

WATERS

CHAPTER 566

HOUSE BILL NO. 1565
(Berg, Mertens)

DRAINAGE PERMIT

AN ACT to amend and reenact section 61-01-22 of the North Dakota Century Code, relating to drainage.

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

SECTION 1. AMENDMENT.) Section 61-01-22 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-01-22. PERMIT TO DRAIN WATERS REQUIRED - PENALTY.) Any person, before draining water from a pond, slough, or lake, or any series thereof, which drains an area comprising eighty acres or more into a watercourse, as defined by section 61-01-06, shall first secure a permit to do so. The permit application shall be submitted to the state engineer. The state engineer shall refer the application to the board of commissioners of the water management district or districts within which is found a majority of the watershed or drainage area of the pond, slough, or lake for consideration and approval, but the state engineer may require that applications proposing drainage of statewide or interdistrict significance be returned to him for final approval. A permit shall not be granted until an investigation shall disclose that the quantity of water which will be drained from the pond, slough, or lake, or any series thereof, will not flood or adversely affect lands of lower proprietors. If the investigation shall show that the proposed drainage will flood or adversely affect lands of lower landowners, the board of commissioners of the water management district shall not issue a permit until flowage easements are obtained. Such flowage easements shall be filed for record in the office of the register of deeds of the county or counties in which such lands are situated. An owner of land proposing to drain shall undertake and agree to pay the expenses incurred in making the required investigation. The provisions of this section shall not be construed to apply to the construction or maintenance of any existing or prospective drain constructed under the supervision of a state or federal agency.

Any person draining, or causing to be drained, water of a pond, slough, or lake, or any series thereof, which drains an area comprising eighty acres or more, into a watercourse,

without first securing a permit to do so, as provided by this section, shall be liable for all damage sustained by any person caused by such draining, and shall be guilty of an infraction. When temporary ponding of water occurs due to spring runoff or heavy rains, an area not in excess of eighty acres may be drained without the necessity of securing a permit.

Approved April 21, 1977

CHAPTER 567

SENATE BILL NO. 2205
(Rait)

RELEASE OF EASEMENTS FOR DAMS

AN ACT to authorize the state water commission to release easements granted to the state for dams.

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

SECTION 1.) A new section to chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

RELEASE OF EASEMENTS - PROCEDURE.) The commission may, when it deems such action to be in the best interest of the state, for good and valuable consideration, release easements granted to the state for the construction, operation, and maintenance of dams, along with access thereto, if such dams have not been constructed within ten years of the granting of the easement or if such dams are no longer useful and will not be reconstructed. Any release executed under the authority of this section shall be in the name of the state of North Dakota by the governor and attested by the secretary of state.

Approved April 6, 1977

CHAPTER 568

HOUSE BILL NO. 1256
(Conmy, Martinson)

EASEMENT FOR BISMARCK STREET CONSTRUCTION

AN ACT authorizing an easement over certain property of the state of North Dakota to the city of Bismarck for the construction and maintenance of a street and the reversion thereof in the event of nonuse.

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

SECTION 1.) Authorization is hereby granted to the state water commission for the conveyance to the city of Bismarck of a right-of-way over certain property of the state of North Dakota for the construction and maintenance of a street subject to the following:

1. Assumption by the city of any special assessments for street construction and paving (or graveling, if the street is not paved), curb and gutter, and any driveways which may be constructed from the street onto state property until such time as the property shall be sold, conveyed, or otherwise disposed of by the state.
2. Installation by the city, in a manner acceptable to the state engineer, of fencing adjacent to the north and south boundary of the easement herein granted.
3. Reversion to the state in the event the easement granted is not used for the stated purpose or is abandoned.

SECTION 2.) The easement herein granted is limited to the following:

All that portion of the northwest quarter northwest quarter of section two, township one hundred thirty-eight north, range eighty west, fifth p.m., lying within a strip of land eighty feet wide, lying forty feet on each side of the following described Broadway Avenue extension centerline as surveyed and staked over and across said northwest quarter northwest quarter.

Beginning at a point forty-seven feet east and one thousand seventy-four point seventy-seven feet south, zero degrees, twenty minutes, forty-five seconds west of the northwest corner of said section two. Thence continuing south zero degrees, twenty minutes, forty-five seconds west, forty feet, said point is midway on the proposed Broadway Avenue extension. Thence running north eighty-nine degrees, fifty-nine minutes, thirty-nine seconds east eight hundred forty-two point sixty-five feet or until said line crosses the east line of the North Dakota state water commission property.

The easement herein granted consists of one point fifty-five acres, more or less, and is shown on city of Bismarck right-of-way plat number nineteen A-two hundred one B.

Approved March 17, 1977

CHAPTER 569

SENATE BILL NO. 2062
(Legislative Council)
(Interim Committee on Natural Resources)

WATER APPROPRIATION

AN ACT to create and enact sections 61-04-01.1, 61-04-01.2, 61-04-02.1, 61-04-04.1, 61-04-06.1, 61-04-06.2, 61-04-06.3, 61-04-15.1, 61-04-29, 61-04-30, and 61-04-31 of the North Dakota Century Code, relating to the basis for the appropriation of water and the definition of terms therein involved, to the granting of water permits and their terms, to priority of water rights, to emergency or temporary authorization, to fees, to change in point of diversion or purpose of use, to reservations of waters, to the enforcement powers of the water commission and state engineer, and to penalties; to amend and reenact sections 61-04-01, 61-04-02, 61-04-03, 61-04-04, 61-04-05, 61-04-06, 61-04-07, 61-04-09, 61-04-14, 61-04-15, 61-04-17, 61-04-22, 61-04-23, 61-04-24, and 61-04-26 of the North Dakota Century Code, relating to the need for a water permit, to permit applications and the criteria for the issuance of water permits, to the application of water to a beneficial use, to transfer of water permits, to the filing of documents affecting water rights, and to the forfeiture of water rights; to repeal sections 61-01-01.1, 61-01-02, subsection 1 of section 61-03-05, 61-04-07.1, 61-04-16, and 61-14-05 of the North Dakota Century Code, relating to priority of water rights, to the attachment of conditions on a water permit, to the right to use water, to referees in water actions in court, and to changes in the place of diversion; and providing a penalty.

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

SECTION 1. AMENDMENT.) Section 61-04-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-01. PETITIONS, REPORTS, SURVEYS, AND OTHER DOCUMENTS FILED IN OFFICE OF COMMISSION.) Any petitions, applications, surveys, reports, orders, or other documents provided for in this chapter shall be filed in the office of the commission in the city of Bismarck, where they shall be kept on file under the control of the state engineer.

