

WATERS

CHAPTER 745

SENATE BILL NO. 2174
(Committee on Natural Resources)
(At the request of the State Engineer)

WATER OBSTRUCTIONS AND APPROPRIATIONS

AN ACT to create and enact a new section to chapter 61-03 of the North Dakota Century Code, relating to the authority of the state engineer to levy civil penalties for unauthorized construction of works or appropriation of water; and to amend and reenact sections 61-01-23, 61-02-41, and 61-03-21.2 of the North Dakota Century Code, relating to access to rivers and streams for removal of obstructions and authority of the state engineer to survey water appropriations and regulate unauthorized or unsafe structures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

SECTION 2. AMENDMENT. Section 61-02-41 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-41. ~~Commission may enter to make surveys~~ Surveys for the diversion of waters. For the purpose of regulating the diversion of the natural flow of waters, the ~~commission~~ state engineer may enter upon the means and place of use of all appropriators for the purpose of making surveys of respective rights and seasonal needs.

SECTION 3. AMENDMENT. Section 61-03-21.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-03-21.2. Removal of unsafe or unauthorized works. If the state engineer pursuant to his authority under title 61 determines that works are

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

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

SECTION 4. A new section to chapter 61-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Penalties - Civil. In addition to criminal sanctions that may be imposed pursuant to law, a person who knowingly violates any provision of this title or any rules adopted under this title may be assessed a civil penalty not to exceed five thousand dollars for each day the violation occurred and continues to occur and may be required by the state engineer to forfeit any right to the use of water. The civil penalty or forfeiture of a right to use water may be adjudicated by the courts or by the state engineer through an administrative hearing under chapter 28-32.

If a civil penalty levied by the state engineer after an administrative hearing is not paid within thirty days after a final determination that the civil penalty is owed, the civil penalty may be assessed against the property of the landowner responsible for the violation leading to the assessment of the penalty. The assessment must be collected as other assessments made under this title are collected. Notwithstanding the provisions of section 57-20-22, all interest and penalties due on the assessment must be paid to the state. Any civil penalty assessed under this section must be in addition to any costs incurred by the state engineer for enforcement of the order.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 746

HOUSE BILL NO. 1188
(Committee on Natural Resources)
(At the request of the State Engineer)

WATER PROJECT CONDEMNATION

AN ACT to create and enact a new section to chapter 61-02 of the North Dakota Century Code, relating to the condemnation power of the state water commission for the southwest pipeline project; and to amend and reenact subsection 2 of section 61-16.1-09 of the North Dakota Century Code, relating to the powers of water resource boards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY 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:

Condemnation by the water commission. Whenever a right of way is to be taken by condemnation proceedings for any purpose authorized by chapter 61-24.3, the commission may take possession of the right of way after making a written offer to purchase and depositing the amount of the offer with the clerk of the district court of the county wherein the right of way is located. The clerk shall immediately notify the property owner in writing of such deposit. Within thirty days after receiving such notice, the property owner may appeal to the district court by serving notice of appeal upon the water commission and the matter must be tried at the next term of court with a jury, unless a jury be waived, in the manner prescribed for trials under chapter 32-15.

SECTION 2. AMENDMENT. Subsection 2 of section 61-16.1-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Exercise the power of eminent domain in the manner provided by title 32 for the purpose of acquiring and securing any rights, titles, interests, estates, or easements necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of dams, flood control projects, and other water conservation, distribution, and supply works of any nature and to permit the flooding of lands, and to secure the right of access to such dams and other devices and the right of public access to any waters impounded thereby. Provided, however, that when the interest sought to be acquired is a right of way for any project authorized in this chapter for which federal funds have been appropriated, the district, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county wherein the right of way is located, may thereupon take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota.

Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 747

SENATE BILL NO. 2091
(Committee on Natural Resources)
(At the request of the State Engineer)

STATE ENGINEER INSPECTION DUTIES

AN ACT to repeal sections 61-03-07 and 61-03-09 of the North Dakota Century Code, relating to the state engineer's duty to investigate coal-bearing lands and to investigate bridges and culverts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Sections 61-03-07 and 61-03-09 of the North Dakota Century Code are hereby repealed.

