracts, shall be judicially examined, approved, and confirmed, or disapproved and disaffirmed. Such proceeding shall comply as nearly as possible with the procedure required in the case of irrigation districts under the laws of North Dakota.

SECTION 13. TERMINATION OF DISTRICT.) Upon the vote of a majority of the directors of the board, the district shall cease to exist from and after the thirty-first day of December following the vote, subject to the payment of any obligations entered into prior to such vote. After all obligations of the district have been paid, the board of directors shall certify such fact to the city or county auditor of each of the cities or counties within the district and shall proceed to liquidate the assets of the district in such a manner as the board shall deem in the best interests of the district. Following liquidation, the board shall return to each governmental entity its pro rata share of any moneys remaining in the district treasury. The pro rata share shall be equal to the proportion that such governmental entity's total contribution to the district bears to the total contribution of all governmental entities to the district.

SECTION 14. ADDITION OF OTHER GOVERNMENTAL ENTITY TO DISTRICT.) Upon filing with the county commission a petition containing the signatures of ten percent of the eligible electors residing in the governmental entity, voters within that governmental entity may join the district upon a favorable vote of sixty percent majority of the eligible electors residing therein, exclusive of any cities within the entity, provided that the governing body's application for membership be approved by the board of directors of the district. The county auditor of each county shall certify the results of the election to the secretary of state in the manner provided by section 16-13-24. The board of directors, as a condition of approval of such application, may require the levy of such taxes within said governmental entity as may be equitable to equalize the burden of such governmental entity with the obligations paid or assumed by the other governmental entities in the district. Such governmental entity is hereby authorized to levy such taxes as may be necessary to carry out its part of the agreement for becoming a part of the district, which levy shall be in addition to the amount which may otherwise be legally levied by that governmental entity.

SECTION 15. LIMITATIONS.) The provisions of this Act shall not be construed to limit the rights, powers, or duties of any state department or agency, or of any political subdivision. Nor shall

any of the provisions of this Act be construed as limiting or in any way affecting the laws of this state relating to organization and maintenance of water management districts, park districts, or irrigation districts, or any other legal entity found wholly or partly within the boundaries of the west river water supply district.

SECTION 16. APPROPRIATION.) There is hereby appropriated out of any moneys in the lands and mineral trust fund in the state treasury, not otherwise appropriated, the sum of \$40,000.00, or so much thereof as may be necessary, to the state water commission for the purpose of assisting the west river water supply district in carrying out the provisions of the Act for the biennium beginning July 1, 1979, and ending June 30, 1981. Such moneys shall be available only in the event that the district is created.

Approved April 7, 1979