SECTION 2.) Section 61-04-01.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

61-04-01.1. DEFINITIONS.) In this chapter, unless the context or subject matter otherwise requires:

1. "Beneficial use" means a use of water for a purpose consistent with the best interests of the people of the state.
2. "Commission" means the state water commission.
3. "Domestic use" means the use of water by an individual, or by a family unit, or household, for personal needs and for household purposes, including, but not limited to heating, drinking, washing, sanitary and culinary uses; irrigation of land not exceeding one acre in area for noncommercial gardens, orchards, lawns, trees, or shrubbery; and for household pets and domestic animals kept for household sustenance and not for sale or commercial use, whether the water is supplied by the individual, a municipal government, or by a privately owned public utility or other agency.
4. "Fish, wildlife, and recreation" means the use of water for the purposes of propagating and sustaining fish and wildlife resources and for the development and maintenance of water areas necessary for outdoor recreation activities.
5. "Industrial use" means the use of water for the furtherance of a commercial enterprise wherever located, including but not limited to manufacturing, mining, or processing.
6. "Irrigation use" means the use of water for application to more than one acre of land to stimulate the growth of agricultural crops.
7. "Livestock use" means the use of water for drinking purposes by herds, flocks, or bands of animals, kept for commercial purposes.
8. "Municipal use" means the use of water by the state through its political subdivisions, institutions, facilities, and properties, and the inhabitants thereof, whether supplied by the government or by a privately owned public utility or other agency, for primarily domestic purposes as defined herein.
9. "Person" includes political subdivisions, corporations, partnerships, associations, the United States and its departments or agencies, the state of North Dakota and its departments or agencies, and any other legal entity.

10. "Water of the state" or "waters of the state" means those waters identified in section 61-01-01.

SECTION 3.) Section 61-04-01.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

61-04-01.2. RIGHT TO USE WATER - BASIS.) A right to appropriate water can be acquired for beneficial use only as provided in this chapter. Beneficial use shall be the basis, the measure, and the limit of the right to the use of water.

SECTION 4. AMENDMENT.) Section 61-04-02 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-02. PERMIT FOR BENEFICIAL USE OF WATER REQUIRED.) Any person, before commencing any construction for the purpose of appropriating waters of the state or before taking waters of the state from any constructed works, shall first secure a water permit from the state engineer unless such construction or taking from such constructed works is for domestic or livestock purposes or for fish, wildlife, and other recreational uses or unless otherwise provided by law. However, immediately upon completing any constructed works for domestic or livestock purposes or for fish, wildlife, and other recreational uses the water user shall notify the state engineer of the location and acre-feet capacity of such constructed works, dams, or dugouts. Regardless of proposed use, however, all water users shall secure a water permit prior to constructing an impoundment capable of retaining more than twelve and one-half acre-feet of water. Although no water permit shall be required of a landowner or his lessee to appropriate water from any source for domestic or livestock purposes or for fish, wildlife, and other recreational uses, those appropriators may apply for water permits in order to clearly establish a priority date; the state engineer may provide by regulation for the waiver of any fee or hearing for such applications. An applicant for a water permit to irrigate need not be the owner of the land to be irrigated.

SECTION 5.) Section 61-04-02.1 of the North Dakota Century Code is hereby created and enacted 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 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.

SECTION 6. AMENDMENT.) Section 61-04-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-03. APPLICATION FOR WATER PERMIT - CONTENTS - INFORMATION TO ACCOMPANY.) The application for a permit to make beneficial use

of any waters of the state shall be in the form required by the rules and regulations established by the state engineer. Such rules and regulations shall prescribe the form and contents of, and the procedure for filing, the application. The application, along with all other information filed with it, shall be retained in the office of the commission after approval or disapproval of the application. The state engineer may require additional information not provided for in the general rules and regulations if he deems it to be necessary.

SECTION 7. AMENDMENT.) Section 61-04-04 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-04. FILING AND CORRECTION OF APPLICATION.) The date of the receipt of the application provided for in section 61-04-03 in the commission office shall be noted thereon. If the application is defective as to form, incomplete, or otherwise unsatisfactory, it shall be returned with a statement of the corrections, amendments, or changes required, within thirty days after its receipt, and sixty days shall be allowed for the refiling thereof. If the application is corrected as required and is refiled within such time, it, upon being accepted, shall take priority as of the date of its original filing. Any corrected application filed after the time allowed shall be treated in all respects as an original application received on the date of its refiling. The application may be amended by the applicant at any time prior to the commencement of administrative action by the state engineer as provided in sections 61-04-05 through 61-04-07.

SECTION 8.) Section 61-04-04.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

61-04-04.1. APPLICATION FEES.) The following fees shall accompany an application and shall be paid by the state engineer into the general fund of the state treasury:

1. For municipal use in municipalities of 2500 population or over according to the latest federal census.....\$250
2. For municipal use in municipalities of less than 2500 population according to the latest federal census.....\$150
3. For irrigation.....\$100
4. For industrial use of one c.f.s. or less.....\$150
5. For industrial use in excess of one c.f.s.....\$500
6. For recreation.....\$ 50
7. For commercial recreation.....\$100

SECTION 9. AMENDMENT.) Section 61-04-05 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-05. NOTICE OF APPLICATION - CONTENTS - PROOF - FAILURE TO FILE SATISFACTORY PROOF.) When an application is filed which complies with the provisions of this chapter and the rules and regulations established thereunder, the state engineer shall instruct the applicant to: (1) give notice thereof by certified mail in the form prescribed by regulation, to all record title owners of real estate within a radius of one mile from the location of the proposed water appropriation site, except where the one-mile radius extends within the geographical boundary of a city the notice shall be given to the governing body of such city and no further notice need be given to the record title owners of real estate within the geographical boundary of the city; and (2) publish notice thereof, in a form prescribed by regulation, in a newspaper of general circulation in the area of the proposed appropriation site, once a week for two consecutive weeks. Such notice shall give all essential facts as to the proposed appropriation, among them the places of appropriation and of use, amount of water, the purpose for which it is to be used, the name and address of the applicant, and the time and place of a hearing on the application by the state engineer. Proof of publication shall be filed with the state engineer within sixty days from the date of his instructions to make publication. In case of failure within the time required to file satisfactory proof of publication in accordance with the rules and regulations applicable thereto, the application thereafter shall be treated as an original application filed on the date of receipt of proof of publication in proper form.

SECTION 10. AMENDMENT.) Section 61-04-06 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-06. HEARING - CRITERIA FOR ISSUANCE OF PERMIT.) Upon the receipt of the proof of publication, the state engineer shall conduct a hearing on the application. The state engineer shall issue a permit if he finds all of the following:

1. The rights of a prior appropriator will not be unduly affected.
2. The proposed means of diversion or construction are adequate.
3. The proposed use of water is beneficial.
4. The proposed appropriation is in the public interest. In determining the public interest, the state engineer shall consider all of the following:
 - a. The benefit to the applicant resulting from the proposed appropriation.

- b. The effect of the economic activity resulting from the proposed appropriation.
- c. The effect on fish and game resources and public recreational opportunities.
- d. The effect of loss of alternate uses of water that might be made within a reasonable time if not precluded or hindered by the proposed appropriation.
- e. Harm to other persons resulting from the proposed appropriation.
- f. The intent and ability of the applicant to complete the appropriation.

If approved, the approval shall be noted on the application, and the state engineer shall issue a conditional water permit allowing the applicant to appropriate water. Provided, however, the commission may, by resolution, reserve unto itself final approval authority over any specific water permit in excess of five thousand acre-feet. The state engineer may cause a certified transcript to be prepared for any hearing conducted pursuant to this section. The costs for the original and up to seven copies of the transcript shall be paid by the applicant.

SECTION 11.) Section 61-04-06.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

61-04-06.1. PREFERENCE IN GRANTING PERMITS.) When there are competing applications for water from the same source, and the source is insufficient to supply all applicants, the state engineer shall adhere to the following order of priority:

1. Domestic use.
2. Municipal use.
3. Livestock use.
4. Irrigation use.
5. Industrial use.
6. Fish, wildlife, and other outdoor recreational uses.