Approved March 17, 1989
Filed March 17, 1989

CHAPTER 748

HOUSE BILL NO. 1129
(Committee on Natural Resources)
(At the request of the State Engineer)

WATER USE PERMITS AND FEES

AN ACT to amend and reenact subsection 3 of section 61-04-01.1, sections 61-04-04.1, 61-04-05, 61-04-27, 61-04-29, and 61-04-30 of the North Dakota Century Code, relating to the definition of domestic use, application fees for water permits, notice of a water permit application, water use reports required by the state engineer, and enforcement of water rights and the enjoining of unauthorized uses through the administrative process; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 61-04-01.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- 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 [.40 hectare] 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, when the water is supplied by the individual or family unit. Also included within this use are "domestic rural uses" which must be defined by the state engineer by rule.

SECTION 2. AMENDMENT. Section 61-04-04.1 of the North Dakota Century Code is hereby amended and reenacted 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~~ water use fund of the state treasury:

- 1. For municipal or public use in municipalities or other entities of 2,500 population or over according to the latest federal census \$250
- 2. For municipal or public use in municipalities or other entities of less than 2,500 population according to the latest federal census \$150
- 3. For irrigation \$100
- 4. For industrial use of one c.f.s. or less, or seven hundred twenty-four acre-feet [893,039.52 cubic meters] or less \$150
- 5. For industrial use in excess of one c.f.s., or in excess of seven hundred twenty-four acre-feet [893,039.52 cubic meters] \$500

6. For recreation, livestock, or fish and wildlife \$ 50
7. For commercial recreation \$100

SECTION 3. AMENDMENT. Section 61-04-05 of 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 application is filed which complies with the provisions of this chapter and the rules and regulations established thereunder adopted under this chapter, the state engineer shall instruct the applicant to: ~~(1) give~~

1. Give notice thereof of the application by certified mail in the form prescribed by regulation rule, to all record title owners of real estate within a radius of one mile [1.61 kilometers] from the location of the proposed water appropriation site, except where:
 - a. If the one-mile ~~(1.61 kilometers)~~ [1.61-kilometer] radius extends within the geographical boundary of a city, the notice ~~shall~~ must be given to the governing body of such the 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~~
 - b. If the one-mile [1.61-kilometer] radius includes land within the geographical boundary of a rural subdivision where the lots are of ten acres [4.04 hectares] or less, the notice must be given to the governing body of the township or other governing authority for the rural subdivision and no further notice need be given to the record title owners of real estate within the geographical boundary of the rural subdivision;
 - c. If the one-mile [1.61-kilometer] radius includes a single tract of rural land which is owned by more than ten individuals, the notice must be given to the governing body of the township or other governing authority for that tract of land and no further notice need be given to the record title owners of that tract.
2. Provide the state engineer with an affidavit of notice by certified mail within sixty days from the date of the engineer's instructions to provide notice. If the applicant fails to file satisfactory proof of notice by certified mail within sixty days and in compliance with the applicable rules, the state engineer shall treat the application as an original application filed on the date of receipt of the affidavit of notice by certified mail in proper form. Upon receipt of a proper affidavit of notice by certified mail, the state engineer shall publish notice thereof of the application, in a form prescribed by regulation rule, in a newspaper of general circulation in the area of the proposed appropriation site, once a week for two consecutive weeks. Such The notice ~~shall~~ must give all essential facts as to the proposed appropriation, among them including the places of appropriation and of use, amount of water, the purpose for which it is to be used use, 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. The applicant shall pay all costs of the publication of notice.

SECTION 4. AMENDMENT. Section 61-04-27 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-27. Information filed with state engineer - Installation of measuring devices. On or before the first day of February of each year all water users persons holding a water permit, including irrigation districts, federal agencies, and political subdivisions, shall file with the state engineer, on forms supplied by the state engineer, topographic, mapping, foundation test borings, design, water use, and such other information as the state engineer shall require. The state engineer may also require any such water users persons to install measuring devices, which shall conform to the state engineer's specifications, at all points specified by the state engineer.

SECTION 5. AMENDMENT. Section 61-04-29 of the North Dakota Century Code is hereby amended and reenacted 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 an administrative proceeding or 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. Notwithstanding any other provision of law, the state engineer may issue administrative orders requiring the immediate cessation of water use when the state engineer has a reasonable belief that such use is unauthorized or continued use will damage the rights of prior appropriators.

