

# WATERS

## CHAPTER 698

HOUSE BILL NO. 1198

(Committee on Agriculture)

(At the request of the Commissioner of Agriculture)

### WATER COMMISSION MEMBERS

AN ACT to amend and reenact section 61-02-04 of the North Dakota Century Code, relating to membership of the state water commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-02-04 of the North Dakota Century Code is amended and reenacted as follows:

61-02-04. State water commission - Members - Terms - Qualifications. The state water commission shall consist of the governor, commissioner of agriculture, and seven other members to be appointed by the governor who shall take into account reasonable geographic considerations in making such appointments. The governor or the commissioner of agriculture, or both, may appoint a representative to serve in his stead that official's capacity at such meetings as he that official may be unable to attend. The seven appointive members of the commission shall be appointed for a term of six years each with their terms of office so arranged that two terms and not more than three terms shall expire on the first day of July of each odd-numbered year. Each appointive member shall be a qualified elector of the state and shall be subject to removal by judicial procedure. In case of a vacancy, the vacancy shall be filled by appointment by the governor for the remainder of the unexpired term. Before entering upon the discharge of ~~his~~ official duties, each appointive member shall take, subscribe, and file with the secretary of state the oath prescribed for civil officers.

Approved March 11, 1991

Filed March 11, 1991

## CHAPTER 699

SENATE BILL NO. 2209  
(Committee on Natural Resources)  
(At the request of State Water Commission)

### MODIFICATION OF UNSAFE WORKS

AN ACT to amend and reenact section 61-03-21.2 of the North Dakota Century Code, relating to the modification of unsafe or authorized works.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-03-21.2 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

61-03-21.2. Removal or modification of unsafe or unauthorized works. If the state engineer pursuant to his authority under title 61 determines that works are unsafe or unauthorized, the state engineer shall notify the landowners by registered mail at the landowner's last known post-office address of record. A copy of the notice must also be sent to any tenant, if the state engineer has actual knowledge of the fact that a tenant exists. The notice must specify the nature and extent of the noncompliance, the modifications necessary for compliance, and must state that if the works are not modified or removed within the period stated in the notice, but not less than thirty days, the state engineer shall cause the removal or modification of the works and assess the cost thereof, or such portion as the state engineer shall determine, against the property of the landowner responsible. The notice must 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. The request for a hearing must state with particularity the issues, facts, and points of law to be presented at the hearing. If the state engineer determines the issues, facts, and law to be presented are well founded and are not frivolous and the request for a hearing was not made merely to interpose delay, the state engineer shall set a hearing date without undue delay. In the event of an emergency, the state engineer may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from constructing or maintaining the works, or ordering the landowner to remove or modify the works. Any assessments levied under the provisions of this section must be collected in the same manner as other assessments authorized by this title. If, in the opinion of the state engineer, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. Any person aggrieved by action of the state engineer under the provisions of this section may appeal the decision of the state engineer to the district court of the county in which the land is located in accordance with the procedures provided under chapter 28-32. A hearing as provided for in this section is a prerequisite to an appeal, unless the hearing was denied by the state engineer.

For purposes of this section, the term "works" includes dams, dikes, wells, or other devices for water conservation, flood control, regulation, storage, diversion, or carriage of water.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 700

SENATE BILL NO. 2142  
(Committee on Natural Resources)  
(At the request of the State Water Commission)

### WATER PERMIT FEES

AN ACT to amend and reenact section 61-04-04.1 of the North Dakota Century Code, relating to fees for water permit applications.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-04-04.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

61-04-04.1. Application fees. The following fees ~~shall~~ must accompany an application and must be paid by the state engineer into the water use fund of the state treasury:

1. For municipal or public use in municipalities or other entities of 2,500 population or over according to the latest federal census ..... ~~\$250~~ \$500
2. For municipal or public use in municipalities or other entities of less than 2,500 population according to the latest federal census ..... ~~\$150~~ \$250
3. For irrigation ..... ~~\$100~~ \$200
4. For industrial use of one c.f.s. or less, or seven hundred twenty-four acre-feet [893,039.52 cubic meters] or less ..... ~~\$150~~ \$250
5. For industrial use in excess of one c.f.s., or in excess of seven hundred twenty-four acre-feet [893,039.52 cubic meters] ..... ~~\$500~~ \$750
6. For recreation, livestock, or fish and wildlife ..... ~~\$ 50~~ \$100
7. For commercial recreation ..... ~~\$100~~ \$200
8. Water permit amendment ..... \$ 50