SECTION 12.) Section 61-04-06.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

61-04-06.2. TERMS OF PERMIT.) The state engineer may issue a conditional permit for less than the amount of water requested, but in no case may he issue a permit for more water than can be beneficially used for the purposes stated in the application. He may require modification of the plans and specifications for the appropriation. He may issue a permit subject to fees for water use, terms

conditions, restrictions, limitations, and termination dates he considers necessary to protect the rights of others, and the public interest. Conditions and limitations so attached shall be related to matters within the jurisdiction of the state engineer; provided, however, that all conditions attached to any permit issued prior to July 1, 1975, shall be binding upon the permittee.

SECTION 13.) Section 61-04-06.3 of the North Dakota Century Code is hereby created and enacted to read as follows:

61-04-06.3. PRIORITY.) Priority in time shall give the superior water right. Priority of a water right acquired under this chapter dates from the filing of an application with the state engineer, except for water applied to domestic, livestock, or fish, wildlife, and other recreational uses in which case the priority date shall relate back to the date when the quantity of water in question was first appropriated, unless otherwise provided by law.

Priority of appropriation does not include the right to prevent changes in the condition of water occurrence, such as the increase or decrease of stream flow, or the lowering of a water table, artesian pressure, or water level, by later appropriators, if the prior appropriator can reasonably acquire his water under the changed conditions.

SECTION 14. AMENDMENT.) Section 61-04-07 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-07. REJECTION OF APPLICATIONS - APPEAL TO DISTRICT COURT.) If the state engineer determines that an application does not meet the criteria prescribed in section 61-04-06, he shall reject the application. He shall decline to order the publication of notice of any application which does not comply with the requirements of the law and the rules and regulations thereunder. Any applicant, within sixty days from the date of refusal to approve an application, may appeal to the district court of the county in which the proposed place of diversion or storage is situated, from any decision of the state engineer which denies a substantial right. In the absence of such appeal, the decision of the state engineer shall be final.

SECTION 15. AMENDMENT.) Section 61-04-09 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-09. APPLICATION TO BENEFICIAL USE - INSPECTION - PERFECTED WATER PERMIT - INSPECTION BY OTHERS THAN STATE ENGINEER.) On or before the date set for the application of the water to a beneficial use, or upon notice from the owner that water has been applied to a beneficial use, the state engineer shall cause the works to be inspected, after due notice to the holder of the conditional water permit. Such inspection shall be thorough and

complete, in order to determine the actual capacity of the works, its safety, and efficiency. If the works are not properly and safely constructed, the state engineer may require the necessary changes to be made within such time as he shall deem reasonable and shall not issue a perfected water permit until such changes are made. Failure to make the changes shall cause postponement of the priority under the water permit for such time as may elapse from the date set for completing the changes until the changes are actually made to the satisfaction of the state engineer, and any application subsequent in time may have the benefit of such postponement of priority. When the works are found in satisfactory condition, after inspection, the state engineer shall issue the perfected water permit, setting forth the actual capacity of the works and such limitations or conditions upon the water permit as stated in the conditional water permit as authorized by section 61-04-06.2; provided, however, that all conditions attached to any permit issued prior to July 1, 1975, shall be binding upon the permittee.

SECTION 16. AMENDMENT.) Section 61-04-14 of the 1975 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 to beneficial use 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 shall be considered abandoned and void if no request for renewal is received by the state engineer within thirty days after the date the permittee is informed the period for applying water to a beneficial use has expired.

SECTION 17. AMENDMENT.) Section 61-04-15 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-15. ASSIGNMENT OR TRANSFER OF CONDITIONAL OR PERFECTED WATER PERMIT.) Any conditional or perfected water permit may be assigned only upon approval by the state engineer. Any conditional or perfected water permit may also be transferred, with the approval of the state engineer, to any parcel of land owned by the holder of such water permit. Upon reasonable proof that such assignment or transfer can be made without detriment to existing rights, the state engineer shall cause the water permit involved to be assigned or simultaneously severed and transferred from such land without losing priority of any right previously established. The decision of the state engineer shall be final unless some party interested in the same source of water supply shall, within sixty days, bring appropriate action in the district court of the county in which the land is located appealing such decision. Applications for assignment and transfer shall be in the form required by regulation. The transfer of title to land in any manner whatsoever shall carry with it all rights to the use of water appurtenant thereto for irrigation purposes.

SECTION 18.) Section 61-04-15.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

61-04-15.1. CHANGE IN POINT OF DIVERSION OR USE.)

1. A permit holder may change the point of diversion or purpose of use without affecting the priority date if approved by the state engineer.
2. The state engineer may approve the proposed change if he determines that the proposed change will not adversely affect the rights of other appropriators. Applications for a change in the point of diversion or any purpose of use shall be processed in the same manner as an application for a water permit.
3. A change in the purpose of use may be authorized only for a superior use as determined by the order of priorities contained in section 61-04-06.1.

SECTION 19. AMENDMENT.) Section 61-04-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-17. SURPLUS WATER TO BE DELIVERED TO PERSONS ENTITLED TO BENEFICIAL USE - CHARGES - COMPELLING DELIVERY.) The owner or owners of any works for the storage, diversion, or carriage of water, which contain water in excess of their needs for beneficial use, shall be required to deliver such surplus, at reasonable rates for storage, or carriage, or both, as the case may be, to the parties entitled to the use of the water for beneficial purposes. In case of the refusal of such owner or owners to deliver any such surplus water at reasonable rates as required by the state engineer, they may be compelled to do so by the district court of the county in which the surplus water is to be used.

SECTION 20. AMENDMENT.) Section 61-04-22 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-22. PRESCRIPTIVE WATER RIGHT.) Any person who used or attempted to appropriate water from any source for beneficial use over a period of twenty years prior to July 1, 1963, shall be deemed to have acquired a right to the use of such water without having filed or prosecuted an application to acquire a right to the beneficial use of such waters if the user shall have, by July 1, 1965, filed with the state engineer an application for a water permit. If the state engineer found that the application substantiated the claim and it was approved, it shall be a perfected water permit with a priority date relating back to the date when water in the quantity stated in the application was first appropriated. If the prescriptive user failed to file an application for a water permit with the state engineer by July 1, 1965, such prescriptive water right shall be declared abandoned and forfeited.

Any prescriptive water permit acquired under this section shall be subject to forfeiture for nonuse as prescribed by sections 61-04-23 through 61-04-25.

SECTION 21. AMENDMENT.) Section 61-04-23 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-23. FORFEITURE OF WATER RIGHTS - INSPECTION OF WORKS.) Any appropriation of water must be for a beneficial use, and when the appropriator fails to apply it to the beneficial use cited in his permit or ceases to use it for the beneficial use cited in his permit for three successive years, unless such failure or cessation of use shall have been due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause, the state engineer may declare such water permit or right forfeited; provided, however, that any such water permit or right held by a state agency, department, board, commission, or institution may be declared forfeited only by the North Dakota legislative assembly. The state engineer shall, as often as necessary, examine the condition of all works constructed or partially constructed within the state and compile information concerning the condition of every water permit or right, and all ditches and other works constructed or partially constructed thereunder.