SECTION 6. AMENDMENT. Section 61-04-30 of the North Dakota Century Code is hereby amended and reenacted 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 specifically authorizing such action, 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 violates the terms of the permit; 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.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 749

HOUSE BILL NO. 1179
(Whalen)

WEATHER MODIFICATION CONTRACT BONDS

AN ACT to amend and reenact sections 61-04.1-34 and 61-04.1-35 of the North Dakota Century Code, relating to the performance bond and bid bond required for weather modification contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-04.1-34 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04.1-34. Performance bond required. Before the board shall contract with any controller, it shall require the controller to furnish a surety bond or cash or negotiable securities for the faithful performance of the contract in such amount as determined by the board, conditioned that the licensee and his agents will in all respects faithfully perform all weather modification contracts undertaken with the board and will comply with all provisions of this chapter and the contract entered into by the board and the licensee.

SECTION 2. AMENDMENT. Section 61-04.1-35 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04.1-35. Bid bond required. All bids submitted to the board of weather modification for operations conducted under this chapter shall be accompanied by a separate envelope containing a bidder's bond or cash or negotiable securities in a sum equal to five percent of the full amount of the bid, executed by the bidder as principal ~~and~~ or by a surety company authorized to do business in this state as a guaranty that the bidder will enter into the contract if it is awarded to him.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 750

HOUSE BILL NO. 1397
(Hokana)

IRRIGATION DISTRICT DIRECTORS RESIDENCY

AN ACT to amend and reenact section 61-06-01 of the North Dakota Century Code, relating to the residency requirements of the board of directors of an irrigation district.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-06-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-06-01. Board of directors of irrigation district - Terms - Vacancies. If an irrigation district contains less than ten thousand irrigable acres [4046.86 irrigable hectares] of land and is not divided into precincts or divisions, the board of directors thereof shall consist of five directors who shall be residents of the state and electors of the district and shall be elected at large. Two directors elected at the election for the organization of the district shall serve until the first Tuesday in April following the first regular district election, and three directors shall serve until the first Tuesday in April following the second regular election.

If an irrigation district contains ten thousand irrigable acres [4046.86 irrigable hectares] or more, it shall be divided into five or seven divisions or precincts, as the case may be, and one director shall be elected from and by the electors of each division or precinct.

If an irrigation district contains ten thousand irrigable acres [4046.86 irrigable hectares] or more and is divided into five divisions or precincts, the board of directors of such irrigation district shall consist of five directors. Two directors elected at the election for the organization of the district shall serve until the first Tuesday in April following the first regular district election, and three directors shall serve until the first Tuesday in April following the second regular district election.

If an irrigation district contains ten thousand irrigable acres [4046.86 irrigable hectares] or more and is divided into seven divisions or precincts, the board of directors of such irrigation district shall consist of seven directors. Three directors elected at the election for the organization of the district shall serve until the first Tuesday in April following the first regular district election, and four directors shall serve until the first Tuesday in April following the second regular district election.

The terms of office of the directors elected at such first election for the organization of the district shall be determined by lot at their first meeting. Directors elected at subsequent elections shall serve for four

years and until their successors are duly elected and qualified. In case the office of any director shall become vacant, the remaining members of the board shall fill the vacancy by appointment. A director appointed to fill a vacancy shall serve the unexpired term of the director whose office he has been appointed to fill. In the event that vacancies shall occur in the offices of a majority of the directors of an irrigation district, the remaining members and the state engineer shall fill the vacancies; and in the event that the offices of all the directors shall become vacant, the state engineer shall appoint the members of the board and they shall serve until the next regular election of the district. Their successors in office shall then be elected to serve the unexpired term of the directors whose offices became vacant. The unexpired term of office which each director thus elected shall fill shall be determined by lot.

