

WATERS

CHAPTER 738

HOUSE BILL NO. 1067
(Murphy)

OIL AND GAS WELLS TO WATER WELLS

AN ACT to amend and reenact section 61-01-27 of the North Dakota Century Code, relating to the conversion of oil and gas exploration and production wells to water wells.

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

SECTION 1. AMENDMENT. Section 61-01-27 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-01-27. Prohibition on Procedure for converting mineral wells to water wells. In order to protect the public's health, safety, and welfare and to protect this state's ground water supplies, and except for purposes related to chapters 38-08 and 38-08.1, no well that has been drilled for the purpose of the exploration or production of oil or gas may be converted to a water well without first obtaining approval from the industrial commission. Any person who converts an exploration or production well to a water well ~~shall~~ be without first obtaining approval from the industrial commission is guilty of a class A misdemeanor and shall be required to close the well in accordance with state standards and bear all costs associated with the closure.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 739

HOUSE BILL NO. 1108
(Committee on Natural Resources)
(At the request of the State Engineer)

STATE ENGINEER'S AUTHORITY

AN ACT to repeal section 61-02-75 of the North Dakota Century Code, relating to the state engineer's authority to administer oaths and issue subpoenas.

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

SECTION 1. REPEAL. Section 61-02-75 of the North Dakota Century Code is hereby repealed.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 740

HOUSE BILL NO. 1101
(Committee on Natural Resources)
(At the request of the Water Commission)

GAME AND FISH DEPARTMENT WATER PERMITS

AN ACT to cancel and declare forfeited water permits numbered 814, 1470, and 1094, relating to the right of the North Dakota game and fish department to appropriate water; and to declare an emergency.

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

SECTION 1. Cancellation of water permit number 814. The right of the North Dakota game and fish department to appropriate five hundred acre-feet of water from the Blacktail Creek for fish propagation and recreation purposes under water permit number 814 is canceled and all rights under the permit are forfeited.

SECTION 2. Cancellation of water permit number 1470. The right of the North Dakota game and fish department to appropriate ninety acre-feet annually and to store eight hundred thirty acre-feet of water from the Blacktail Creek for recreation purposes under water permit 1470 is canceled and all rights under the permit are forfeited.

SECTION 3. Cancellation of water permit number 1094. The right of the North Dakota game and fish department to appropriate ninety-five acre-feet of water from the Little Missouri River for recreation under water permit number 1094 is canceled and all rights under the permit are forfeited.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 741

HOUSE BILL NO. 1298
(Representatives Shaw, Ulmer, Tokach)
(Senators Mushik, W. Meyer)

WATER RESOURCE BOARD IMPROVEMENT AGREEMENTS

AN ACT to create and enact a new section to chapter 61-16.1 of the North Dakota Century Code, relating to agreements between water resource boards and state and federal agencies for certain improvements.

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

SECTION 1. A new section to chapter 61-16.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Water resource boards - Agreements with state or federal agencies for certain improvements. A water resource board may enter into an agreement with any federal or state agency, or any combination thereof, for the construction of a project, under the terms of which the contract for the work is to be let by the federal or state agency or any combination thereof. If under the terms of the agreement at least fifty percent of the total cost of constructing the project is to be paid by the agency or agencies and if any portion of the cost of the project is to be paid by the levy of special assessments, the board may by resolution create a project assessment district for the purpose of levying special assessments to finance the amount that the district will be obligated to pay in accordance with the agreement, over and above any other funds which are on hand and properly available for that purpose. The assessment district must be of a size and form as to include all properties which in the judgment of the board, after consultation with a registered engineer designated by the board for that purpose, will be benefited by the construction of the proposed project, and the board shall direct the engineer to prepare a map showing the boundaries of the proposed assessment district. The board shall by resolution declare the necessity of the project, set forth the general nature and purpose of the proposed project, estimate the total cost of the project, and the approximate amount or fraction of the cost which the district will be obligated to pay under the agreement, and the fact that this amount, or a lesser amount as the board may specify, is proposed to be paid by the levy of special