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 701

SENATE BILL NO. 2147  
(Committee on Natural Resources)  
(At the request of the Water Commission)

### WATER PERMIT ERROR CORRECTION

AN ACT to amend and reenact section 61-04-28 of the North Dakota Century Code, relating to correction of errors in applications for water permits or water permits by the state engineer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-04-28 of the North Dakota Century Code is amended and reenacted as follows:

61-04-28. Correction of application or water right by state engineer. Upon proof satisfactory to ~~him~~ the state engineer that an application for a water permit or any water permit contains an error relative to the point of diversion ~~or~~, the legal description of the land to which the water is to be applied, or the quantity of water, the state engineer may, by written notice to the holder of the affected water permit, correct ~~such~~ the error without publication of notice.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 702

SENATE BILL NO. 2092  
(Senators Streibel, Naaden, Traynor)  
(Representatives Henegar, Belter, Clayburgh)

### GARRISON DIVERSION CONSERVANCY DISTRICT

AN ACT to amend and reenact subsections 3 and 5 of section 61-24-01 and section 61-24-02 of the North Dakota Century Code, relating to the Garrison Diversion Conservancy District.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 3 and 5 of section 61-24-01 of the North Dakota Century Code are amended and reenacted as follows:

3. To replenish and restore the depleted waters of lakes, the Red, Sheyenne, James, and other rivers, and streams in such the district, and to stabilize the flow of ~~said these~~ streams.
5. To make available within the district, waters diverted from the Missouri River for irrigation, domestic, municipal, and industrial needs, and for hydroelectric power, recreation, fish, wildlife, and other beneficial and public uses.

SECTION 2. AMENDMENT. Section 61-24-02 of the North Dakota Century Code is amended and reenacted as follows:

61-24-02. Garrison Diversion Conservancy District created. The "Garrison Diversion Conservancy District", hereinafter referred to as the "district" ~~shall consist~~ consists of that part of the state ~~which~~ that is included within the boundaries of the following counties, ~~to wit:~~ Barnes, Benson, Bottineau, Burleigh, Cass, Dickey, Eddy, Foster, Grand Forks, Griggs, LaMoure, McHenry, McLean, Nelson, Pierce, Ramsey, Ransom, Renville, Richland, Sargent, Sheridan, ~~Steele~~, Stutsman, ~~Trall~~, Ward, and Wells.

~~Such The~~ district ~~shall be~~ is a governmental agency, body politic and corporate with the authority to exercise the powers specified in this chapter, or which may be reasonably implied.

Any county ~~adjoining the district as herein created; or as hereafter composed;~~ may join such the district upon application of its board of county commissioners and the approval of such the application by the board of directors of the district. ~~The board of directors, as a condition of approval of such application, may require the levy of such taxes within said county as may be equitable to equalize the burden of such county with the obligations paid or assumed by the other counties in the district.~~ Such county 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~~ is in addition to the amount ~~which that~~ may otherwise be legally levied for county purposes.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 703

HOUSE BILL NO. 1455  
(Mahoney, Dalrymple)

## FILLING OF VACANCY ON GARRISON DIVERSION CONSERVANCY BOARD

AN ACT to amend and reenact section 61-24-03.1 of the North Dakota Century Code, relating to filling vacancies of directors of the Garrison Diversion Conservancy District.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-24-03.1 of the North Dakota Century Code is amended and reenacted as follows:

61-24-03.1. Filling vacancy of director on general election ballot. Whenever a vacancy exists on a general election no-party ballot for any directorship of the Garrison Diversion Conservancy District, ~~such the~~ vacancy may be filled by filing with the county auditor at least ~~thirty~~ sixty days prior to the general election a petition substantially in the form provided in section 61-24-03, stating that the petitioner desires to become a candidate for election to the office of director. This petition must contain the signatures of not less than fifty qualified electors of the county, unless there were at least fifty write-in or sticker votes for the petitioner cast in the no-party primary election for ~~such~~ the office.