At the regular irrigation district election in 1984, the secretary of any existing irrigation district which has only three directors shall include in the notice of election a statement that irrigation districts must have five directors, and that the two new positions for director will be filled at the upcoming district election. The notice shall also state that any elector desiring to be a candidate for the office of district director and to have the elector's name appear on the ballot for one of the new openings for the office of director must file a request with the secretary of the board not less than twenty days before the election. For the irrigation districts with only three directors, the directors elected for the two new positions, and the director elected to fill the office of the existing director whose regular term would have expired in 1984, shall be elected to four-year terms. The remaining directors of existing irrigation districts with three directors whose terms do not expire in 1984 shall serve until the next regular election of the irrigation district, which shall be in 1986. Directors elected at the regular election of an irrigation district in 1986 shall then be elected for four-year terms.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 751

HOUSE BILL NO. 1281
(Representatives Marks, Stofferahn, Dalrymple)
(Senators Axtman, Vosper, Dotzenrod)

IRRIGATION WATER ON ROADWAYS

AN ACT to create and enact a new section to chapter 61-14 of the North Dakota Century Code, relating to placing and operating irrigation works or equipment near, on, or over roadways; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 61-14 of the North Dakota Century Code is hereby created and enacted to read as follows:

Willfully allowing water to flow or fall upon roadway prohibited - Penalty. No person may place, erect, or operate a sprinkler irrigation system, center pivot irrigation system, or other irrigation works or equipment upon or across any highway, street, or road or in such a manner as to willfully allow water from the irrigation works or equipment to flow or fall upon any highway, street, or road. This section does not apply to the transportation of irrigation works or equipment upon a highway, street, or road. A person violating this section is guilty of an infraction.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 7, 1989
Filed April 7, 1989

CHAPTER 752

HOUSE BILL NO. 1284
(Wilkie, P. DeMers, Gilmore, Gerntholz, Nowatzki)

WATER PROJECT APPROVAL

AN ACT to amend and reenact sections 61-16.1-12.1, 61-16.1-18, and 61-16.1-19 of the North Dakota Century Code, relating to approval of proposed water projects.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16.1-12.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-12.1. 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 their votes on the proposed project with the secretary of the board to be mailed to each landowner affected by the proposed project as determined by the tax rolls of the county in which the affected property is located. The board may send the material by certified mail or by regular mail attested by an affidavit of mailing signed by the attorney or secretary of the board. The notice must also set forth the time and place where the board shall meet to hear and determine whether the sufficiency of any

protests against the project is approved. The notice must also be published once each week for two consecutive weeks in the a newspaper or newspapers of general circulation in the district and once in the official county newspaper of each county in which the benefited lands are located. Within five days after the first publication mailing 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 mailing of the resolution, at which time the board shall hear and determine whether 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 project is approved. If the board finds the protests to be insufficient that fifty percent or more of the total votes filed are against a proposed project, then the board may not proceed further with the proposed project. If the board finds that less than fifty percent of votes filed are against the proposed project, 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 are applicable to such the assessments and the special warrants issued pursuant to this section.

SECTION 2. AMENDMENT. Section 61-16.1-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-18. Hearing - Notice - Contents. Upon the filing of the engineer's report provided for in section 61-16.1-17, and after satisfying the requirements of section 61-16.1-21, the water resource board shall fix a date and place for public hearing on the proposed project. Such The place of hearing shall must be in the vicinity of the proposed project and shall must be convenient and accessible for the majority of the landowners subject to assessment for such the project or whose property shall be is subject to condemnation for the proposed project. The board shall cause a complete list of the benefits and assessments to be made, setting forth each county, township, or city assessed in its corporate capacity as well as each lot, piece, or parcel of land assessed, the amount each is benefited by the improvement and the amount assessed against each. At least ten days before the hearing, the board shall file with the county auditor of each county or counties in which the project is or will be located the list showing the percentage assessment against each parcel of land benefited by the proposed project and the approximate assessment in terms of money apportioned thereto. Notice of such the filing shall must be included in the notice of hearing. Notices of the hearing shall must contain a copy of the resolution of the board as well as the time and place where the board will conduct the hearing. The notice of hearing shall must specify the general nature of the project as

finally determined by the engineer and the board. The notice of hearing shall must also specify when and where protests against such votes concerning the proposed project shall may be filed and an assessment list showing the percentage assessment against each parcel of land benefited by the proposed project and the approximate assessment in terms of money apportioned thereto. The board shall cause the notice of hearing to be published once a week for two consecutive weeks in the newspaper or newspapers of general circulation in the area in which the affected landowners reside, and in the official county newspaper of each county in which the benefited lands are located. The date set for such the hearing shall must not be less than twenty days after the first publication mailing of the notice. A record of the hearing shall must be made by the board, including a list of affected landowners present in person or by agent, and such the record shall must be preserved in the minutes of the meeting. Affected landowners, and the governing body of any county, township, or city to be assessed, shall must be informed at the hearing of the probable total cost of the project and their individual share of such the cost and the portion of their property, if any, to be condemned for such the project.