SECTION 22. AMENDMENT.) Section 61-04-24 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-24. FORFEITURE OF WATER RIGHTS - NOTICE - CONTENTS.) If it shall appear that any water appropriation or portion thereof has not been used for a beneficial use, or having been so used at one time has ceased to be used for such purpose for more than three successive years, unless such failure or cessation of use shall have been due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause, the state engineer shall set a place and time for a hearing. Any holder of a water permit using water from a common source of supply, any applicant therefor or any interested party may request the state engineer to conduct such a hearing, the purpose of which shall be the cancellation of any unused water rights to such common source of supply. Any decision of the state engineer in denying a request for such a hearing may be appealed in the manner prescribed by section 61-04-07. Prior to the hearings the state engineer shall serve notice upon the permit holder and upon the owners of land benefited by such appropriation or works to show cause by such time and at such place why the water appropriation or a portion thereof should not be declared forfeited and canceled.

In addition to the time and place of hearing, such notice shall contain:

1. A description of the water appropriation.

2. The permit number upon the records of the commission.
3. The date of priority.
4. The point of diversion.
5. A description of the lands benefited by such appropriation as indicated on the application for a water permit on file in the office of the commission.
6. Notice that the permit holder, the owners of land benefited by such appropriation or works, and other interested parties whose right to use water may be affected by a cancellation of the appropriation are to show cause why such appropriation, or a portion thereof, should not be canceled.

The notice shall be served personally or sent by registered or certified mail at least thirty days before the date of hearing to the permit holder and to the owners of land benefited by such appropriation as indicated on the application for a water permit on file in the office of the commission, or to persons having an interest in works as they appear from the records of the county treasurer or the register of deeds. In addition, such notice shall be published in a newspaper of general circulation in the county in which the point of diversion is located once each week for two consecutive weeks prior to the date of hearing.

SECTION 23. AMENDMENT.) Section 61-04-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-26. REGISTER OF DEEDS TO RECORD WATER PERMIT OR ORDER AFFECTING WATER RIGHT.) A water permit may be recorded as any other instrument affecting the title to real property without acknowledgment or further proof. A copy of any order declaring any water right, or portion thereof, forfeited, canceled, or abandoned shall be filed by the state engineer in the office of the register of deeds in the county or counties where the affected land is located, and it shall be recorded as any other instrument affecting the title to real property without acknowledgment or further proof. Any document filed under this section shall be listed in the index of the property affected as provided in section 11-18-07.

SECTION 24.) Section 61-04-29 of the North Dakota Century Code is hereby created and enacted to read as follows:

61-04-29. ENFORCEMENT.) The state engineer shall have full power and authority to institute, maintain, and prosecute to determination in any of the courts of this state, or in any of the federal courts, any and all actions, suits, and special proceedings that may be necessary to enjoin unauthorized use of water, to enforce an order of the state engineer or the state water commission, or to otherwise administer the provisions of this chapter.

SECTION 25.) Section 61-04-30 of the North Dakota Century Code is hereby created and enacted to read as follows:

61-04-30. PENALTY.) A person who constructs works for an appropriation, or diverts, impounds, withdraws, or uses a significant amount of water from any source without a permit, except as otherwise provided in section 61-04-02; or a person who violates an order of the state engineer to cease and desist from preventing any water from moving to a person having a prior right to use the same; or who disobeys an order of the state engineer requiring him to take steps to cause the water to so move; or who fails or refuses to install meters, gauges, or other measuring devices or to control works; or who violates an order establishing corrective controls for an area or for a source of water, or who knowingly makes a false or misleading statement in a declaration of existing rights, is guilty of a class A misdemeanor. As used in this section, "significant amount of water" means any amount of water in excess of that allowed in a valid water permit, or any amount of water in excess of the needs for domestic and livestock purposes where no permit has been issued.

SECTION 26.) Section 61-04-31 of the North Dakota Century Code is hereby created and enacted to read as follows:

61-04-31. RESERVATION OF WATERS - PUBLIC HEARING - NOTICE.)

1. Whenever it appears necessary to the state engineer, or when so directed by the commission, he may by regulation:
 - a. Reserve and set aside waters for beneficial utilization in the future; and
 - b. When sufficient information and data are lacking to allow for the making of sound decisions, withdraw various waters of the state from additional appropriations until such data and information are available.
2. Prior to the adoption of a regulation under this section, the state engineer shall conduct a public hearing in each county in which waters relating to the regulation are located. The public hearing shall be preceded by a notice placed in a newspaper of general circulation published within each of the counties.
3. Regulations adopted hereunder shall be subject to chapter 28-32.

SECTION 27. REPEAL.) Subsection 1 of section 61-03-05 and sections 61-04-16 and 61-14-05 of the North Dakota Century Code, and sections 61-01-01.1, 61-01-02, and 61-04-07.1 of the 1975 Supplement to the North Dakota Century Code are hereby repealed.

Approved April 21, 1977

CHAPTER 570

HOUSE BILL NO. 1441
(Berg, Mertens, Russell, Nicholas)

WATER MANAGEMENT DISTRICTS

AN ACT to create and enact a new section to chapter 61-16 of the North Dakota Century Code, relating to joint water management district boards; and to amend and reenact section 61-16-05, subsection 9 of section 61-16-11, and sections 61-16-12, 61-16-19.1, 61-16-48, and 61-16-50 of the North Dakota Century Code, relating to the powers and duties of a water management district board of commissioners, consolidation or adjustment of districts, and tax levy limitations.

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

SECTION 1. AMENDMENT.) Section 61-16-05 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-05. WATER MANAGEMENT DISTRICTS - AREA TO BE INCLUDED.)
All land in North Dakota shall be within a water management district.

SECTION 2. AMENDMENT.) Subsection 9 of section 61-16-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. After organization of the board, and on or before July first, in each year thereafter, to adopt a budget showing estimated expenses for the ensuing fiscal year commencing July first, and by resolution submit such budget to the board of county commissioners in each county in which the district is located. The board of county commissioners shall consider such budget and by resolution levy a tax of not to exceed four mills on each dollar of taxable valuation in the district or part thereof and direct the county auditor to file such budget and spread the levy on his tax roll.

SECTION 3. AMENDMENT.) Section 61-16-12 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-12. DISTRICT BUDGET - TAX LEVY - FINANCING BY SPECIAL ASSESSMENT.) The board of commissioners shall estimate the expenses

of the district from the date of its establishment until the end of the ensuing fiscal year, and before July first in each year thereafter shall estimate district expenses for the fiscal year ensuing. Estimates of district expenses may include costs of rights-of-way, easements, or other interests in property deemed necessary for the construction, operation, and maintenance of any projects therein. Upon completion and adoption of a budget covering necessary expenses, the board of commissioners shall send a copy of such budget or apportionment thereof to the county auditor of each county in the district. If a district includes more than one county, the estimates shall be apportioned to counties affected. Each county auditor shall transmit the same to the board of county commissioners of his county. The board of county commissioners shall either disapprove the budget, amend and approve the budget as amended, or approve the budget as submitted and, if approved as amended or as submitted, by resolution levy, authorize, and direct their county auditor to extend and spread upon the tax roll of his county a tax of not to exceed four mills on each dollar of taxable valuation in the district or part of district situated in the county in the same manner, and with the same effect, as general property taxes are extended and spread. Funds produced each year by such tax levy shall be available until expended, and if such tax levy in any year will not produce sufficient revenue to cover district expenses, a fund sufficient to pay the same may be accumulated. The acquisition of rights-of-way, easements, and the construction, operation, and maintenance of a project in a district may, in the discretion of the board of commissioners, be financed in whole or in part by special assessments against property benefited by such project, or from revenues realized from tax collections, or from net revenues to be derived from service charges to be imposed and collected for the services of the project, or any combination of such sources.