A vacancy in the no-party ballot ~~shall be~~ is deemed to exist when no candidate is nominated at the primary election or when a candidate nominated at the primary ~~shall die, resign~~ dies, resigns, or otherwise ~~become~~ becomes disqualified to have ~~his~~ that person's name printed on the ballot at the general election.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 704

SENATE BILL NO. 2357  
(Senators Redlin, O. Hanson, E. Hanson)  
(Representatives Tollefson, Nichols, Gilmore)

### NORTHWEST AREA WATER SUPPLY PROJECT

AN ACT to provide for the creation of the northwest area water supply advisory committee and to authorize the state water commission to develop and construct a northwest area water supply project; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY 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 in northwestern North Dakota do not enjoy safe drinking water, and that the water in these areas and localities contains iron, sulfates, alkali, salt, nitrates, fluoride, and other hazardous and discoloring substances. It is also found and declared that other areas and localities in northwestern North Dakota 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 northwestern North Dakota with water supplies from the Missouri River, utilizing a pipeline transmission and delivery system, may be the only alternative to provide northwestern North Dakota with a safe, good quality, dependable source, and adequate quantity of water.

It is further declared that effective development and utilization of the land and water resources of this state; the opportunity for greater economic security; the protection of health, property, enterprise, and the preservation of the benefits from the land and water resources of this state; and the promotion of the prosperity and general welfare of all of the people of North Dakota involve, necessitate, and require the exercise of the sovereign powers of the state and concern a public purpose. Therefore, in order to accomplish this public purpose, it is hereby declared necessary that a project be pursued that would supply and distribute water to the people of northwestern North Dakota through a pipeline transmission and delivery system for purposes including domestic, rural water districts, municipal, livestock, light industrial, mining, and other uses, with primary emphasis on domestic, rural water district, and municipal uses.

The provisions of this Act may not be construed to abrogate or limit the rights, powers, duties, and functions of the state water commission or the state engineer, but must be considered supplementary to those rights, powers, duties, and functions.

SECTION 2. Northwest area water supply advisory committee - Created. The northwest area water supply advisory committee consists of the following representatives, appointed by the state engineer:

1. One person from the city of Minot recommended by the Minot city council.
2. One person from the city of Williston recommended by the Williston city council.
3. One person from the Bottineau, Burke, Divide, McHenry, McLean, Mountrail, Renville, Ward, or Williams County water resource districts recommended jointly by the governing boards of the Bottineau, Burke, Divide, McHenry, McLean, Mountrail, Renville, Ward, or Williams County water resource districts.
4. One representative of the state water commission recommended by the commission.
5. One representative of the Three Affiliated Tribes, representing that area of the Fort Berthold Indian Reservation north of the Missouri River and Lake Sakakawea recommended by the tribal council.
6. One representative of rural water distribution systems located in northwestern North Dakota. This representative must be a resident of Bottineau, Burke, Divide, McHenry, McLean, Mountrail, Renville, Ward, or Williams County.
7. One representative of a municipality other than the city of Minot, located in Bottineau, Burke, Divide, McHenry, McLean, Mountrail, Renville, Ward, or Williams County.
8. One representative of the Garrison Diversion Conservancy District recommended by the board of directors of the conservancy district.
9. One at-large representative.

**SECTION 3. Advisory committee - Officers - Meetings - Compensation.**

The northwest area water supply advisory committee shall elect a chairman and vice chairman. The advisory committee shall meet at the times and places necessary to carry out the purposes of this Act. The advisory committee members may be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09. The advisory committee members serve at the pleasure of the state engineer. Vacancies must be filled in the same manner as original appointments are made.

**SECTION 4. Powers of the state water commission in consultation with the northwest area water supply advisory committee.** The state water commission may, in consultation with the northwest area water supply advisory committee:

1. Accept funds, property, services, or other assistance, financial or otherwise, from federal, state, tribal, and other public or private sources for the purpose of aiding and promoting the development of a project to deliver water to northwestern North Dakota.
2. Cooperate and contract with the state, its agencies, or its political subdivisions, the Three Affiliated Tribes, or any agency of the United States, in research and investigation or other

activities promoting the development of a project to deliver water to northwestern North Dakota.