assessments upon property within the assessment district determined to be benefited by the project. The board shall cause the resolution of necessity together with a copy of the map showing the boundaries of the assessment district and a notice stating the date and time by which the owners of any property liable to be specially assessed for the proposed project must file written protests against the project with the secretary of the board. The notice must also set forth the time and place where the board shall meet to hear and determine the sufficiency of any protests against the project. The notice must be published once each week for two consecutive weeks in the newspaper or newspapers of general circulation in the district and in the official county newspaper of each county in which the benefited lands are located. Within five days after the first publication of the resolution the board shall cause a copy of the resolution to be personally served upon any county, city, or township, in its corporate capacity which may be benefited directly or indirectly from the construction of the proposed project and upon any county which may become liable for any deficiency in the fund to be created for the project, by delivering a copy of the resolution to any member of the governing body thereof. The meeting must be held not less than thirty days after the first publication of the resolution, at which time the board shall hear and determine the sufficiency of the written protests. If the board finds the protests filed within thirty days after the first publication of the resolution contain the names of the owners of a majority by taxable value of the land subject to assessment for the construction of the proposed project, then the protests bar further proceedings. If the board finds the protests to be insufficient the board may proceed with the project. In any assessment district created under this section the board may dispense with all other requirements of this chapter, other than those stated in this section. After the contract for the work has been let, the board may issue warrants on the fund of the project for the total amount of the cost thereof, and the board, without holding the hearing required by section 61-16.1-18, shall proceed to determine and levy any assessments against property benefited by the project and prepare an assessment list all in accordance with the procedures required by sections 61-16.1-21 through 61-16.1-24, both inclusive. The provisions of sections 61-16.1-25 through 61-16.1-36, both inclusive, shall be applicable to such assessments and the special warrants issued pursuant to this section.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 742

SENATE BILL NO. 2237
(Committee on Natural Resources)
(At the request of the State Engineer)

APPEALS TO THE STATE ENGINEER

AN ACT to amend and reenact section 61-16.1-23 of the North Dakota Century Code, relating to appeals of assessments to the state engineer.

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

SECTION 1. AMENDMENT. Section 61-16.1-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-23. Appeal to state engineer. After the hearing provided for in section 61-16.1-22, affected landowners and any political subdivision subject to assessment, having not less than twenty-five percent of the possible votes, as determined by section 61-16.1-20, who believe that the assessment had not been fairly or equitably made, or that the project is not properly located or designed, may appeal to the state engineer by petition, within ten days after the hearing on assessments, to make a review of the assessments and to examine the location and design of the proposed project. Upon receipt of such petition the state engineer shall examine the lands assessed and the location and design of the proposed project, and if it appears that the assessments have not been made equitably, he may proceed to correct the same, and his correction and adjustment of said assessment shall be final. Should it appear that, in the judgment of the state engineer, the project has been improperly located or designed, he may order a relocation and redesign. Such relocation and redesign shall be followed in the construction of the proposed project. Any Upon filing a bond for two hundred fifty dollars with the board for the payment of the costs of the state engineer in the matter, any landowner or political subdivision who or which claims that he or it will receive no benefit at all from the construction of a new project may appeal to the state engineer within ten days after the hearing on assessments, the question of whether there is any benefit. The state engineer shall not determine the specific amount of benefit upon an appeal by an individual landowner or political subdivision, but shall only determine if there is any benefit to the landowner or political subdivision, and the determination of the state engineer upon such question shall be final.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 743

HOUSE BILL NO. 1554
(Representative Dalrymple)
(Senator Tweten)

DRAIN MAINTENANCE

AN ACT to amend and reenact sections 61-16.1-48 and 61-21-43 of the North Dakota Century Code, relating to the maintenance of drains.

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

SECTION 1. AMENDMENT. Section 61-16.1-48 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-48. Assessment of costs of cleaning and repairing drains. The cost of cleaning out and repairing an assessment drain ~~shall~~ or a drainage structure constructed by any governmental entity for which no continuing funds for maintenance are available must be assessed pro rata against the lands benefited in the same proportion as the original assessment of the costs in establishing such drain, or in accordance with any reassessment of benefits in instances where there has been a reassessment of benefits under the provisions of section 61-16.1-26. In cases where no assessment for construction costs or reassessment of benefits has been made, the water resource board shall make assessments for the cost of cleaning and repairing such drain or drainage structure constructed by any governmental entity for which no continuing funds for maintenance are available in accordance with the provisions of this chapter for the establishment of a new project. The governing body of any incorporated city, by agreement with the board, is authorized to contribute to the cost of cleaning out, repairing, and maintaining a drain in excess of the amount assessed under this section, and such excess contribution may be expended for such purposes by the board.

SECTION 2. AMENDMENT. Section 61-21-43 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-43. Assessment of costs of cleaning and repairing drains. The cost of cleaning out and repairing a drain ~~shall~~ or a drainage structure constructed by any governmental entity for which no continuing funds for maintenance are available must be assessed pro

rata against the lands benefited in the same proportion as the original assessment of the costs in establishing such drain, or in accordance with any reassessment of benefits in instances where there has been a reassessment of benefits under the provisions of section 61-21-44. In cases where no assessment for construction costs or reassessment of benefits has been made, the board shall make assessments for the cost of cleaning and repairing such drain or drainage structure constructed by any governmental entity for which no continuing funds for maintenance are available after a hearing thereon as prescribed in this chapter in the case of a hearing on the petition for the establishment of a new drain. The governing body of any incorporated city, by agreement with the board, is authorized to contribute to the cost of cleaning out, repairing, and maintaining a drain in excess of the amount assessed under this section, and such excess contribution may be expended for such purposes by the board.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 744

HOUSE BILL NO. 1217
(Committee on Natural Resources)
(At the request of the State Engineer)

MAINTENANCE OF WATER PROJECTS

AN ACT to create and enact two new sections to chapter 61-16.1 of the North Dakota Century Code, relating to financing the maintenance of water projects.