If the project is one involving the maintenance of a drain, and it is desired to finance such project in whole or in part by means of special assessments, the levy in any year for such maintenance shall not exceed one dollar per acre on any agricultural lands benefited by the drain. Agricultural lands which carried the highest assessment when the drain was originally established, or received the most benefits under a reassessment of benefits, may be assessed the maximum amount of one dollar per acre. The assessment of other agricultural lands in the district shall be based upon the proportion that the assessment of benefits at the time of construction or at the time of any reassessment of benefits bears to the assessment of the benefits of the agricultural land assessed the full one dollar per acre. Nonagricultural property shall be assessed such sum in any one year as the ratio of the benefits under the original assessments or any reassessment bears to the assessment of agricultural lands bearing the highest assessment. In case the maximum levy of one dollar per acre for any year will not produce an amount sufficient to cover the cost of cleaning out and repairing such drain, the board of commissioners may accumulate a fund in an amount not exceeding the sum produced by such maximum permissible levy for two years.

SECTION 4. AMENDMENT.) Section 61-16-19.1 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-19.1. CONTRACTS FOR CONSTRUCTION OR MAINTENANCE OF PROJECT.) If the cost of construction or maintenance of a project does not exceed five thousand dollars, such work may be done on a day work basis or a contract may be let without being advertised. In cases where the cost of such construction or maintenance exceeds five thousand dollars, the lowest and best bid shall be accepted. The board of commissioners shall give at least ten days' notice of the time and place where contract will be let. Such notice shall be published at least once in a newspaper of general circulation in a county in which the work is to be carried on and shall be mailed to any prospective bidders known to the board of commissioners.

Any person receiving a contract for construction or maintenance of a project shall give a performance bond in an amount set by the board of commissioners conditioned upon the proper performance of the contract within the time specified by such contract. The board shall reserve the right to reject any or all bids and may postpone the letting of contracts from time to time or to such other time and place as the board may publicly announce. Any contracts not let at the original contract letting may be let by the board at a later time after notice and in accordance with the provisions of this section. The competitive bid requirement of this section shall be waived, upon the determination of the board of commissioners, and upon approval of the county commissioners, that an emergency situation exists requiring the prompt repair of a project, and a contract may be made for the prompt repair of the project without seeking bids.

SECTION 5. AMENDMENT.) Section 61-16-48 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-48. CONSOLIDATION OF WATER MANAGEMENT DISTRICTS.) Any two or more water management districts may be consolidated into a single district or existing districts may be adjusted to reflect watershed boundaries as determined by the state engineer by filing with the state water commission a petition signed by a majority of the board of commissioners of each of the districts or by fifty percent or more of the landowners within each of the districts. When such petition is filed by the boards of commissioners of the districts petitioning to consolidate, it shall be accompanied by a certified copy of the resolution of the governing boards authorizing the signing of such petition. The petition shall contain a detailed plan for the disposition of the property, assets, and liabilities of each of the districts. This plan shall be as equitable as practicable to every landowner within the districts and shall fully protect creditors and the holders of improvement warrants of the petitioning districts. The plan may provide for a continuance of assessments upon properties in the petitioning districts to retire outstanding obligations, or for the assumption of such outstanding obligations and the spreading of assessments for the payment thereof over properties in the newly created district. No

petition shall be approved by the commission unless it fully meets the requirements of this section.

The commission shall fix a time and place for a public hearing on the petition. The hearing site shall be convenient and accessible for a majority of the affected individuals. Not less than ten days prior to the date of hearing, notice thereof shall be published in at least one newspaper of general circulation in each of the districts being consolidated or adjusted. Additional notice of such hearing may be given in a manner prescribed by the commission.

Prior to the hearing, the state engineer shall make, or cause to be made, an investigation of the need for consolidation of the petitioning districts and shall submit a report of his findings to the commission. This report shall be presented and read at the petition hearing. If the commission finds it is not feasible, desirable, or practical to consolidate the petitioning districts, it shall deny the petition and state the reasons for denial. If, however, the commission finds that problems of flood control, watershed development or improvement, drainage, water supply, or other reasons make consolidation or boundary adjustment and establishment of the proposed water management district desirable, it shall grant the petition and create the district. Upon creation of the new water management district, the commission shall dissolve the included districts or make necessary boundary adjustments to existing districts.

SECTION 6. AMENDMENT.) Section 61-16-50 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-50. CLOSING A NONCOMPLYING DRAIN - NOTICE AND HEARING - APPEAL - INJUNCTION.) Upon receipt of a complaint of unauthorized drainage, the board shall promptly investigate and make a determination thereon. If the board shall determine that a drain, lateral drain, or ditch has been opened or established 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 drain, lateral drain, or ditch is not closed or filled within such period as the board shall determine, 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, 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 drain, lateral drain, or ditch. 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.

SECTION 7.) A new section to chapter 61-16 of the North Dakota Century Code is hereby created and enacted to read as follows:

JOINT EXERCISE OF POWERS.)

1. Two or more boards may, by agreement, jointly or cooperatively exercise any power which is authorized a board by title 61. The agreement shall state the purpose of the agreement or the power to be exercised, and it shall provide for the method by which the purpose sought shall be accomplished or the manner in which the power shall be exercised. When the agreement provides for the use of a joint board, the joint board shall be representative of the boards which are parties to the agreement. Notwithstanding other provisions of law, the agreement may specify the number, composition, terms, or qualifications of the members of the joint board.
2. The boards which are parties to such an agreement may provide for disbursements from their individual budgets to carry out the purpose of the agreement. In addition, a joint board established pursuant to this section may, by resolution, on or before July first of each year, adopt a budget showing estimated expenses for the ensuing fiscal year and the proposed contributions of each member district as determined by the agreement. The boards of the member districts shall then submit such budget to their respective board of county commissioners. Each board of county commissioners shall consider such budget and, if approved, by resolution, levy an ad valorem tax not to exceed two mills upon the real property within the district. Such levy shall be in excess of any other levy authorized for a district.
3. The proceeds of one-half of this levy shall be credited to the joint board's administrative fund and shall be used for regulatory activities and for the construction and maintenance of projects of common benefit to the member districts. The remainder shall be credited to the construction funds of the joint board and shall be used for the construction and maintenance of projects of common benefit to more than one district.

4. Funds may be paid to and disbursed by the joint board as agreed upon, but the method of disbursement shall agree as far as practicable with the method provided by law for the disbursement of funds by boards. Contracts let and purchases made under the agreements shall conform to the requirements applicable to contracts and purchases by boards. The joint board shall be accountable for all funds and reports of all receipts and disbursements to the state water commission in a manner prescribed by the commission.
5. The agreement may be continued for a definite term or until rescinded or terminated in accordance with its terms. The agreement shall provide for the disposition of any property acquired as the result of a joint or cooperative exercise of powers, and the return of any surplus moneys in proportion to contributions of the several contracting boards after the purpose of the agreement has been completed.
6. Residence requirements for holding office in a district shall not apply to any officer appointed to carry out any agreement.
7. This section does not dispense with procedural requirements of any other statute providing for the joint or cooperative exercise of any governmental power.