3. Appoint and procure the services of engineers, attorneys, and others to assist in developing a project to deliver water to northwestern North Dakota.
4. Exercise such other powers as may be necessary for, or incidental to, the achievement of the purposes of this Act.
5. Construct, operate, and manage a project to deliver water throughout northwestern North Dakota.

SECTION 5. State engineer - Employment of staff. The state engineer may employ full-time personnel and may employ such other personnel as are necessary for the administration of this Act and as available funds permit. Notwithstanding section 61-02-64.1, funds disbursed from the contract fund or appropriated for purposes of administering this Act may be used for salaries and expenses of persons employed pursuant to this Act.

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 705

HOUSE BILL NO. 1376  
(Representatives Urlacher, Martin, Larson)  
(Senators Goetz, Tallackson)

### SOUTHWEST WATER AUTHORITY

AN ACT to provide for creation of the southwest water authority; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY 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 in southwestern North Dakota do not enjoy adequate quantities of high quality drinking water. It is also found and declared that other areas and localities in southwestern North Dakota 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 southwestern North Dakota, with water supplies from Lake Sakakawea and the Missouri River, utilizing a pipeline transmission and delivery system, is a feasible approach to provide southwestern North Dakota with a safe, good quality, dependable source, and adequate quantity of water.

It is further declared that opportunity for greater economic security, protection of health, property, enterprise, preservation of the benefits from the land and water resources of this state, and the promotion of the prosperity and general welfare of all of the people of North Dakota depends on the effective development and utilization of the land and water resources of this state, and necessitate and require the exercise of the sovereign powers of the state and concern a public purpose. Therefore, in order to accomplish this public purpose, it is hereby declared necessary that a project to supply and distribute water to southwestern North Dakota, as authorized by chapter 61-24.3, and acts amendatory thereof and supplementary thereto, be established and constructed, to:

1. Provide for the supply and distribution of water to the people of southwestern North Dakota through a pipeline transmission and delivery system for purposes including, but not limited to, domestic, rural water, municipal, livestock, light industrial, mining, and other uses, with primary emphasis on domestic, rural water, and municipal uses.
2. Provide for the future economic welfare and property of the people of this state, and particularly the people of southwestern North Dakota, by making available waters from Lake Sakakawea and the Missouri River for beneficial and public uses.

The provisions hereof may not be construed to abrogate or limit the rights, powers, duties, and functions of the state water commission or the state engineer, but must be considered supplementary thereto.

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

1. "Authority" means the southwest water authority.
2. "Board" means the board of directors of the southwest water authority.
3. "Person" includes any natural person, state agency, municipality, political subdivision, public or private corporation, partnership, or association.
4. "Southwest pipeline project" includes the project and works, or any part thereof, authorized in chapter 61-24.3
5. "Works" includes all property rights, easements, and franchises relating thereto and deemed necessary or convenient for operation of the southwest pipeline project, all water rights acquired and exercised by the authority in connection with the southwest pipeline project, and all means of delivering and distributing water through the utilization of a pipeline transmission and delivery system, as authorized in chapter 61-24.3

SECTION 3. Southwest water authority created. The southwest water authority shall consist of that part of the state which is included within the boundaries of: Dunn, Stark, Golden Valley, Billings, Slope, Bowman, Adams, Grant, Hettinger, Morton, and Mercer Counties.

Such authority is a governmental agency, body politic and corporate with the authority to exercise the powers specified in this chapter, or which may be reasonably implied.

Any county adjoining the authority as herein created, or as hereafter composed, may join such authority upon application of its board of county commissioners and the approval of such application by the board of directors of the authority. The board of directors, as a condition of approval of such application, may require payments as may be equitable to equalize the burden of such county with the obligations paid or assumed by the other counties in the authority.

SECTION 4. Board of directors - Officers - Meetings - Compensation. The authority shall be governed by a board of directors who must be chosen in accordance with the provisions of this chapter. At the first election after the initial board of directors has been appointed, two directors must be elected from each county within the authority, and three directors must be elected in the city of Dickinson. The two directors from Stark County may not be residents of the city of Dickinson. The board shall elect from the directors a chairman, vice chairman, and secretary. A majority of the directors constitutes 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 not to exceed the amount provided for by subsection 1 of section 54-35-10, and must be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09.