SECTION 3. AMENDMENT. Section 61-16.1-19 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-19. Protest Voting on proposed projects. At the hearing, the affected landowners, and any county, township, or city to be assessed, shall must also be informed when and where protests against such votes concerning the proposed project may be filed. Affected landowners, and the governing body of any county, township, or city to be assessed, shall then have thirty days after the date of the hearing to file written protests their votes with the secretary of the water resource board, protesting concerning the project. Any form of written objection which sufficiently indicates the intention of the writer shall be sufficient. Once the deadline for filing protests against the proposed project votes has been reached, no more protests votes may be filed and no person may withdraw his or her name from the list of those filing protests against the proposed project a vote. Any withdrawal of a protest against vote concerning the proposed project before that time must be in writing. When the protests votes have been filed and the deadline for filing protests votes has passed, the board shall immediately determine the sufficiency of the protests whether the project is approved. If the board finds that fifty percent or more of the total votes, as determined by section 61-16.1-20, have protested filed are against the proposed project, then the protests shall be vote constitutes a bar against proceeding further with the project. If the protests are found to be insufficient in number or invalid, board finds that the number of votes filed against the proposed project is less than fifty percent of the votes filed, the board shall issue an order establishing the proposed project and may proceed, after complying with the requirements of sections 61-16.1-21 and 61-16.1-22, to contract or provide for the construction or maintenance of the project in substantially the manner and according to the forms and procedure provided in title 40 for the construction of sewers within municipalities. The board may enter into an agreement with any federal or state agency under the terms of which the contract for the project is to be let by the federal agency, the state agency, or a combination thereof. In projects where there is an agreement that a party other than the board will let the contract, the board may dispense with all of the requirements of title 40. Upon making an order establishing or denying establishment of a project, the board shall publish notice of the order in a newspaper of general circulation in the area in which the affected landowners reside, and in the official county newspaper of each county in which the benefited lands are located. Any right of appeal shall begin begins to run on the date of publication of the notice. As used in this section, "board" means water resource board.

CHAPTER 753

SENATE BILL NO. 2080
(Senators Lodoen, Nelson)
(Representatives R. Larson, Lindgren)

WATER BENEFITS ASSESSMENT NOTICE

AN ACT to amend and reenact sections 61-16.1-26 and 61-21-44 of the North Dakota Century Code, relating to reassessment of benefits for water and drainage projects.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16.1-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-26. Reassessment of benefits. The water resource board may hold at any time, or, upon petition of any affected landowner or political subdivision which has been assessed after a project has been in existence for at least one year, shall hold a hearing for the purpose of determining the benefits of such project to each tract of land affected. At least ten days' notice of the hearing ~~shall~~ must be given by publication in the newspaper or newspapers having general circulation in the district and in the official county newspaper of each county in which the benefited lands are located and by mailing notice thereof by ordinary mail to each owner of land ~~affected by the project~~ whose assessment is proposed to be raised as determined by the records of the register of deeds or county treasurer. The provisions of this chapter governing the original determination of benefits and assessment of costs ~~shall~~ apply to any reassessment of benefits carried out under this section. The board ~~shall~~ may not be forced to make such reassessment more than once every ten years, nor ~~shall~~ may any assessment or balance thereof supporting a project fund be reduced or impaired by reassessment or otherwise so long as bonds payable out of such fund remain unpaid and moneys are not available in such fund to pay all such bonds in full, with interest. Costs of maintenance ~~shall~~ must be prorated in accordance with any plan for reassessment of benefits that has been adopted.