Approved April 9, 1977

CHAPTER 571

SENATE BILL NO. 2515
(Nelson)

WATER PROJECT BIDS AND CONTRACTS

AN ACT to create and enact a new section to chapter 61-16 and to chapter 61-21 of the North Dakota Century Code, to allow a water management board and a drainage board to accept bids to supply culverts and pipe arches for a period of one year; and to amend and reenact subsection 1 of section 61-21-01 and sections 61-21-25, 61-21-45, and 61-21-46 of the North Dakota Century Code, relating to definitions of a drain, to situations where no acceptable bids are received, to allowing drain boards to contract with the county or private contractors to construct drains, to contracts for constructing or maintaining water management projects, and to the contracts and maximum levy for cleaning and repairing drains.

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

SECTION 1.) A new section to chapter 61-16 of the North Dakota Century Code is hereby created and enacted to read as follows:

CULVERT AND PIPE ARCH BIDS AND ACCEPTANCE.) A board may advertise for bids to supply culverts and pipe arches and may accept one or more low bids. A board may utilize bids for such materials received by the county within which the board has jurisdiction and may accept one or more low bids. The board may then purchase materials from the accepted low bidder or bidders for a period of one year from the date of the original acceptance of the bids.

SECTION 2.) A new section to chapter 61-21 of the North Dakota Century Code is hereby created and enacted to read as follows:

CULVERT AND PIPE ARCH BIDS AND ACCEPTANCE.) A board may advertise for bids to supply culverts and pipe arches and may accept one or more low bids. A board may utilize bids for such materials received by the county within which the board has jurisdiction and may accept one or more low bids. The board may then purchase materials from the accepted low bidder or bidders for a period of one year from the date of the original acceptance of the bids.

SECTION 3. AMENDMENT.) Subsection 1 of section 61-21-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The word "drain" shall include any natural watercourse opened, or proposed to be opened, and improved for the purpose of drainage and any artificial drains of any nature or description constructed for such purpose, including dikes and appurtenant works. This definition may include more than one watercourse or artificial channel constructed for the aforementioned purpose when the watercourses or channels drain land within a practical drainage area as determined by the written petition called for in section 61-21-10 and the survey and examination called for in section 61-21-12;

SECTION 4. AMENDMENT.) Section 61-21-25 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-25. LETTING OF CONTRACTS FOR DRAINS.) The board shall let contracts for the construction of the drain, culverts, bridges and appurtenances thereto, or portions thereof at the appointed time and place to the lowest and best bidder. Any person receiving a contract for the construction of a drain or portions thereof shall give a performance bond in an amount set by the board for the proper construction of the work within the time specified in the contract. The board shall reserve the right to reject any and all bids and may postpone the letting of contracts for the construction of such drain or parts thereof from time to time or to such other time and place as the board may publicly announce. Any parties who are to be assessed for the construction of such drain may be bidders on construction contracts and, if equal bidders with other parties and equally well qualified, shall be preferred in awarding construction contracts. Any contracts for the construction of portions of a drain which are not let at the original contract letting may be let at a later time by the board after due notice as provided in section 61-21-24 and in accordance with the provisions of this section. If the board does not receive any acceptable bids after having advertised for the same upon two separate occasions, it may, at its sole and absolute discretion, negotiate a contract acceptable to it with the board of county commissioners of its county or any other party.

SECTION 5. AMENDMENT.) Section 61-21-45 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-45. CONTRACTS FOR WORK OF CLEANING AND REPAIRING DRAINS.) If the cost of any work of cleaning out or repairing any drain, or system of legal drains, if more than one cleaning or repair project is carried on under one contract, does not exceed five thousand dollars in any one year, such work may be done on

a day work basis or a contract may be let without being advertised. In cases where the cost of such work exceeds five thousand dollars in any one year, a contract shall be let to the lowest and best bidder in the manner described in this chapter for the letting of bids for construction of drains. The board may reject any and all bids for the cleaning and repairing of drains and have such work performed by county equipment at the expense of the drainage district. The competitive bid requirement of this section shall be waived, upon the determination of the board of commissioners that an emergency situation exists requiring the prompt repair of a project, and a contract may be made for the prompt repair of the project without seeking bids.

SECTION 6. AMENDMENT.) Section 61-21-46 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-46. MAXIMUM LEVY - ACCUMULATION OF FUND.) The levy in any year for cleaning out and repairing a drain shall not exceed one dollar per acre on any agricultural lands in the drainage district. Agricultural lands which carried the highest assessment when the drain was originally established, or received the most benefits under a reassessment of benefits, may be assessed the maximum amount of one dollar per acre. The assessment of other agricultural lands in the district shall be based upon the proportion that the assessment of benefits at the time of construction or at the time of any reassessment of benefits bears to the assessment of the benefits of the agricultural land assessed the full one dollar per acre. Nonagricultural property shall be assessed an amount not to exceed one dollar for each one thousand dollars of assessed valuation of such nonagricultural property. In case the maximum levy or assessment on agricultural and nonagricultural property for any year will not produce an amount sufficient to cover the cost of cleaning out and repairing such drain, the board may accumulate a fund in an amount not exceeding the sum produced by such maximum permissible levy for two years. If the cost of, or obligation for, the cleaning and repair of any drain shall exceed the total amount which can be levied by the board in any two-year period, the board shall obtain an affirmative vote of the majority of the landowners as determined by section 61-21-16 prior to obligating the district for such costs.

Approved April 6, 1977

CHAPTER 572

SENATE BILL NO. 2136
(Smykowski, Redlin)

GARRISON DIVERSION CONSERVANCY DISTRICT
BOARD

AN ACT to create and enact subsection 15 of section 61-24-08 of the North Dakota Century Code, relating to the powers and duties of the Garrison diversion conservancy district board of directors; and to amend and reenact section 61-24-03 of the North Dakota Century Code, relating to the election of the same board of directors.

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

SECTION 1. AMENDMENT.) Section 61-24-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-24-03. ELECTION OF DIRECTORS OF THE GARRISON DIVERSION CONSERVANCY DISTRICT.) A director of the Garrison diversion conservancy district shall be nominated and elected in each county in the district. Any person who is a resident and qualified elector of the county who aspires to the office of director of the Garrison diversion conservancy district shall, not more than sixty-six days or less than forty-six days before four p.m. of the forty-sixth day prior to any primary election preceding a general election at which a director of the district is to be elected, present to the county auditor a petition giving his name, post-office address, the title of the office "Director of the Garrison Diversion Conservancy District," and containing the signatures of not less than fifty nor more than three hundred qualified electors of the county to which each signer has added his residence with street number, if any, and the date of signing.

The petition shall 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 voter therein; that I am a candidate for nomination to the office of director of the

Garrison Diversion Conservancy District to be chosen 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 two candidates receiving the highest number of votes if more than two are running shall be nominated.

The names of the candidates so nominated at the primary election shall be placed on the no-party ballot at the ensuing general election and the candidate receiving the highest number of votes shall be duly elected.

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

SECTION 2.) Subsection 15 of section 61-24-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

15. To sell or exchange any and all real property purchased or acquired by the district. All moneys received pursuant to any such sale or exchange shall be deposited in the Bank of North Dakota to the credit of the district and may be disbursed only for the payment of expenses of the district as specified in subsection 9 of this section.