SECTION 5. Initial board of directors. Immediately upon the effective date of the creation of the authority, each county commission in the

authority shall appoint two directors from their respective counties, and the city commission of Dickinson shall appoint three directors from the city of Dickinson, to serve on the initial board of directors of the authority. Directors so appointed shall assume office on the first day of June 1991, and shall serve until their successors are duly elected and ready to assume office. The initial board of directors shall meet at a time and place designated by the state engineer, after June 1, 1991, and they shall organize. Appointed directors may be candidates for election to the board of directors.

SECTION 6. Election of county directors of the southwest water authority. Any person who is a resident and qualified elector of the county, who aspires to the office of director of the southwest water authority, shall, not more than seventy days or less than fifty-five days and before four p.m. of the fifty-fifth day prior to any primary election preceding a general election at which a director of the authority is to be elected, present to the county auditor a petition giving his name, post-office address, and the title of the office of the southwest water authority to which he is seeking election. The petition must contain the signatures of not less than fifty nor more than three hundred qualified electors of the county. Each signer of such petition shall include with his name his mailing address.

The petition must be accompanied by an affidavit substantially as follows:

STATE OF NORTH DAKOTA )  
COUNTY OF ) ss.

I \_\_\_\_\_, being duly sworn, depose and say that I reside in the (county) of \_\_\_\_\_ and State of North Dakota; that I am a qualified elector therein; that I am a candidate for the office of director of the Southwest Water Authority to be elected at the primary election to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_, and I do hereby request that my name be printed upon the no-party primary election ballot as provided by law, as a candidate for said office.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

Notary Public, North Dakota

Upon receipt of the petition the county auditor shall without fee place the name of the aspirant on the no-party primary election ballot as a candidate for the aforesaid office of director. The candidate receiving the highest number of votes shall be elected.

At the primary election votes must be canvassed, returned certified, and certificates of election issued in the manner provided by law for the election of county officers.

SECTION 7. Election of city directors of the southwest water authority. Any person who is a resident and qualified elector of the city of Dickinson who aspires to the office of director of the southwest water



of the director whose office has become vacant, and until his successor has been elected and qualified.

Members of the board of directors from a county must be elected at the primary election, beginning in 1992, and shall assume office on the first Monday in July following their election. Members of the board of directors elected from the city of Dickinson must be elected at the municipal election, beginning in 1992, and shall assume office on the first Monday in July following their election.

SECTION 9. Powers and duties of the district board of directors. The board of directors of the southwest water authority has the power:

1. To sue and be sued in the name of the authority.
2. To exercise the power of eminent domain in the manner provided by title 32 for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of pipelines, reservoirs, connections, valves, and all other appurtenant facilities used in connection with the southwest pipeline project, or any part thereof.
3. 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 southwest pipeline project, or any part thereof.
4. To cooperate and contract with the state, its agencies, or its political subdivisions, or any agency of the United States, in research and investigation or other activities promoting the establishment, construction, development, or operation of the southwest pipeline project, or any part thereof.
5. To furnish assurances of cooperation, and as principal and guarantor or either to enter into a contract, or contracts, with the United States of America, or any department or agency thereof, and with public corporations and political subdivisions of North Dakota for the performance of obligations for the construction, operation, or maintenance of the southwest pipeline project, or any part thereof, or for the delivery of water to any such department, agency, or political subdivision.
6. To construct or purchase separately or in cooperation with agencies of the United States, or the state of North Dakota, its agencies or political subdivisions, and to equip, maintain, and operate an office and principal place of business for the district, or other buildings or facilities to carry out activities authorized by this chapter.
7. To appoint and fix the compensation of such employees as the board shall deem necessary to conduct the business and affairs of the authority, and to procure the services of engineers and other technical experts, and to retain an attorney or attorneys to assist, advise, and act for it in its proceedings.

