

**Fifty-fifth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Monday, the sixth day of January,
one thousand nine hundred and ninety-seven**

SENATE BILL NO. 2265
(Senators Nething, Klein)
(Representative DeKrey)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

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

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

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

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

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

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

1. The maximum principal amount of bonds proposed to be issued.
2. ~~The maximum interest rate they shall bear.~~
3. ~~Whether they will be of serial or single maturity.~~
4. ~~If a single maturity, the year thereof, or if serial maturities, the years of such maturities, but not the amount for each of such years.~~
5. The purpose for which ~~they~~ the bonds are proposed to be issued.
6. 3. The total amount of bonded indebtedness, if any, of the district.
7. 4. Any other statement of fact deemed advisable by the board.

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

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

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

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

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

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

61-08-09. ~~Execution of bonds and interest coupons - Validity of bonds not impaired by change in officers.~~ The bonds issued under the provisions of this chapter ~~shall~~ must be executed in the name of and for the district by the manual or facsimile signatures of the chairman and secretary of the board. ~~The interest coupons attached to such bonds may be executed by the lithographed or engraved facsimile signature of such officers. The validity of every bond so executed shall remain~~

~~unimpaired is not impaired by the fact that one or more of the a subscribing or attesting officers have officer has ceased to be such an officer or officers of the district before delivery to the purchaser.~~

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

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

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

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

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

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

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

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

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

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

so applied, in favor of the owners or holders of ~~such the bonds or improvement warrants~~ or in favor of the trustee ~~created~~ appointed in connection with ~~such the bonds or improvement warrants~~.

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

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

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

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

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

61-08-27. District treasurer to remit moneys to county treasurer - Crediting proper fund. The district treasurer shall remit to the county treasurer all moneys received by the treasurer in payment of assessments levied for sinking funds or for the payment of bonds ~~and improvement warrants~~. The district treasurer also shall remit to the county treasurer moneys raised from water rentals or water charges, when directed to do so by the board, and the district treasurer shall designate the fund or funds to which ~~such the~~ moneys belong, except that all moneys, from whatever source derived, obligated under the terms of any contract, or agreement made and entered into by the district, to meet payments as they become due ~~thereunder~~, shall be paid and remitted to ~~such the~~ county treasurer and shall be credited by the county treasurer to the proper fund.

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

61-08-28. ~~Payment of bonds and warrants due—Redemption of bonds and warrants—~~ Notice of redemption—Contents—Bids—Opening interest. ~~Upon the presentation to the~~ The county treasurer ~~of bonds or improvement warrants or the coupons of either, then due and payable, the county treasurer shall pay the same shall pay the principal of, premium, if any, and interest on the bonds upon maturity, redemption, or purchase in the open market from any moneys in the fund created for the payment thereof. Whenever the fund created for the payment of any series of bonds or improvement warrants shall amount to ten thousand dollars, the board shall direct the county treasurer to pay such an amount of such bonds, or improvement warrants, not due, at the lowest value at which they may be offered for redemption, except that no bond or improvement warrant shall be redeemed at a rate above par. Notice of such proposed redemption shall be advertised at least once in the official newspaper of the county in which the custodian of sinking funds is county treasurer, and in any other newspaper which the board of directors may designate. Such notice shall state that sealed proposals will be received for the redemption of such bonds or improvement warrants at the time and place therein stated. Such proposals shall be opened by the board in open meeting and the lowest bid must be accepted. In case the bids are equal, the lowest numbered bonds or improvement warrants, as the case may be, shall have the preference. If no bonds, or improvement warrants, are presented for~~

~~redemption, the county treasurer, with the approval and consent of the board of directors, shall invest such money in bonds of the United States or in bonds or warrants of the state of North Dakota. The county treasurer may disburse moneys in the fund to the fiscal agent or trustee appointed by the board for the purpose of paying the principal of, premium, if any, and interest on the bonds for which the fund was created, without any authorization from the board.~~

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

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

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

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

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

61-08-35. Procedure used in issuing refunding bonds. When in the judgment of the board of directors of an irrigation district it ~~shall be to~~ is in the best interests of ~~such the~~ irrigation district to issue its negotiable bonds ~~in the name of such irrigation district~~ for the purpose of refunding or paying outstanding ~~bonded indebtedness, or any issue of bonded indebtedness of such irrigation district,~~ as ~~enumerated~~ provided in section 61-08-34, refunding bonds may be issued pursuant to resolutions duly passed at a regular or special meeting of ~~such the~~ board of directors. ~~Such~~ The refunding bonds may be sold at public or private sale and must be signed in the same manner as the bonds to be refunded or by ~~such the~~ officers of the irrigation district ~~issuing the same~~ as may be designated in the resolutions providing for their issuance.

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

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

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

Issuance of revenue bonds. The acquisition, construction, reconstruction, improvement, betterment, or extension of any revenue producing facility, and the issuance of revenue bonds in

anticipation of the collection of the revenues of the facility, may be authorized by resolution adopted by the affirmative vote of a majority of the board of directors. The amount of the bonds authorized may not exceed the amount authorized by the electors of the district as provided in this chapter.

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

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

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

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

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

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

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-fifth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2265.

Senate Vote: Yeas 49 Nays 0 Absent 0

House Vote: Yeas 81 Nays 13 Absent 3

Secretary of the Senate

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,

at _____ o'clock _____ M.

Secretary of State