SECTION 2. AMENDMENT. Section 61-21-44 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-44. Reassessment of benefits. The board may hold at any time, and, upon petition of any affected landowner after a drain has been in existence for at least one year, shall hold a hearing for the purpose of determining the benefits of such drain to each tract of land affected. At least ten days' notice of such hearing ~~shall~~ must be given by publication in a newspaper having general circulation in the county and by mailing notice thereof to each owner of land ~~affected by the drain~~ whose assessment is proposed to be raised as determined by the records of the register of deeds or county treasurer. The provisions of this chapter governing the original determination of benefits and assessment of costs ~~shall~~ apply to any reassessment of benefits carried out under this section. The board ~~shall~~ may not be forced to make such reassessment more than once every ten years, nor ~~shall~~ may any assessment or balance thereof supporting a drainage fund be reduced or impaired by reassessment or otherwise as long as bonds payable out of such fund remain unpaid and moneys are not available in such fund to pay all such bonds in full, with interest.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 754

HOUSE BILL NO. 1260
(Representatives Belter, Dalrymple)
(Senator Nelson)

WATERCOURSE ADJACENT FILL NOTICE

AN ACT to create and enact a new section to chapter 61-16.1 of the North Dakota Century Code, relating to notice of removal or replacement of fill adjacent to a watercourse.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY 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:

Removal or placement of fill. Prior to removing or placing any fill adjacent to a watercourse, the person responsible shall provide written notice to the district describing the amount and type of fill to be placed or removed and the location of the activity.

For purposes of this section, "adjacent" means within two hundred feet of the bank of the body of water during normal flow or stage. The requirements of this section do not apply to surface coal mining and reclamation operations for which a permit has been secured from the public service commission pursuant to chapter 38-14.1.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 755

SENATE BILL NO. 2092
(Committee on Political Subdivisions)
(At the request of the State Engineer)

COUNTY REVETMENT WORK CONSTRUCTION

AN ACT to repeal chapter 61-19 of the North Dakota Century Code, relating to the construction of revetment works by the county commissioners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Chapter 61-19 of the North Dakota Century Code is hereby repealed.

Approved March 17, 1989
Filed March 17, 1989

CHAPTER 756

HOUSE BILL NO. 1392
(Representatives Urlacher, Goetz, Wald)
(Senators Krauter, Maixner)

SOUTHWEST PIPELINE SYSTEM CONSOLIDATION

AN ACT to create and enact a new section to chapter 61-24.3 of the North Dakota Century Code, relating to the distribution of water through the southwest pipeline project.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 61-24.3 of the North Dakota Century Code is hereby created and enacted to read as follows:

Water distribution lines. Notwithstanding the plans and specifications of state water commission project No. 1736, as authorized in this chapter, the state water commission is hereby authorized to investigate the integration of rural water delivery into the southwest pipeline project, state water commission project No. 1736. If the commission determines that construction cost savings, operation and maintenance cost savings, operation efficiencies, and other advantages can be realized by incorporating water supply, distribution, and delivery into one entire system, and that such benefits and advantages outweigh any additional costs or disadvantages, the commission shall plan, design, integrate, incorporate, construct, operate, and maintain the southwest pipeline project and rural water delivery as one system. The exercise of this authority must be in the manner and time as the commission may deem appropriate.

Approved March 21, 1989
Filed March 23, 1989

CHAPTER 757

SENATE BILL NO. 2107
(Committee on Natural Resources)
(At the request of the State Department of
Health and Consolidated Laboratories)

WATER POLLUTION RESPONSIBILITY

AN ACT to amend and reenact subsection 5 of section 61-28-02 of the North Dakota Century Code, relating to the definition of person in control, prevention, and abatement of pollution of surface waters.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 61-28-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. "Person" means the state or any agency or institution thereof, any municipality, political subdivision, public or private corporation, individual, partnership, association, any agency or instrumentality of the United States government, or other entity, and includes any officer or governing or managing body of any municipality, political subdivision, or public or private corporation.

Approved March 17, 1989
Filed March 17, 1989

CHAPTER 758

SENATE BILL NO. 2167
(Committee on Natural Resources)
(At the request of the State Engineer)

WASTE DISPOSAL SYSTEM APPROVAL

AN ACT to amend and reenact subsection 9 of section 61-28-04 and subsection 2 of section 61-28-06 of the North Dakota Century Code, relating to submission of information concerning disposal systems to the state water commission and permits for disposal systems.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 61-28-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. To require the prior submission of plans, specifications, and other data relative to, and to inspect the construction of, disposal systems or any part thereof in connection with the issuance of approvals as are required by this chapter ~~and to submit such plans, specifications, and data to the state water commission for its information and advice.~~