8. To appoint from their number an executive committee and vest the same with such powers and duties as the board may from time to time delegate thereto, in order to facilitate the duties and work of the board in connection with the business affairs involved in the development, construction, operation, and maintenance of the southwest pipeline project, or any part thereof.
9. To enter into a contract or contracts for a supply of water from the United States or the state water commission and to sell, lease, and otherwise contract to furnish any such water for beneficial use to persons or entities within or outside the authority.
10. To accept, on behalf of the district, appointment of the district as fiscal agent of the United States or the state water commission and authorization to make collections of money for and on behalf of the United States or the state water commission in connection with the southwest pipeline project, or any part thereof.
11. To sell or exchange any and all real property purchased or acquired by the authority. All moneys received pursuant to any such sale or exchange shall be deposited to the credit of the authority and may be disbursed for the payment of expenses of the authority.

SECTION 10. District budget - Tax levy. Beginning in 1992, and each year thereafter, through December 31, 1997, the authority may levy a tax of not to exceed one mill annually on each dollar of taxable valuation within the boundaries of the authority for the payment of administrative expenses of the authority, including per diem, mileage, and other expenses of directors, expenses of operating the office, engineering, surveying, investigations, legal, administrative, clerical, and other related expenses of the authority. The power to levy a tax does not extend beyond December 31, 1997. All moneys collected pursuant to such levy must be deposited to the credit of the authority and may be disbursed only as herein provided. The board may invest any funds on hand, not needed for immediate disbursement or which are held in reserve for future payments, in bonds of the United States, guaranteed by the United States or an instrumentality or agency thereof, bonds or certificates of indebtedness of the state of North Dakota, or any of its political subdivisions. During the period of time in which the authority may levy one mill annually as provided herein, any joint water resource board created pursuant to section 61-16.1-11, by or among one or more of the water resource districts in the counties which are included in the authority, must be limited to one mill under the authority of section 61-12.1-11.

SECTION 11. District budget - Determination of amount to be levied - Adoption of levy - Limitation. In July of each year the board of directors shall estimate and itemize all the administrative expenses and obligations of the district, including expenses of directors, expenses of operating the office, and any other obligations and liabilities relating to administrative, clerical, engineering, surveying, investigations, legal, and other related expenses of the authority. Upon the completion and adoption of such budget, the board of directors shall make a tax levy in an amount sufficient to meet such budget. Such levy must be in the form of a resolution, adopted by a majority vote of the members of the board of directors of the district. Such resolution must levy in mills, but may not exceed one mill, and must be sufficient to meet the administrative, engineering, surveying, investigations, legal and related expenses, obligations, and liabilities of the district as provided in the budget. The board shall also prepare and

adopt an annual budget for operation, management, maintenance, and repayment of the southwest pipeline project. Revenues for operation, management, maintenance, and repayment of the southwest pipeline project must come from water service contract revenues.

SECTION 12. 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 mill levy to the county auditor of each county which is a member of the authority. Copies of all such documents must be sent to the state tax commissioner.

SECTION 13. County auditors to extend tax levy. The county auditor of each county within the authority, 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 county in the same manner and with the same effect as other taxes are extended.

SECTION 14. County treasurer or city auditor to collect and remit district taxes - District fund established - Nonreverter - Disbursements. The treasurer of each county in which a mill levy has been certified shall collect the 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 authority, on demand, all taxes, interest, and penalties so collected, and shall forthwith notify the secretary of the authority of such payment. Expenditures must be made by the board of directors upon vouchers signed by the chairman of the board.

SECTION 15. Proceedings to confirm contract. The board of directors of the authority, after entering into a contract with the United States government, the state of North Dakota, or with any public corporation or political subdivision 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, must be judicially examined, approved, and confirmed, or disapproved and disaffirmed. Such proceeding must comply as nearly as possible with the procedure required in the case of irrigation districts under the laws of North Dakota.

SECTION 16. Procedure for exclusion from authority of county not benefited.