Approved March 31, 1977

CHAPTER 573

HOUSE BILL NO. 1133
(Committee on Social Welfare)
(At the request of the Health Department)

SAFE DRINKING WATER ACT

AN ACT to provide for standards of health for public water systems; to provide for system approval, limitations on water contaminants, records and reporting procedure, variances and exemptions, enforcement process; and to provide for imposition of penalties.

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

SECTION 1. DECLARATION OF PUBLIC POLICY AND LEGISLATIVE INTENT.) The Legislative Assembly declares it to be the policy of this state that safe supplies of drinking water are essential to the maintenance of the public health and welfare. Those persons supplied with water from public water systems must be able to rely with confidence upon the quality of water publicly used for human consumption. Those persons served by public water systems are entitled to regulation of those systems so that they may purchase healthful water, free of harmful contaminants. It is the intention of the Legislative Assembly that these policies will be fulfilled by the state in accordance with the terms of this Act and consistent with the provisions of the federal Safe Drinking Water Act of 1974.

SECTION 2. DEFINITIONS.) As used herein, unless the context or subject matter otherwise requires:

1. "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.
2. "Department" means the North Dakota state department of health.
3. "Maximum contaminant level" means the maximum permissible level of contaminant in water which is delivered to any user of a public water system.
4. "Person" means any individual, corporation, company, association, partnership, or municipality.
5. "Public water system" means a system for the provision to the public of piped water for human consumption,

if such system has at least fifteen service connections or regularly serves at least twenty-five individuals, and includes:

- a. Any collection, treatment, storage, or distribution facilities under control of the operator of such system and used primarily in connection with such system.
 - b. Any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.
6. "Supplier of water" means any person who owns or operates a public water system.

SECTION 3. POWERS AND DUTIES OF DEPARTMENT.) The department may exercise the following powers and shall have the following duties:

1. Administer and enforce a safe drinking water program pursuant to the provisions of this Act.
2. Provide technical assistance on request to municipalities of the state and other persons, and cooperate with appropriate federal agencies.
3. Advise, consult, and cooperate with other public agencies and with affected groups and industries.
4. Issue such orders as may be necessary to effectuate the purposes of this Act and enforce the same by all appropriate administrative and judicial process.
5. Maintain an inventory of public water systems within the state, which inventory may consist of such information as the department deems necessary.
6. Conduct sanitary surveys of public water systems within the state.
7. Adopt rules and regulations relating to maximum contaminant levels, monitoring and analytical requirements and reporting, public notification, and record keeping which the department determines are necessary to protect public health and welfare.
8. Adopt rules and regulations relating to the siting, construction, operation, and modification of public water systems which the department determines are necessary to prevent violation of maximum contaminant levels.
9. Require the submission of plans, specifications, and

- such other information as it deems necessary.
10. Establish a plan for the provision of safe drinking water under emergency circumstances.
 11. Require each supplier of water to keep such records and make such reports to the department as it may deem necessary.
 12. Establish a schedule of fees that may be charged by the department for laboratory tests conducted at the request of any supplier of water; such fees shall be deposited in the general fund.
 13. Require any supplier of water to notify the users of such public water system of any violations of any provision of this Act, any regulation, the terms or conditions of any approval, any variance or exemption, or any order issued by the department.
 14. Request and accept grants of funds or services from any federal or state agency, or any other source, public or private, and to administer such grants in accordance with any terms or conditions thereof. Any such grants received shall be used only for the purposes for which they are made.
 15. Designate the state department of health as the state safe drinking water agency for all purposes of the federal Safe Drinking Water Act and is authorized to take all actions necessary and appropriate to secure for the state the benefit of such Act and any grants made thereunder.

SECTION 4. APPROVAL OF WATER SYSTEMS.)

1. No person shall construct, install, modify, use, or operate a public water system without prior approval from the department or in violation of the terms of, conditions imposed upon, or order of the department concerning such approval.
2. The department shall provide for the issuance, suspension, revocation, modification, and renewal of any approval required pursuant to this section.
3. Approval by the department shall not relieve any person of the responsibility to comply with any requirements of law or any rule or regulation.
4. The department may provide for the collection of reasonable fees for the approval required pursuant to this section. Such fees shall be deposited in

the general fund.

SECTION 5. VARIANCES AND EXEMPTIONS.) The department may issue variances or exemptions and make rules and regulations governing the issuance, denial, modification, revocation, and suspension of the same to noncomplying water systems. Such variances and exemptions shall be accompanied by a compliance time schedule requiring compliance within such time as the department shall determine.

SECTION 6. RIGHT OF ON-SITE INSPECTION.)

1. Any duly authorized officer, employee, or agent of the department may enter and inspect any property, premise, or place on or at which a public water system is located or is being constructed, installed, or established at any reasonable time for the purpose of ascertaining the state of compliance with this Act and rules and regulations adopted pursuant thereto. If requested by the owner or operator of the premises, a report setting forth all facts found which relate to compliance status shall be forwarded to that owner or operator.
2. The department may at any reasonable time conduct tests and take samples of water and other materials which affect or may affect maximum contaminant levels at any public water system and shall have the power to have access to and copy any records required by department rules or regulations to be maintained, and to inspect any monitoring equipment located on the premises.

SECTION 7. CERTIFICATION OF LABORATORIES.) No laboratory analysis of water taken from a public water system or any report of such analysis required by this Act or any regulation adopted pursuant to this Act shall be accepted by the department unless such analysis or report shall be made by the division of public health laboratories of the department or by any other laboratory certified by the department for such purposes. The department shall provide for the certification of any laboratory, for the purposes of this section, which meets such criteria as the department may establish to insure the accuracy of laboratory analyses.

SECTION 8. ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.) Any proceeding under this Act for:

1. The issuance or modification of rules and regulations including emergency orders; or
2. The determination of compliance with rules and regulations of the department;

shall be conducted in accordance with the provisions of chapter 28-32, and appeals may be taken as therein provided. Where an emergency

exists requiring immediate action to protect the public health and safety, the department may, without notice or hearing, issue an order reciting the existence of such emergency. Notwithstanding any provision of this Act, such order shall be effective immediately, but on application to the department within ten days of such order any person to whom such order is directed shall be afforded a hearing. Such hearing shall be in accordance with chapter 28-32 of the North Dakota Century Code. On the basis of such hearing, the emergency order shall be continued, modified, or revoked, within thirty days after such hearing.

SECTION 9. INJUNCTION PROCEEDINGS.) The violation of any provision of this Act, or any rule, regulation, or order issued thereunder, is declared a nuisance inimical to the public health, welfare, and safety. Whenever in the judgment of the department any person has engaged in or is about to engage in any acts or practices which constitute a violation of this Act, or any rule, regulation, or order issued hereunder, the department may maintain an action in the name of the state enjoining such action or practices or for an order directing compliance and, upon a showing by the department that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

SECTION 10. ENFORCEMENT - PENALTIES - INJUNCTION.)

1. If, after the completion of the administrative hearing process, the department determines that a violation of this Act, or any rule, regulation, or order of the department issued under this Act has occurred, it shall make all of its evidence and findings available to the attorney general for use in any remedial action his office determines to be appropriate, including an action for injunctive relief.
2. Any person who willfully violates this Act or any regulation or order of the department shall be punished by a civil penalty of not more than five thousand dollars per day of violation.

Nothing in this section shall be construed to deny use of the remedy of injunctive relief where it is deemed appropriate.