SECTION 2. AMENDMENT. Subsection 2 of section 61-28-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. It shall be unlawful for any person to carry on any of the following activities unless he holds a valid permit for the disposal of all wastes which are, or may be, discharged thereby into the waters of the state:
 - a. The construction, installation, modification, or operation of any disposal system or part thereof or any extension or addition thereto without plans and specifications previously approved by the department ~~and the state water commission.~~
 - b. Cause a material increase in volume or strength of any wastes in excess of the permissive discharges specified under existing approved plans.
 - c. The construction, installation, or operation of any industrial, commercial, or other establishment or any extension or modification or addition thereof, the operation of which would cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, or biological properties of any waters of the state in any manner not already lawfully authorized.
 - d. The construction or use of any new outlet for the discharge of any wastes into the waters of the state.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 759

SENATE BILL NO. 2095
(Committee on Appropriations)
(At the request of the State Department of
Health and Consolidated Laboratories)

WASTEWATER FACILITY FUNDING

AN ACT to authorize the state department of health and consolidated laboratories to apply for and accept certain grants for the planning, design, construction, and rehabilitation of wastewater treatment facilities, to provide for matching funds, to require that money received through such grants and state matching funds be deposited into the water pollution control revolving loan fund, and to provide for the use, capitalization, investment, and disposition of the funds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

Water pollution control revolving loan fund program - Purposes -
Establishment - Capitalization of fund - Disposition of moneys -
Administration.

1. It is the determination of the legislative assembly that the federal funds for the administration and implementation of the federal wastewater construction grants program will decline within the years to come, thereby decreasing the amount of funds that the state will have to operate and carry out the functions that it has been assigned to accomplish. In order to continue to provide funds to political subdivisions for the planning, design, construction, and rehabilitation of wastewater treatment facilities, and other lawful activities connected with this program, it is the purpose of this section to provide for the establishment of a revolving loan fund to be capitalized by federal grants, matching state funds when required, and by any other funds generated by the operation of the revolving loan fund.
2. There is hereby established a fund to be known as the water pollution control revolving loan fund, hereafter referred to as the "revolving loan fund", which must be maintained and operated by the state department of health and consolidated laboratories. Grants from the federal government or its agencies allotted to the state for the capitalization of the revolving loan fund, and state matching funds when required, must be deposited directly in the revolving loan fund in compliance with the terms of the federal grant. Money in the revolving loan fund must be expended in a manner consistent with terms and conditions of the grants received by the state and may be used to offer loan guarantees; to provide payments to reduce interest on loans and loan guarantees; to make bond interest subsidies; to provide bond guarantees on behalf of municipalities, other local political subdivisions, and intermunicipal or interstate agencies; to provide assistance to a

- municipality, other local political subdivisions, or intermunicipal or interstate agencies with respect to the nonfederal share of the costs of a project; to finance the cost of facility planning and the preparation of plans, specifications, and estimates for construction of publicly owned treatment works; to provide financial assistance for the construction and rehabilitation of a project on the state priority list; to secure principal and interest on bonds issued by a public trust having the state of North Dakota as its beneficiary, or the North Dakota municipal bond bank if the proceeds of such bonds are deposited in the revolving loan fund and to the extent provided in the terms of the federal grant; to provide for loan guarantees for similar revolving funds established by municipalities, other local political subdivisions, or intermunicipal agencies; to purchase debt incurred by municipalities or other local political subdivisions for wastewater treatment projects; to improve credit market access by guaranteeing or purchasing insurance or other credit enhancement devices for local obligations or obligations of a public trust having the state of North Dakota as its beneficiary or the North Dakota municipal bond bank; to fund other programs which the federal government authorizes by the terms of its grants; to fund the administrative expenses of the state department of health and consolidated laboratories associated with the revolving loan fund; and to provide for any other expenditure consistent with the federal grant program and state law. Money not currently needed for the operation of the revolving loan fund or otherwise dedicated may be invested. All interest earned on investments must be credited to the revolving loan fund.
3. The revolving loan fund must be administered by the state department of health and consolidated laboratories, which is authorized to enter into contracts and other agreements in connection with the operation of the revolving loan fund, including contracts and agreements with federal agencies, political subdivisions, public trusts having the state of North Dakota as beneficiary or the North Dakota municipal bond bank, and other parties to the extent necessary or convenient for the implementation of the revolving loan fund program. The state department of health and consolidated laboratories shall maintain full authority for the operation of the revolving loan fund in accordance with applicable federal and state law.
 4. The state department of health and consolidated laboratories has the following powers and duties in regard to the revolving loan fund.
 - a. To apply for and accept grants of money from the United States environmental protection agency or other federal agencies for the purpose of making funds available to political subdivisions for the planning, design, construction, and rehabilitation of wastewater treatment facilities and other related activities. The department may contract to receive such grants, agree to match the grant in whole or in part when required, and to comply with applicable federal laws and regulations in order to secure the grants. Money received through these grants and state matching funds must be deposited into the water pollution

control revolving loan fund or used for appropriate administrative purposes.