1. Any county in the authority not benefited or not to be benefited, in whole or in part, by the southwest pipeline project, or any part thereof, may be excluded from the authority as provided herein. The board of county commissioners of any such county may by resolution direct the county auditor and the chairman of the board to file with the board of directors of the authority a petition, for and on behalf of the county, requesting the board of directors of the authority to exclude such county therefrom. A certified copy of the resolution of the county board must accompany and be filed with such petition. The petition and resolution must state specific reasons why such county will not be benefited by the southwest pipeline project, or any part thereof.
2. Within sixty days from the date of filing said resolution and petition for exclusion from the authority, the authority board

shall meet to consider such petition. It may grant such petition or it may fix a time and place for a hearing thereon. If a hearing is set, the secretary of the board shall cause notice of the filing of such petition for exclusion, and of the time and place for a hearing, to be published once each week for two consecutive weeks in a newspaper of general circulation printed within the authority. The hearing mentioned in such notice must be held not less than ten nor more than twenty days after the last publication of such notice. The notice must state that any person, corporation, municipality, and county in the authority may appear or be represented at the hearing and show cause why the petition should or should not be granted. The board shall hear the petition at the time and place mentioned in the notice.

3. If after the hearing on the petition the authority board of directors shall determine that the county requesting to be excluded from the authority will not be benefited, the authority board shall by resolution grant the petition and shall direct the chairman and secretary to execute the order of the board excluding such county from the authority. If, however, the authority board shall decide that such county will be benefited it shall deny the petition and direct the chairman and secretary to execute its order refusing to exclude such county from the authority. A county excluded from the authority is not liable for any obligations thereof incurred after exclusion but is liable for and shall pay to the authority taxes levied before exclusion.
4. If any contract has been made with the United States or any agency thereof, or the state of North Dakota or any agency thereof, before such petition is filed, such petition may not be granted unless consented thereto by the appropriate agency of the United States or North Dakota, and if such agency gives its consent upon condition, such conditions must be included in the order of exclusion and the county may be required to, and in that event such county shall continue to, pay and satisfy any obligations under any such contract.

SECTION 17. Appeal from orders of authority board. An appeal from an order of the board of directors of the authority denying a petition for exclusion may be taken to the district court of the petitioning county. The appeal provided for herein must be taken within thirty days after the order of the authority board has been filed with the secretary thereof and public notice of such order has been made. The appeal must be taken by serving notice of appeal upon the secretary of the authority. The appeal must be docketed as any cause pending in district court is docketed and thereupon the court shall have and exercise original jurisdiction and shall hear and determine the cause de novo without a jury. An appeal to the supreme court may be taken by the petitioning county or by the authority, from any judgment entered therein in district court, and from any order of said court if an appeal would lie from such order if entered by the court in a civil action.

SECTION 18. Easement granted for ditches, canals, tramways, and transmission lines on any public lands. In connection with the construction and development of the southwest pipeline project, there is granted over all the lands belonging to the state, including lands owned or acquired for highway right-of-way purposes, a right of way for pipelines, connections, valves, and all other appurtenant facilities constructed as part of the

southwest pipeline project, provided, however, that the director of the department of transportation and the state engineer must approve the plans of the authority with respect to the use of any and all right of way of roads prior to such grant becoming effective.

SECTION 19. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 706

SENATE BILL NO. 2159  
(Committee on Human Services and Veterans Affairs)  
(At the request of the State Department of Health and  
Consolidated Laboratories)

### SAFE DRINKING WATER ACT PENALTIES

AN ACT to create and enact a new subsection to section 61-28.1-10 of the North Dakota Century Code, relating to enforcement and penalties under the safe drinking water act; and to amend and reenact subsection 2 of section 61-28.1-10 of the North Dakota Century Code, relating to enforcement and penalties under the safe drinking water act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 61-28.1-10 of the North Dakota Century Code is amended and reenacted as follows:

2. Any person who willfully violates this chapter or any regulation or order of the department shall be punished by a civil penalty of not more than ~~five~~ ten thousand dollars per day of violation.