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

SECTION 1. A new section to chapter 61-16.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Petition for maintenance - Bond required. A written petition for maintenance of a project other than an assessment drain may be made to the board under this section. The petition shall designate the maintenance requested. The petition must be signed by six, or if a majority is less than six, by a majority of the landowners within the area benefited by the project. The petitioners shall supply a surety bond in the amount of two hundred fifty dollars. The bond must be for the payment of costs if the board finds the petition was improvidently made.

SECTION 2. A new section to chapter 61-16.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Maintenance of project - Exception. If, upon receipt of a petition meeting the requirements of section 1 of this Act, or upon the board's own motion, the board determines a project established under the provisions of this chapter requires maintenance, the board may provide the required maintenance by using the same method used initially to finance the project. Unless otherwise provided by law or agreement, the participation of the state in financing the initial project does not bind the state to finance any maintenance. Any maintenance financed through special assessments may not exceed the maximum levy established by 61-16.1-45. This section does not apply to maintenance of assessment drains.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 745

SENATE BILL NO. 2540
(Senator Tweten)
(Representatives Dalrymple, Kent, Almlie)

FEDERAL PROJECT MAINTENANCE ASSESSMENTS

AN ACT to create and enact a new section to chapter 61-16.1 of the North Dakota Century Code, relating to maintenance assessments for federally constructed projects.

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

SECTION 1. A new section to chapter 61-16.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Maintenance of federally constructed projects - Assessment district established. If a water resource board enters or has been assigned rights in a contract with a federal agency for construction of a flood control project or soil conservation service project, and the terms of the contract require the water resource board to provide for maintenance of the project after construction, the water resource board may finance in whole or in part the maintenance of the project with funds raised through the collection of a special assessment levied against the land and premises benefited by maintenance of the project. The assessments to be levied may not exceed fifty cents per acre annually on agricultural lands and may not exceed fifty cents annually for each five hundred dollars of taxable valuation of nonagricultural property. No action is required for the establishment of the assessment district or the assessments except the water resource board must approve the maintenance and assessment therefore by a vote of two-thirds of the members and the board of county commissioners of the county must approve and levy the assessments to be made by a vote of two-thirds of its members.

Approved April 7, 1987
Filed April 9, 1987

CHAPTER 746

SENATE BILL NO. 2032
(Legislative Council)
(Interim Agriculture Committee)

WATER PROJECT DEVELOPMENT ASSISTANCE

AN ACT to provide assistance to landowners in developing water projects.

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

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

1. "Commission" means the state water commission.
2. "Cost of works" means necessary costs for designing, engineering, surveying, and construction of a water project.
3. "Landowner" means any person who holds ownership rights in real estate sufficient to have a legally protectable interest in the real estate, including a tenancy or leasehold interest.
4. "Lender" includes the Bank of North Dakota.
5. "Person" does not include any governmental entity or an urban or rural water users association.
6. "Water project" means any project for conserving, draining, and distributing water, including reservoirs, dams, diversion canals, distribution canals, channels, ditches, lateral ditches, drains, dikes, and pumping units, constructed for the purpose of irrigation, watering stock, or supplying water for domestic, agricultural, recreational, fish and wildlife use, flood control, drainage, water conservation and regulation, storage, diversion, or carrying of water.

SECTION 2. Industrial commission to issue bonds - Program administered by commissioner of agriculture. Bonds may be issued by the industrial commission pursuant to chapter 4-36 for the purpose of making loans

to lenders and requiring the proceeds of the loans to be used by the lenders to make loans to landowners for water projects. The industrial commission, for the administration of the program established pursuant to this Act, may delegate to the commissioner of agriculture, and the commissioner of agriculture is authorized to exercise, all administrative powers granted to the industrial commission pursuant to chapter 4-36.

SECTION 3. Contents of application - Approval by water commission. A water project and the cost of works must be approved by the commission before a loan to finance the cost of works is eligible to be made by a lender with the proceeds of a loan from the industrial commission. An application for approval must be in writing in a form prescribed by the commission and must include:

1. The name and address of the applicant;
2. An economic analysis of the water project;
3. An engineering analysis of the water project;
4. An analysis of the water project's impact upon surrounding land and landowners;
5. Copies of all governmental permits and licenses and private rights or permissions required to complete the water project;
6. Maps, plans, and other documentation describing the water project and its location;
7. Proof of the necessary ownership rights to construct the water project; and
8. Any other information the commission may require.