SECTION 11. SHORT TITLE.) This Act shall be known as the "North Dakota Safe Drinking Water Act of 1977".

Approved March 11, 1977

CHAPTER 574

HOUSE BILL NO. 1181
(Mertens, Berg)

DEVILS LAKE BASIN ADVISORY COMMITTEE

AN ACT to continue the Devils Lake basin advisory committee, 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 the waters of the Devils Lake basin and other natural resources of the basin are threatened with deterioration and degeneration, which may endanger the natural stability and economic productivity of the basin. It is further found and declared that by virtue of the special conditions and circumstances of the natural ecology, agricultural pattern, conservation interests, and human needs of the Devils Lake basin, the basin is experiencing problems of resource use and deficiencies of water resource control; and that there is a need to maintain an equilibrium between the basin's natural endowment and its man-made environment, to preserve the recreational opportunities of the region, and to enhance the agricultural productivity of the basin. It is therefore imperative that the basin-wide planning advisory committee be continued to develop and implement a basin plan of water and related resource conservation and orderly development.

SECTION 2. DEFINITIONS.) Unless the context and subject matter otherwise requires:

1. "Commission" shall mean the North Dakota state water commission;
2. "Advisory committee" shall mean the Devils Lake basin advisory committee; and
3. "Basin" shall mean the Devils Lake basin.

SECTION 3. ADVISORY COMMITTEE - COMPOSITION.) There is hereby created a Devils Lake advisory committee, which committee shall consist of:

1. The chairman of the water commission, or his representative.
2. One representative from each of the Benson, Cavalier, Nelson, Towner, Pierce, Ramsey, Rolette, and Walsh county water management districts, who shall be appointed by the respective district's board of commissioners.
3. One member of the Devils Lake city commission, who shall be selected by such city commission.
4. One representative to be designated by the Fort Totten tribal council.
5. The regional director of the fish and wildlife service, United States department of the interior, or his representative.
6. One representative of region no. 1 of the North Dakota soil conservation districts, who shall be chosen by the executive board of the association of soil conservation districts.
7. One representative of the north central regional council, who shall be chosen by such council.
8. One representative of the Garrison diversion conservancy district, who shall be chosen by the chairman of the district.
9. Two citizens to be selected by the chairman of the commission. One of the two citizens shall be a recognized conservationist.

In the event of a consolidation or division of existing water management districts pursuant to sections 61-16-48 and 61-16-49, the representation of the several water management districts on the advisory committee shall be adjusted accordingly by the chairman of the commission.

SECTION 4. MEETINGS OF THE ADVISORY COMMITTEE - QUORUM - ADVISORY COMMITTEE TO ADOPT BYLAWS.) The advisory committee shall adopt such bylaws as are necessary for the conduct of the business affairs of the district as it may determine necessary, including the time and place of regular meetings of the advisory committee. Members shall elect a chairman and vice chairman. They shall also elect a secretary-treasurer, which offices may be held by the same person and either or both offices may be held by someone not a member of the advisory committee. Special meetings may be called by the secretary on order of the chairman of the advisory committee or upon the written request of the majority of the advisory committee. Notice of

special meetings shall be given to each member of the advisory committee at least three days before such meeting, provided that a special meeting may be held at any time when all members of the advisory committee are present or consent thereto in writing. A majority of the members of the advisory committee shall constitute a quorum for the transaction of business, but any number may adjourn the meeting for want of a quorum.

The state engineer shall organize and conduct the first meeting of the advisory committee until a chairman is elected.

SECTION 5. EXECUTIVE DIRECTOR.) The advisory committee may appoint an executive director. It shall be the responsibility of the executive director to carry out the policies and directions of the advisory committee and shall, within the limits of personnel and funds available, perform such other duties as may be assigned to him by the advisory committee.

SECTION 6. COMPENSATION OF ADVISORY COMMITTEE MEMBERS.) Each member of the advisory committee, not eligible for compensation by the United States, the state, an agency of the state, or a political subdivision, shall be paid a per diem of thirty-five dollars for each day he engages in the official business of the advisory committee, if he submits a claim for such payment, and shall also be reimbursed for necessary and actual expenses at the rates and in the manner provided by law for other state officers.

SECTION 7. ADVISORY COMMITTEE BUDGET - TAXES.) After organization of the advisory committee, and on or before July first of each year thereafter, the advisory committee shall, by resolution, adopt a budget showing estimated expenses for the ensuing fiscal year commencing July first, and the contributions of each member water management district as determined by prorating the taxable valuation of that portion of the district within the basin. The advisory committee shall submit such budget to the county commissioners of each county represented on the advisory committee. The board of county commissioners shall, by resolution, levy a tax of not to exceed one mill on each dollar of taxable valuation in the basin and direct the county auditor to spread the levy on the tax roll. The boundaries of the basin shall be determined by the state engineer.

SECTION 8. POWERS AND DUTIES.) The advisory committee shall serve as the focal point within the basin for comprehensive water and related natural resource planning. Its principal function shall be that of a planning and coordinating committee for the water resources programs on all levels of local government. The advisory committee shall be vested with the power and duty to:

1. Plan the development and implementation of long-term water resources policies for the basin as a whole.
2. Coordinate and appraise water resource programs administered by all levels of government and private enter-

prise in the basin.

3. Develop a comprehensive basin management plan, to include:
 - a. A water use plan for the integrated utilization of water and related land resources within the basin.
 - b. A conservation plan for the preservation, development, utilization, and management of water and other related natural resources within the basin.

The plan developed under this subsection shall be accomplished with the input of local and state-wide interests.

4. Cooperate with the United States government, and any appropriate agency or department thereof, concerning water resources planning programs within the basin.
5. Encourage cooperation among public and private conservation groups, and commercial organizations.

The advisory committee may recommend legislation to the governor designed to enhance water management and planning for the several water management agencies having jurisdiction over the waters in the basin.

In formulating a basin management plan, the advisory committee shall seek to harmonize the needs of the basin as a whole, the plans of the counties and municipalities within the basin, the plans and planning activities of the region, state, federal, and other public agencies and nongovernmental agencies and organizations which affect or are concerned with planning and development within the region. Where necessary for the realization of the basin plan, the committee may engage in collaborative planning with local governmental jurisdictions located outside the basin, but contiguous to the basin's boundaries.

SECTION 9. LIMITATION.) This Act shall not diminish or in any way affect the existing powers or duties of the commission, water management districts, or other governmental subdivisions of the state of North Dakota to manage and control the surface waters of the basin or to develop or construct projects in connection therewith.

SECTION 10. STATE WATER COMMISSION TO PROVIDE ADMINISTRATIVE SUPPORT.) The advisory committee shall, for administrative purposes, be a division of the state water commission. The commission shall advise, assist, cooperate with, and enter into all contracts necessary and desirable on behalf of the advisory committee. The commission is hereby appointed fiscal agent for the advisory committee, and as such is authorized to receive and expend gifts,

donations, grants, and other financial aids and funds received for the benefit of the advisory committee.

SECTION 11. APPROPRIATION.) There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$18,000.00, or so much thereof as may be necessary, to the state water commission, for the purpose of carrying out the provisions of this Act, for the biennium beginning July 1, 1977, and ending June 30, 1979.

SECTION 12. EXPIRATION.) This Act shall expire June 30, 1979.

Approved April 6, 1977