SECTION 2. A new subsection to section 61-28.1-10 of the North Dakota Century Code is created and enacted as follows:

Any person who violates this chapter, or any rule implementing this chapter, and any person who violates any order issued by the department under this chapter is subject to a civil penalty not to exceed five thousand dollars per day of violation.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 707

SENATE BILL NO. 2513  
(Senator Marks)  
(Representative Williams)

### FRIVOLOUS COMPLAINTS ON DRAINS

AN ACT to amend and reenact section 61-32-07 of the North Dakota Century Code, relating to frivolous complaints concerning noncomplying drains.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-32-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

61-32-07. Closing a noncomplying drain - Notice and hearing - Appeal - Injunction - Frivolous complaints. Only a landowner experiencing flooding or adverse effects from an unauthorized drain constructed before January 1, 1975, may file a complaint with the water resource board. Any person may file a complaint about an unauthorized drain constructed after January 1, 1975. A complaint must be filed on a form made available by the state engineer. Upon receipt of a complaint of unauthorized drainage, the water resource board shall promptly investigate and make a determination of the facts with respect to the complaint. If the board determines that a drain, lateral drain, or ditch has been opened or established by a landowner or tenant contrary to the provisions of this title or any rules ~~or regulations promulgated~~ adopted by the board, the board shall notify the landowner by registered ~~or certified~~ mail at the landowner's post-office address of record. A copy of the notice must also be sent to the tenant, if known. The notice must specify the nature and extent of the noncompliance and ~~shall~~ must state that if the drain, lateral drain, or ditch is not closed or filled within such reasonable time as the board ~~shall determine~~ determines, but not less than thirty days, the board shall procure the closing or filling of the drain, lateral drain, or ditch and assess the cost thereof, or such portion as the board ~~shall determine~~ determines, against the property of the landowner responsible. The notice must also state that the affected landowner may, within fifteen days of the date the notice is mailed, demand, in writing, a hearing on the matter. Upon receipt of the 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 drain, lateral drain, or ditch and ordering the closure of the illegal drain. Any assessments levied under the provisions of this section must be collected in the same manner as assessments authorized by chapter 61-16.1. 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 proportion to the responsibility of the landowners. Any person 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 in section 28-34-01. A hearing as provided for in this section is

not a prerequisite to ~~such~~ an appeal. If, after the first complaint, in the opinion of the board, the complaint is frivolous, the board may assess the costs of the frivolous complaint against the complainant.

Approved March 15, 1991  
Filed March 15, 1991

## CHAPTER 708

HOUSE BILL NO. 1471  
(Representatives DeWitz, Boehm)  
(Senators Keller, Tomac, Freborg)

### SOVEREIGN LANDS

AN ACT to amend and reenact subsection 3 of section 61-33-01 of the North Dakota Century Code, relating to the definition of sovereign lands for purposes of sovereign land management.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 61-33-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. "Sovereign lands" means those areas, including beds, and islands, accretions, and relictions lying within the ordinary high watermark of navigable lakes and streams. Lands established to be riparian accretion or reliction lands pursuant to section 47-06-05 are considered to be above the ordinary high watermark and are not sovereign lands.

Approved April 9, 1991  
Filed April 9, 1991

## CHAPTER 709

SENATE BILL NO. 2359  
(Senator Meyer)  
(Representative Nichols)

### **LIVESTOCK WATER ASSISTANCE PROGRAM**

AN ACT relating to the establishment of a livestock water assistance program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. In this Act, unless the context otherwise requires:

1. "Commission" means the state water commission.
2. "Program" means the drought disaster livestock water assistance program.
3. "State engineer" means the state engineer appointed under section 61-03-01.

SECTION 2. Drought disaster livestock water assistance program - Administration. The commission shall administer the program for the purpose of providing relief for livestock water supply problems caused by drought.

SECTION 3. Advisory committee. The commission shall appoint an advisory committee of at least three members. The committee shall advise the commission in determining the criteria for eligibility, in defining expenses covered by the program, and in developing rules.

SECTION 4. Eligibility - Application for assistance. Applicants with livestock water supply problems caused by drought may apply for assistance from the program. An applicant must first apply for water cost share assistance from the agriculture stabilization and conservation service. If cost share assistance is denied by the service, the applicant may forward the application to the commission for consideration. An application forwarded to the commission must include a document from the agriculture stabilization and conservation service stating the reason for denial of cost share assistance. The state engineer shall review all applications received by the commission. If the state engineer approves an application, the applicant may receive up to fifty percent of the cost of the project, but in no event more than three thousand five hundred dollars. The state engineer shall provide funds for approved applications in accordance with rules and criteria for eligibility and only to the extent that funding is available.

Approved March 25, 1991  
Filed March 26, 1991