- b. To administer the revolving loan fund as established. The office is also authorized to enter into contracts and other agreements in connection with the operation of the revolving loan fund to the extent necessary or convenient for the implementation of the revolving loan fund program.
- c. To administer and disburse funds in accordance with the federal Clean Water Act, as amended.
- d. To promulgate rules as necessary to carry out the provisions of this chapter and meet the requirements of the federal Clean Water Act, as amended.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 760

HOUSE BILL NO. 1274
(R. Anderson)

LITTLE MISSOURI RIVER COMMISSION

AN ACT to amend and reenact section 61-29-04 of the North Dakota Century Code, relating to the Little Missouri River commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-29-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-29-04. Administration. This chapter shall be administered by a Little Missouri River commission composed of the director of the state parks and recreation department, the state health officer of the state department of health and consolidated laboratories, the chief engineer of the state water commission, or their designated representatives, and one member from each of the following counties: McKenzie, Billings, Slope, Golden Valley, Dunn, and Bowman. The commission members representing the above-mentioned counties shall be appointed by their respective boards of county commissioners and shall serve without compensation except that each appointing board of county commissioners may reimburse its county representative for actual and necessary mileage to and from meetings of the commission at the same rate as state officers. The county representatives appointed shall be resident landowners who live adjacent to the Little Missouri River with the exception of the Golden Valley county representative. A county representative unable to attend a meeting of the commission may be represented by a person who has a written proxy from the representative authorizing that person to act and vote for the representative. The proxy must be a resident landowner of the county that the proxy is representing, but need not live adjacent to the Little Missouri River. The county members shall serve terms of office as follows: Two members shall serve one-year terms, two members shall serve two-year terms, and two members shall serve three-year terms.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 761

HOUSE BILL NO. 1130
(Committee on Agriculture)
(At the request of the Commissioner of Agriculture)

STATE WATERBANK FUND

AN ACT to amend and reenact section 61-31-10 of the North Dakota Century Code, relating to receipt of funds for the waterbank program and appropriating waterbank funds; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-31-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-31-10. Authorization for receipt of funds - Continuing appropriation. The commissioner shall be authorized to receive funds for this program from any private or public source, and shall also be authorized to receive any funds from any North Dakota state agency, which have been specifically authorized for that purpose by the legislative assembly. The commissioner shall work with the governor, game and fish commissioner, United States fish and wildlife service, nonprofit conservation organizations, and any other public official or private organization or citizen to develop a source sources of funding to implement this chapter. ~~All funds received from any source, not including state revenues, are hereby appropriated to the commissioner, and may be expended for the purpose of implementing this chapter upon approval of the emergency commission.~~

All funds received by the commissioner from any private or public source and from any North Dakota state agency as well as all funds appropriated by the legislative assembly for implementing this chapter shall be transferred to a special fund in the state treasury, which is hereby created, to be known as the state waterbank fund. The state waterbank fund and interest earned thereon is hereby appropriated as a standing and continuing appropriation solely for the purpose of implementing this chapter, including payment of money due upon waterbank agreements entered under this chapter.

SECTION 2. APPROPRIATION. There is hereby appropriated, out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the commissioner of agriculture, as a standing and continuing appropriation, the amount of \$4,500. Notwithstanding language in section 2 of this Act to the contrary, this appropriation may be used only for payment of money due upon waterbank agreements entered under chapter 61-31. These moneys must be transferred from the general fund to the state waterbank fund. The commissioner of agriculture shall keep a separate accounting of the funds appropriated by this section. Interest earned on this fund may be expended as provided in section 61-31-10, including expenditure for administration of the waterbank program or payment of moneys due on waterbank agreements.

Approved April 10, 1989
Filed April 11, 1989