SECTION 4. Review of applications - Conditions - Approval. An applicant shall submit the application to the commission. The commission shall review all applications received. If the commission determines that further information is required or that the proposed water project is not meritorious or feasible, the application must be returned to the applicant. Upon return of the application, an applicant may provide the information or make necessary modifications and refile the application. An application that has been returned twice may not be resubmitted without prior approval of the commission. If no further information is required and the commission determines that the proposed water project is meritorious and feasible, the commission shall approve the application and forward it to the commissioner of agriculture.

SECTION 5. Meritorious and feasible water project - Determination. A water project is meritorious and feasible if it meets the following criteria:

1. The benefit of the water project must exceed all costs of the water project, or be beneficial for water conservation, fish and wildlife, and recreation use.
2. The water project must be designed, engineered, surveyed, and constructed in a safe manner using existing proven knowledge and techniques.
3. All governmental permits and rights and private rights or permissions required to complete the water project must be obtained.

SECTION 6. Eminent domain unaffected. The approval or provision of financial assistance for any water project under this Act does not change the right of any entity to exercise the power of eminent domain.

SECTION 7. Assumption of liability - Condition to obtaining funding. The state assumes no liability and provides no guarantee that a water project that is financially assisted under this Act will not cause damages or will operate as expected. In order to obtain any financial assistance under this Act, a landowner shall agree in writing to indemnify and hold harmless the state, its employees, and its agents and assigns, for any liability or claim of liability arising from the establishment, construction, reconstruction, repair, maintenance, or operation of the water project.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 747

SENATE BILL NO. 2902
(Select Committee on Appropriations)
(At the request of the Water Commission)
(Approved by the Committee on Delayed Bills)

SOUTHWEST PIPELINE CONTRACT PREFERENCES

AN ACT to amend and reenact section 61-24.3-03.1 of the North Dakota Century Code, relating to a preference for residents on Southwest Pipeline Project contracts; and to provide an effective date.

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

SECTION 1. AMENDMENT. Section 61-24.3-03.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-24.3-03.1. Preference for resident pipeline manufacturers and bidders for labor and services. Any contracts for the purchase of pipeline materials, labor, or services awarded by the state water commission in regard to the construction of the southwest water pipeline project must be awarded to North Dakota resident pipeline manufacturers and North Dakota resident bidders for labor and services making the lowest responsible bids if those bids do not exceed by more than five percent the lowest responsible bid submitted by a nonresident pipeline manufacturer or bidder for labor or services. As used in this section, "North Dakota resident pipeline manufacturers and bidders for labor or services" means bidders or sellers who have maintained a bona fide place of business within this state for at least five years prior to the date on which the contract bid on is awarded. If the state water commission awards any contract for pipeline materials, labor, or services in regard to construction of the southwest water pipeline project to a nonresident bidder, the commission shall publicly give notice in a newspaper of general circulation regarding the specific reasons why it did not award the contract to a resident bidder. This section shall not apply to contracts that involve federal moneys where a preference would be contrary to federal laws or regulations or to architect, engineer, professional right of way, and land surveying services.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on December 8, 1986.

Approved December 5, 1986
Filed December 8, 1986

CHAPTER 748

HOUSE BILL NO. 1365
(Representatives Wald, Martin, Meyer)
(Senators Krauter, David)

SOUTHWEST PIPELINE TREATMENT PLANTS

AN ACT to amend and reenact section 61-24.3-04 of the North Dakota Century Code, relating to the extent and type of water treatment and the location for water treatment plants for the southwest pipeline project.

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

SECTION 1. AMENDMENT. Section 61-24.3-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-24.3-04. Water treatment. As provided in the engineering preliminary design final report for the southwest pipeline project, state water commission project no. 1736, dated September 1982, the construction of the southwest pipeline project includes a single water treatment plant near the source for treatment of water. The extent and type of water treatment and the location of a water treatment plant or plants for the southwest pipeline project shall be determined by the commission, in accordance with law and as in the judgment of the commission the interests of the state and the water user entities of the southwest pipeline project are best served. In determining the location of the water treatment plant or plants, the commission may only consider alternatives that will provide treated water to all potential using entities at a cost not to exceed the cost of water from the single treatment facility originally provided for in the engineering preliminary design final report for the southwest pipeline project, state water commission project no. 1736 dated September 1982. Any existing water treatment facility that is to be used in the final pipeline design must be made available to the state in operable condition free of deferred maintenance costs and at a cost that does not exceed the actual depreciation, maintenance, and operation costs of that facility. A water treatment facility is in operable condition if, at the time it becomes part of the southwest pipeline project, it is meeting the needs of its current users. Capital improvements necessary for upgrading any existing water treatment facility to be used in the southwest pipeline project must be borne by the state water commission.

Approved April 14, 1987
Filed April 15, 1987